

# Advancing Multilateral Trade Negotiations on Fisheries Subsidies

WTO: PATHS FORWARD

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*At the World Trade Organization's (WTO) Eleventh Ministerial Conference, ministers adopted a Decision on Fisheries Subsidies (WT/MIN(17)/64) directing negotiators to continue talks with a view to adopting an agreement by 2019, the year of the next ministerial conference. These negotiations would build on two working documents: RD/TN/RL/29/Rev.3, which sets out a vertical compilation of key proposals on the table as of fall 2017, and TN/RL/W/274/Rev.2, containing streamlined texts setting out the main options and positions on key substantive elements of the disciplines. The ministerial decision also specifically re-commits WTO members to implementing their existing notification obligations in order to strengthen transparency of the subsidies provided to fishing. This policy brief aims to provide a succinct summary of the main issues in the negotiations and to clarify the decisions facing members as they construct a comprehensive and effective agreement on fisheries subsidies.*

## 1. Introduction

Global fisheries suffer from severe overfishing: around 60 percent of assessed fish stocks are fully exploited and 30 percent are already overexploited (FAO 2016). This constitutes a serious threat to ecosystems, to the livelihoods of the populations depending on fisheries, and to broader sustainable development concerns.

In this context, illegal, unreported, and unregulated (IUU) fishing is a pervasive problem that undermines resource conservation efforts as well as ocean governance more generally. Illegal and unreported catch across all marine fisheries has been estimated to be worth between US\$10 and US\$23 billion annually; in regions like West Africa total catch is estimated to be 40 percent higher than what is reported (Agnew et al. 2009).

According to the World Bank, as fishing effort has increased over the last four decades and resources have been depleted, the harvesting productivity of global fishing has fallen significantly. Returning the industry to a sustainable optimal state would require a 44 percent reduction in overall fishing effort (World Bank 2017).

Against this background, it is notable that considerable amounts—around US\$35 billion per year—are disbursed as subsidies to the sector, of which around US\$20 billion were given in forms that tend to enhance fishing capacity (Sumaila et al. 2013). There is in fact strong evidence from economic modelling and case studies that subsidies to fishing can create incentives for over-capitalisation of the industry and for unsustainable levels of fishing effort. Fisheries management could go some way to



curbing these effects, but is rarely effectively enforced, and can in fact be undermined by political pressure exerted by over-capitalised fleets (UNEP 2011). Reducing or reforming subsidies to the fishing industry would therefore be necessary to remove the policies’ distorting effects that incentivise overcapacity and overfishing (World Bank 2017).

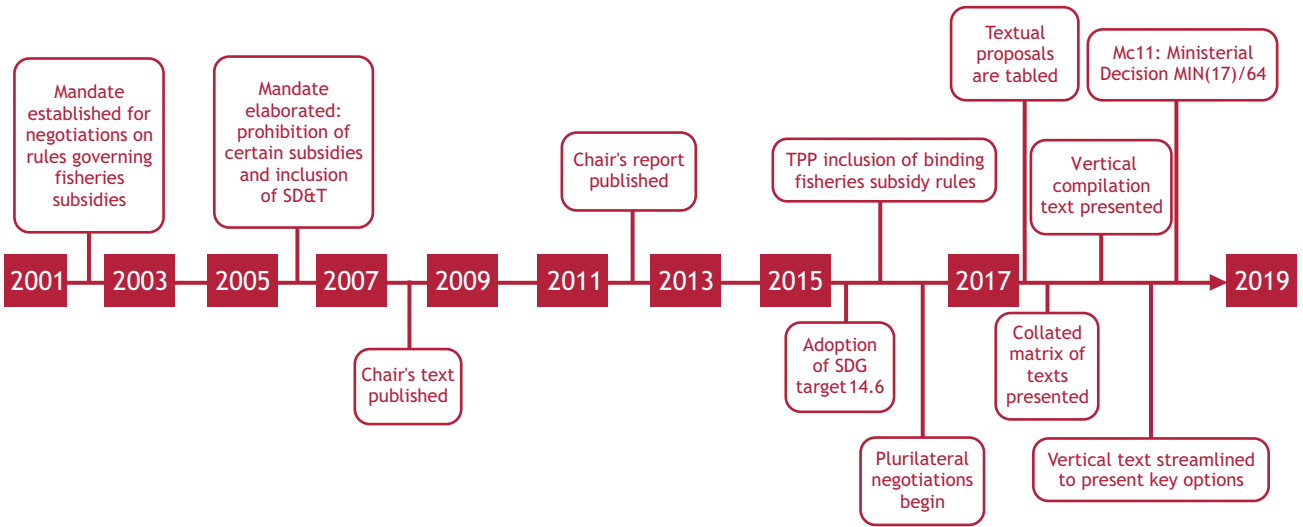
## 2. Fisheries Subsidies at the WTO

World Trade Organization members established a mandate for negotiations on rules governing fisheries subsidies as part of the Doha Round in 2001. They elaborated on that mandate in 2005, directing the prohibition of certain subsidies that contribute to overcapacity and overfishing, enhanced transparency, and the inclusion of appropriate and effective special and differential treatment (S&DT) for developing and least developed country (LDC) members. The negotiations have faced technical challenges, particularly in building subsidy disciplines that address sustainability of fish stocks, as well as political challenges given the sector’s economic importance to developed and developing countries. A Chair’s text of 2007, a milestone in the negotiations, included a list of subsidies to prohibit, a new rule for actionable fisheries subsidies, general exceptions, and a sophisticated system of S&DT, including greater exceptions for small-scale fishing close to shore and narrower exceptions for larger-scale fishing. A Chair’s report of 2011 identified some areas of greater convergence, such as the idea of prohibiting subsidies to IUU fishing.

After a hiatus of several years, negotiations were reinvigorated in mid-2015. The adoption in 2015 of Sustainable Development Goal (SDG) target 14.6 of the United Nations 2030 Agenda for Sustainable Development setting a deadline of 2020 for prohibiting subsidies contributing to overfishing and overcapacity, and for eliminating subsidies to IUU fishing, provided further momentum. WTO members also appear to have been inspired by the inclusion of binding fisheries subsidies rules in the Trans-Pacific Partnership Agreement, which has since been renamed as the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) and is due to be signed in March 2018. Since 2016, a group of 15 WTO members have also been negotiating a plurilateral agreement on fisheries subsidies disciplines amongst themselves.

A wide range of textual proposals were tabled in the lead up to the WTO’s Eleventh Ministerial Conference (MC11). Proposals tabled in the first half of the year were collated by the Negotiating Group Chair into a matrix in July 2017, and then by the proponents into a vertical compilation text in September (now numbered RD/TN/RL/29/Rev.3). Key parts of this vertical text were subsequently streamlined to better identify the options on the table (these streamlined elements are contained in TN/RL/W/274/Rev.2). The 274/Rev.2 document is public, while the RL/29/Rev.3 document is not. This brief focuses on the issues apparent in the texts set out in 274/Rev.2.

Figure 1. Timeline of selected action on fisheries subsidies



### 3. Key Issues in the Negotiations and Sets of Options

A distinctive focus of this most recent phase of negotiations is the emphasis on prohibiting subsidies based on their “effects,” in particular subsidies linked to IUU fishing and subsidies to fishing of stocks that are already overfished. These two prohibitions are thought to be leading candidates for an agreement because of a general understanding that subsidies in these situations, particularly to IUU fishing, are so especially egregious that, at least in principle, the disciplines could apply to all WTO members equally. This understanding is not a point of firm consensus, however; there are proposals on the table that include exceptions to these prohibitions. Many of the proposals also include prohibitions on subsidies based on the type of cost they target—capital costs, like vessel construction, or operating costs, like fuel. Most proposals for disciplines on these latter subsidies include S&DT in the form of wide exceptions for these subsidies to be provided to developing country WTO members’ small-scale fishing, and fishing within those members’ own exclusive economic zones (EEZs).

#### 3.1 Subsidies to illegal, unreported, and unregulated fishing

A central issue in the negotiations over this prohibition is how IUU fishing would be identified and thus trigger the subsidy discipline, the options for which are discussed below. There is also an important question of scope in this prohibition—essentially, whether the subsidy prohibition would be limited to those vessels or operators identified by a member or Regional Fisheries Management Organization (RFMO) under one of the provisions of the agreement, or whether the prohibition would apply to all subsidies to IUU fishing per se, on the basis of a fixed, universally applicable standard or definition of IUU fishing, potentially including subsidies to vessels or operators identified by a member or an RFMO on the basis of that standard. This latter, potentially broader application has raised concerns that a member could identify any IUU fishing around the world (including unreported and unregulated fishing within another member’s EEZ) and challenge another member’s provision of subsidies to that fishing.

An added challenge is that there is no formal, multilaterally agreed legal definition of what constitutes IUU activity. Many proposals refer to Article 3 of the Food and Agriculture Organization (FAO) International Plan of Action on IUU Fishing (IPOA-IUU), but these provisions set out general descriptions of activity and guidelines. While the description in Article 3 could serve as a point of reference, the activities to which an IUU subsidy prohibition would apply will probably require more precise identification in the disciplines.

##### *Identifying activity that would trigger the subsidy prohibition: National lists and determinations*

The first set of options would involve WTO member governments identifying IUU fishing activity in their capacities as subsidising governments, flag states, or coastal states. The proposals on the table suggest (Article 3.1 of 274/Rev.2) that identification could be by way of IUU vessel lists established by members, or through a broader process of “determinations” under national legislation. Some implications of these options are discussed in Schmidt (2017). Very few WTO members currently maintain lists of IUU vessels: only the EU, US, and Norway appear to have national lists of IUU vessels, and these draw heavily on lists by RFMOs. This means, at least initially, that the scope of activity identified by national lists would be limited. Identification by a national determination could encompass more IUU activity, but members would presumably enjoy a degree of discretion in when to make a determination and trigger the subsidy prohibition. Under this set of options, exactly what activity might be identified as “illegal” or “unreported” or “unregulated” in each member’s context would by definition depend on national legislation in place.

Identification by members in their capacities as subsidisers could be an almost circular obligation, as WTO members would, through national lists or determinations, have significant control of when they would identify a vessel or operator that they subsidised and thus trigger of the prohibition.

Identification by members in their capacities as flag states is somewhat broader because (as is recognised in the draft texts) vessels may be flagged to one member, but receive subsidies from another member, for example where the enterprise is based. As research for ICTSD has explained, recent case law under the law of the sea has clarified that a flag state is obliged to exercise “due diligence” by taking all necessary measures to prevent IUU fishing by fishing vessels flying its flag. A WTO prohibition that required

flag states to stop subsidising, or to notify other members so they can stop subsidising operators engaged in IUU fishing, would support the realisation of these obligations through members' domestic economic policy (Young 2017).

The third form of identification would enable a (coastal state) member to identify IUU activity by foreign-flagged vessels fishing operating in waters under the coastal state member's jurisdiction (most significantly, its EEZ). As ICTSD research has noted, the primary obligation to take measures to prevent IUU fishing within the relevant EEZ rests with the coastal state. This means that "enabling coastal states to notify the WTO of vessels or operators found to be flouting conservation measures applicable in that EEZ could also help to support coastal states in discharging their responsibility over those resources, and flag states in their due diligence with respect to vessels under their flag" (Young 2017).

A further option proposed in ICTSD research (Schmidt 2017) is that IUU vessels could be identified by relevant governments pursuant to their implementation of the Port State Measures Agreement, which entered into force in 2016. The agreement already requires that port states inform relevant flag states and RFMOs if vessels are denied port access because of evidence they have engaged in IUU fishing. To date, however, the number of WTO members that has signed the Agreement is limited.

A key policy question reflected in the proposals for all of the forms of identification (other than that by the subsidising member itself) is whether the identification automatically triggers the subsidising member's obligation to stop providing subsidies to the vessels or operators concerned, or alternatively whether, and to what degree, the subsidising member has the ability to "verify" that the determination followed due process and thus retain some degree of control over the trigger of its subsidy obligation. This issue is particularly complex in the situation of identification by a coastal state member of IUU activity in its own EEZ by a foreign vessel or operator.

#### *Identifying activity that would trigger the subsidy prohibition: RFMO lists*

A further option set out in the proposals is that IUU fishing be identified, for the purposes of the subsidy rules, through the IUU vessel list of an RFMO or the FAO. It is worth noting that the scope of this form of identification is currently very narrow. The FAO currently does not manage an IUU vessel list. According to Trygg Mat Tracking, which does maintain a combined list of all RFMO listed IUU vessels, approximately 130 vessels are currently listed by RFMOs, a minute proportion of the estimated 4.7 million fishing vessels around the world (FAO 2016).<sup>1</sup>

As above, a key question with respect to this form of identification is how much control a subsidising member might have over the operation of this trigger of the subsidy prohibition. WTO members appear to be less concerned about the listing of vessels by RFMOs to which they are parties, as these decisions are usually taken by consensus. They appear to be more concerned about the listing of vessels by current or potential future RFMOs to which they are not party (and whose listing decisions they therefore do not control). A related option suggests that a list of vessels could be compiled by the FAO and approved by the WTO Committee on Subsidies and Countervailing Measures (SCM Committee). Several elements of language propose that the subsidising member retain the ability to verify whether a vessel it subsidises was listed based on positive evidence, in accordance with the rules of the RFMO and rules of international law, for example.

Young (2017) has explained that WTO members that are party to the United Nations Fish Stocks Agreement (UNFSA) are already obliged "not only to cooperate to establish but also to respect all RFMOs' conservation measures—including of those RFMOs to which they are not members. Countries that are not parties to the UNFSA or members of a relevant RFMO are not specifically obliged to respect that RFMO's decisions, given the *pacta tertiis* rule, but may still be subject to the UNCLOS [United Nations Convention on the Law of the Sea] obligation to cooperate in the conservation and management of the relevant shared fish stocks." Further, this research has clarified that the UNFSA, which sets out the legal basis for the operation of RFMOs, requires that RFMOs operate in a transparent and non-discriminatory way, which could help to address some members' concerns with this option. More specifically, Schmidt (2017) has reviewed the

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<sup>1</sup> The Combined IUU Vessel List is available here: <http://iuu-vessels.org/iuu/iuu/search>.

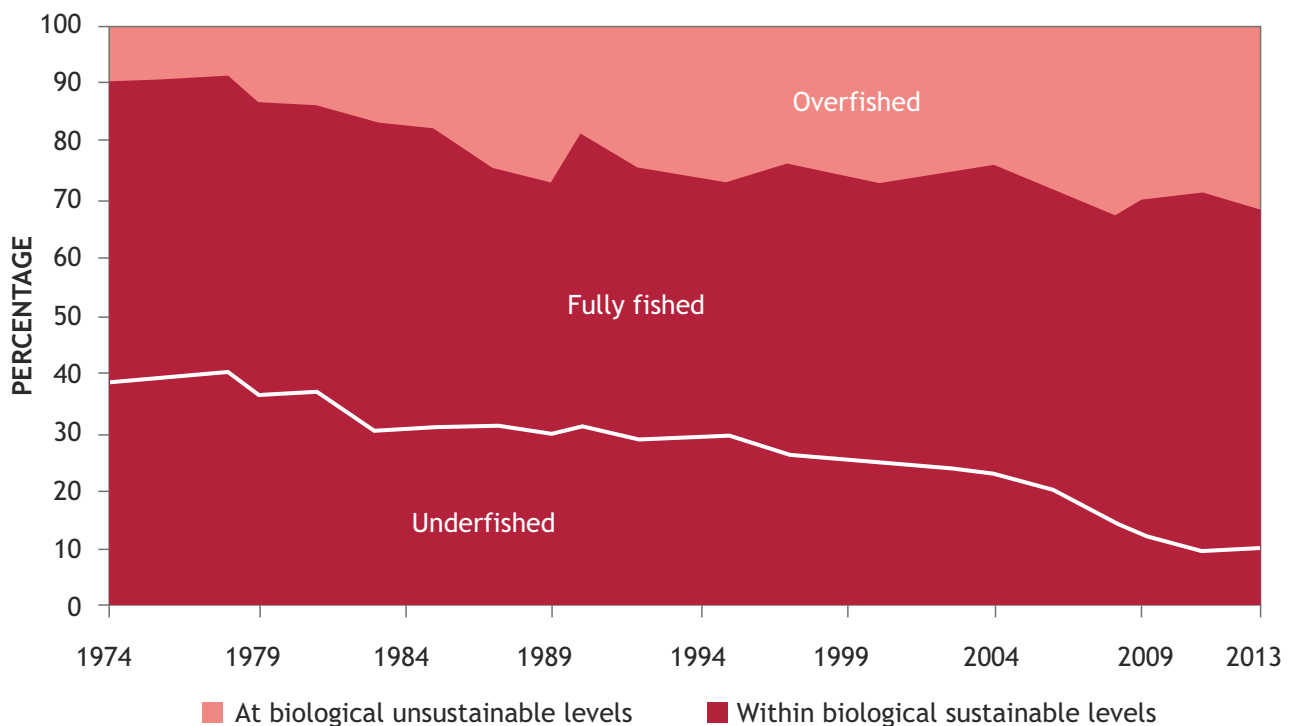
procedures of the 11 RFMOs that currently maintain IUU vessel lists and found that these procedures usually involve an opportunity for comments by contracting members and the flag state of the vessel allegedly engaged in IUU activities.

### 3.2 Prohibition on subsidies to overfished stocks

Several proposals on the table include a prohibition on subsidies for fishing of stocks that are already overfished. According to FAO data, the most comprehensive available covering around 70 percent of global catch, around 31 percent of assessed fish stocks are overfished (Figure 2). Coverage of assessment varies considerably, however, between stocks and regions of the world; commercial stocks are more frequently assessed, and stocks in developing country waters are often less frequently assessed.<sup>2</sup>

Some options on the table would extend the subsidy prohibition to cover the 30 or so percent of global stocks that are not formally assessed. Some experts consider that subsidising the fishing of unassessed stocks poses a significant risk to the biological and economic sustainability of the resource. The reality is that few, if any, governments formally assess every stock under their jurisdiction.

Figure 2. The state of marine fish stocks 1974–2013



Notes: Dark shading = within biologically sustainable levels; light shading = at biologically unsustainable levels. The light line divides the stocks within biologically sustainable levels into two subcategories: fully fished (above the line) and underfished (below the line).

Source: FAO (2016)

Proposals in the negotiations suggest that where there are insufficient data to make a determination, one option is to presume that the stock is overfished; a contrasting option is that the prohibition would not apply until a member acquired the capacity to assess the stock. A third option could be to encourage members to apply the subsidy discipline, where formal assessments are not available, using informal and indirect indicators of stock status, such as declining catch per unit of effort; in the case of multi-species fisheries, the discipline could apply when an ecosystem’s critical indicator species shows signs of being overfished.<sup>3</sup>

2 See presentation by the FAO at ICTSD Knowledge-Sharing Seminar on Fisheries Subsidies, 18 September 2017, available at: <https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies>.

3 See presentation by Maren Headley (Caribbean Regional Fisheries Mechanism) at ICTSD Knowledge-Sharing Seminar on Fisheries Subsidies 18 September 2017, available at: <https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies>.

A key question in designing a prohibition on subsidies to overfished stocks is who makes the decision on whether a stock is overfished or not, and on what basis or in accordance with what standard. The text (paragraph 3.6 of 274/Rev.2) includes variations on two broad options: the establishment of an objective definition of when a stock is overfished, or referring to the decisions of national or regional authorities, or a combination of both. Information presented during ICTSD events has suggested that national definitions of when a stock is overfished differ and might be best applied in the context of local management objectives.<sup>4</sup> Reliance on national decisions to trigger the subsidy prohibition, however, has raised questions about how well those decisions are made, and the standard of scientific evidence on which a national or regional authority would be required to base its decision. A key legal question in this context is whether these decisions should be required to be based on the “best scientific evidence available” or, more relatively, the best evidence “available to the member” or, even more leniently, only the evidence “recognised by” the member.

Two further key policy questions are whether the subsidy prohibition should apply only to fishing that “targets” an overfished stock, and whether it should apply only if the subsidies “negatively affect” a fish stock that is in an overfished condition. One implication of narrowing the discipline to fishing that targets an overfished stock is that it would allow the subsidisation of fishing that took (potentially significant) amounts of overfished stocks as by-catch. A “negative effects” requirement could help to distinguish subsidies that further deplete overfished stocks from those that are designed to help support recovering stocks, but it raises the question of who would make the decision that a subsidy had had a negative effect on an overfished stock, and on what basis. Without further clarification, this decision would presumably be taken by a member in the administration of its subsidy programme, and might potentially be considered by a dispute settlement panel if a member’s implementation of such a rule was ever challenged. One option on the table would restrict the decision to the subsidising member, but require that it be made on the basis of scientific evidence.

### 3.3 Subsidies that contribute to overcapacity and overfishing

The texts on the table contain several options for the inclusion of a prohibition on subsidies that contribute to overcapacity and overfishing (see paragraphs 3.11-13 of 274/Rev.2). One option would provide a general prohibition on subsidies that increase or allow maintenance of the marine fishing capacity of a vessel or fleet of vessels. Other options would prohibit subsidies for the acquisition of machines and equipment that help a vessel to find fish, to the construction, modification, or importation of vessels, and to operating costs including for the provision or use of fuel.

Subsidisation of variable versus fixed inputs has different effects on fishing behaviour, and on the incomes of participants along the value chain. Work by the OECD (2017), presented in summary form at an ICTSD event, has explained the impact of different forms of subsidisation on fishing effort and fishing capacity (Box 1).

#### Box 1. The impact of different forms of subsidisation

Support to **variable inputs** (like bait or fuel) is most likely to increase fishing effort and of least benefit to fishers’ income

Support to **fixed inputs** (vessels) is most likely to increase fleet capacity. The income benefits are usually not shared by new fishers

Support based on **fishers’ income** provides the greatest benefit to fishers

Support to **management, infrastructure and R&D** are least likely to increase capacity or effort

Source: OECD (2017)<sup>5</sup>

4 See presentation by the FAO at ICTSD Knowledge-Sharing Seminar on Fisheries Subsidies 18 September 2017, available at: <https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies>.

5 See also the presentation by OECD at ICTSD Knowledge-Sharing Seminar on Fisheries Subsidies 18 September 2017, available at: <https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies>.

This suggests that the disciplines could be designed to motivate reform of subsidies away from a focus on fixed and variable fishing inputs, which are more likely to have an impact on the amount of fishing activity and catch, towards forms of support that more effectively support fishers' actual incomes and have less impact on fishing effort and capacity.

Fuel subsidies have been a difficult issue in the negotiations. Support to fuel makes up around 22 percent of total value of fisheries subsidies and is considered to enhance fishing capacity (Sumaila et al. 2013). Crucially, estimates suggest that over 90 percent of fuel subsidies are provided to large-scale fishers in the form of subsidies to marine diesel; small-scale fishers are largely excluded from this support because of the expense of acquiring and maintaining diesel engines (Swartz et al. 2013). One option on the table is to list subsidies to fuel alongside other operating costs; if the disciplines build on the WTO Agreement on Subsidies and Countervailing Measures (ASCM) definitions and specificity requirement, this would limit the prohibition to those fuel subsidies that are specific (limited to some set of beneficiaries), and that benefit the fishing industry. Some members are concerned, however, that this approach would exempt horizontal (i.e. economy-wide) fuel subsidies, provided more frequently in developed countries, that benefit their fishing industries. Another option in the text is to discipline all fuel subsidies that might benefit the fisheries sector, including those subsidies to fuel that may not be specific under the ASCM. A third option on the table is to exempt fuel de-taxation schemes from the disciplines completely.

A final set of options for this area of the prohibition would prohibit subsidies to fishing in areas beyond the national jurisdiction of the subsidising member (i.e. fishing on the high seas and in EEZs of other members). One option would add a qualifier, limiting the prohibition to subsidies in these areas that harmed overfished stocks. Another option would exempt from the prohibition subsidies for fishing of RFMO quota, and another would target subsidies that enhance the capacity of large scale industrial fishing outside the subsidising Member's jurisdiction.

### 3.4 Notification and transparency

Subsidies to the fishing industry are, like subsidies to all other industrial goods, subject to the notification requirements under Articles XIV:1 of the General Agreement on Tariffs and Trade (GATT) and Article 25 of the ASCM. Compliance with these existing obligations has been patchy, but there is a wide degree of support for improving the transparency of fisheries subsidies, and there are a number of options in the negotiating texts (see Article 6 in 274/Rev.2) for new information to be notified.

The options, reviewed in research undertaken for ICTSD (Appleton 2017) range from information already required pursuant to the ASCM (like the subsidy programme's name, its legal basis and the level of support provided) to information relating to catch and the status of the fish stocks in the fishery for which the subsidy is provided. This additional information, if notified, could help members to assess the environmental impacts of the subsidies they provide. Some of the elements of information are more readily available than others, however. Analysis by the FAO has explained, for example, that most WTO members would probably be able to report catch by species in large scale fisheries in their EEZs and on the high seas and that reporting catch by species for small scale fisheries would be feasible for some, but not most, developing country members.<sup>6</sup> Additional notification options on the table could support compliance with an eventual agreement, for example by requiring members to notify the SCM Committee of any vessels identified as engaged in IUU fishing.

### 3.5 Special and differential treatment

The question of how special and differential treatment for developing country members should be woven into the final agreement is one of the most contentious in the negotiations. It will likely depend on the scope of the final prohibitions. For one main approach, transitional arrangements, there are several options on the table. One option would provide different transition periods before the rules on prohibited subsidies applied to developed, developing, and least developed countries. Other options would specifically allow capacity- and effort-enhancing subsidies to be provided for an additional transition period after entry into

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<sup>6</sup> See presentation by FAO at ICTSD Knowledge-Sharing Seminar on Fisheries Subsidies 16 November 2017, available at: <https://www.ictsd.org/themes/environment/events/knowledge-sharing-seminar-on-fisheries-subsidies>.

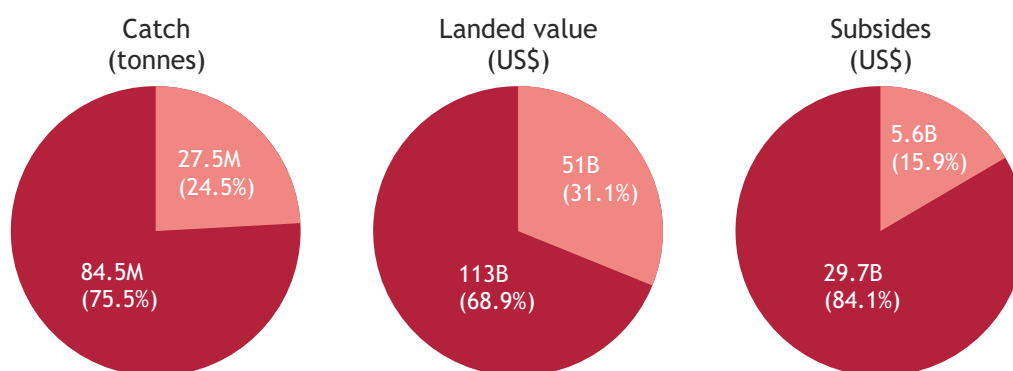
force of the agreement, on condition that the vessels benefitting from the subsidy did not target overfished stocks.

Several options for special and differential treatment relate to unreported and unregulated fishing, subsidies to which some developing country members fear could be challenged if the prohibition on subsidies to IUU fishing extends beyond specifically identified IUU activities (e.g. those based on national or RFMO determinations). One option suggests that the prohibition would not apply to subsidies to unreported and unregulated fishing in waters under the subsidising developing member’s own jurisdiction, and would apply to subsidies a developing member provides to unreported and unregulated fishing *beyond* its jurisdiction only after a transition period. Other options would apply the exception based on the scale of fishing rather than geography. One proposes that the prohibition would apply to subsidies from developing countries to unreported and unregulated fishing (other than large-scale industrial distant-water activities) after a transition period enabling them to establish measures to address unreported and unregulated fishing. A variation on this option would limit the exception to developing countries that are not involved in large-scale industrial distant water fishing.

Further options would provide exceptions for subsidies provided by developing countries to fishing of overfished stocks. One option would permanently exempt subsidies provided by developing countries to fishing of overfished stocks within their territorial waters or EEZs. Subsidies provided by a developing country member to fishing of overfished stocks managed by an RFMO of which the member was a party would have to be removed after a transition period. A relevant consideration in this context is that coastal state WTO members that are parties to UNCLOS are obliged under that agreement to ensure that resources in their EEZs are not overexploited (Young 2017).

A further set of options relate to flexibilities that would be provided to developing countries to continue to subsidise small-scale or artisanal fisheries. The question of whether, and if so how, to establish an exception for small-scale fisheries has been a vexed one. At a policy level, small-scale fishing contributes substantially to employment so is an obvious target for livelihood support; however it can be subject to the same dynamics of overcapacity and overfishing if subsidies provide incentives for excessive effort. Small-scale fisheries receive a relatively small proportion of global subsidies (see Figure 3) and receive only 10 percent of all capacity-enhancing subsidies, much of the value of which goes to large-scale fishing in the form of fuel subsidies, as discussed previously (Swartz et al. 2013).

**Figure 3. Share of annual average catch, landed value, and subsidies that goes to small-scale versus large-scale fisheries globally.**



Source: Sumaila (2017a)

Note: Light red is small-scale and deep red is large-scale fisheries. “M” and “B” stand for “million” and “billion,” respectively.

A particular challenge in the negotiations is how to define the “small-scale” fishing that might be subject to the subsidy exception. One option in the proposals on the table is to establish in the agreement an objective global definition of subsistence, artisanal, or small-scale fishing, for example with reference to vessel length. Another option on the table is to rely on national definitions. A third option, developed in analysis commissioned by ICTSD (Sumaila 2017a), assumes that it is probably neither realistic nor appropriate for the WTO to establish a new global definition of small-scale fishing in the absence of an existing, multilaterally agreed definition in the fisheries context. Instead, governments could consider applying the exception using national definitions of small-scale fishing. To ensure the exception is not

abused and extended to cover subsidies to large-scale activity, the reference could be accompanied by an illustrative list of features commonly accepted as describing small-scale fishing and a requirement that national definitions, and subsidies provided to fisheries meeting these definitions, be notified to the SCM Committee.

A further set of options would provide exemptions for subsidies to fishing within a developing country member’s EEZ or for fishing of RFMO quota. Some options on the table would introduce conditions to these exceptions, for example requiring that the stocks targeted by the subsidised activity are not overfished and are managed by the member. From a policy perspective, a key question underlying this discussion is the balance of interests in access to, and the sustainability of, shared stocks. Shared stocks include stocks that spend all of their time on the high seas, stocks that spend time in both EEZs and the high seas, and those that spend time in more than one EEZ (Sumaila 2017b). The sustainability of stocks that spend some time within EEZs depends in part on effective management by the coastal state or states with responsibility for the relevant EEZs under UNCLOS.

Analysis conducted for ICTSD drawing on existing research has identified two groups with particularly strong interest in shared stocks and the impact of subsidies on their sustainability (Sumaila 2017b). The first group is fishing entities that are responsible for a significant proportion of the global catch of shared species (Table 2). These entities arguably have a duty to ensure they are not contributing, through subsidised fishing, to the depletion of those stocks. The second group are entities which are highly dependent on shared stocks but do not catch a significant portion of them, in global terms (Table 3).<sup>7</sup> From a legal perspective, coastal state WTO members that are parties to UNCLOS are obliged to ensure that resources in their EEZs are not overexploited. Members making use of any exceptions to provide subsidies to fishing of resources within their EEZs would therefore need to ensure that the fishing is not undermining the sustainability of the area’s resources, or the interests of others in those resources (Young 2017).

**Table 2. Fishing entities with highest proportions of global catch from shared stocks (2000–2006)**

Entity	Proportion of global catch from shared stocks (%)
Japan	17
Peru	15
Chile	7
China	5
Republic of Korea	5

Source: Teh and Sumaila (2015)

**Table 3. Fishing entities with highest average percentage of national catch from shared stocks by landed value (2006)**

Entity	Proportion of catch from shared stocks (%)
Vanuatu	95
Greenland	94
Marshall Islands	93
Georgia	92
Peru	87

Source: Teh and Sumaila (2015)

### 3.6 Technical assistance and capacity building

A final set of options in the texts on the table relate to technical assistance and capacity building, including a list of specific activities that developed countries, developing countries in a position to do so, and relevant agencies could support, like conducting stock assessments and monitoring, control, and surveillance of fish stocks. The very technical nature of the resource management underlying disciplines on subsidies to fisheries suggests these provisions will be particularly important for the implementation of an eventual agreement.

Table 4 sets out, in greatly simplified form, some of the key questions and options described above. It is intended to provide an overview of the issues under discussion and is therefore not an exhaustive representation of all of the alternatives presented in the negotiations.

<sup>7</sup> Note in Tables 2 and 3 that Greenland and the Marshall Islands are not WTO members. Of the WTO members listed in these two tables, only Peru is not party to UNCLOS.

**Table 4. Outline of key questions, options, and approaches**

Key questions	Options or approaches	Issues to be resolved
<i>Subsidies to Illegal, unreported, and unregulated fishing</i>		
How is the IUU activity that triggers the subsidy prohibition identified?	<p>A. All activity falling under the IPOA-IUU description</p> <p>B. National listing or determination by:</p> <ol style="list-style-type: none"> <li>1. Subsidising member</li> <li>2. Flag state member</li> <li>3. Coastal state member</li> <li>4. Port state member</li> </ol> <p>C. Vessel lists of RFMOs</p>	<p><i>Are exceptions for subsidies to unreported and unregulated fishing required if all activity under the IPOA-IUU is covered?</i> Options include a permanent exemption or transition period for subsidies to small-scale UU fishing and a transition period for subsidies to UU fishing outside EEZs.</p> <p><i>How to balance effective identification by national or regional authorities with members' desire for control of the trigger of the subsidy obligation?</i> With respect to B.2 through B.3, options include: Requiring prompt recognition or verification by the subsidising member of the determination. With respect to C, options include: Requiring listing to be in accordance with the procedures of the RFMO and international law. Requiring verification by the subsidising member of the RFMO listing.</p>
<i>Subsidies to fishing of overfished stocks</i>		
1. Should the subsidy prohibition extend to unassessed stocks and if so, how?	<p>A. Subsidy prohibition only applies where a stock is known to be overfished.</p> <p>B. In absence of data, a stock is presumed to be overfished.</p> <p>C. Members exercise restraint in subsidising vessels targeting unassessed stocks.</p>	<p><i>How to deal with stocks not assessed due to lack of capacity?</i> Options include: Not applying the prohibition to fishing within territorial seas or EEZs of developing countries. Not applying the prohibition until a member acquires the capacity to assess a stock. Applying discipline using informal indicators of stock status, including for multi-species fisheries. Allowing another member to challenge a subsidy to an unassessed stock on the basis of positive evidence it is overfished.</p>
2. How is an overfished stock defined and on what basis?	<p>A. By objective definition in the agreement (and/or):</p> <p>B. By national or regional authorities</p>	<p><i>How to balance deference to national and regional stock status decisions with ensuring the subsidy obligation acts to protect overfished stocks?</i> With respect to option 2.B, options include: Requiring the decision be based on best scientific evidence available, or the best evidence available to the Member, or only that evidence that is recognised by the authority. Requiring that determinations with respect to straddling and highly migratory stocks be made with cooperation of interested Members. Requiring that regional determinations take into account any objections from a member concerned.</p>
3. Should the prohibition be limited to subsidies that negatively affect overfished stocks and if so, how is the effect defined?	<p>A. Negative effect determined according to the best evidence available</p> <p>B. Negative effect determined by the subsidising member.</p>	<p><i>How to balance deference to national subsidy effect decisions with ensuring the subsidy obligation acts to protect stocks negatively affected by subsidies?</i> With respect to 3.B, options include requiring the decision to be based on best scientific evidence available to the subsidising member, or only that evidence that is recognised by that member.</p>
<i>Subsidies that contribute to overcapacity and overfishing</i>		
How should prohibited subsidies be identified?	<p>A. By effect on fishing ability of a vessel or fleet e.g. Subsidies that increase the fishing capacity of a fishing vessel or of a fleet.</p> <p>B. By type of cost targeted e.g. Subsidies to capital costs and subsidies to operating costs.</p> <p>C. By geographic area e.g. Subsidies to fishing within or outside the subsidising member's jurisdiction.</p> <p>D. By scale of fishing e.g. Subsidies to large-scale industrial fishing</p>	<p><i>How should fuel subsidies be addressed?</i> Options within B. include a prohibition of specific fuel subsidies; a prohibition of specific and non-specific fuel subsidies; or an exemption for fuel de-taxation schemes.</p> <p><i>Should exceptions for subsidies by developing countries be established, and if so, how?</i> Options with respect to B. include exceptions for all developing country subsidies, subject to management requirements.</p> <p>Options with respect to C. include exceptions for subsidies to fishing within developing country EEZs, perhaps subject to management requirements, and for subsidies to fishing of RFMO quota.</p> <p>Options with respect to D. include exceptions for small-scale fishing as defined in the agreement, or as defined by national legislation, or perhaps using national definitions alongside an illustrative list of features and subject to transparency.</p>

Table 4. *Continued*

Key questions	Options or approaches	Issues to be resolved
<i>Notification and transparency</i>		
What information would support the objectives of the agreement?	<p>A. Information on the state of the fleet and fishery for which the subsidy is granted. e.g. the type or kind of fishing activity involved, operators fishing in areas beyond national jurisdiction, catch data, the status of the stocks and the capacity of the fleet and management measures in the fishery for which the subsidy is provided, and trade in the relevant species.</p> <p>B. Information on IUU activity e.g. RFMO or member notification of vessels fishing illegally in waters under their management.</p>	<p><i>Can this information feasibly be provided by most WTO Members?</i> Options with respect to A. include requiring the information to be notified to the extent practicable, and establishing exceptions for LDC members.</p> <p><i>What is the appropriate information to require in a notification to help assess compliance with the agreement?</i></p>
<i>Transitional arrangements and technical assistance</i>		
1. Are transition periods needed and if so, to what extent?	<p>A. Transition periods for prohibited subsidies, except those to overfished stocks, for developing country members.</p> <p>B. Transition period for members that need time to assess their stocks.</p> <p>C. Transition periods for subsidies to small-scale unreported and unregulated fishing.</p> <p>D. Transition periods for developing country subsidies to RFMO-managed overfished stocks</p>	<p><i>How can transition periods and technical assistance be designed so as to enable developing country Members to effectively implement the new disciplines?</i></p> <p>Options with respect to 2.A.-B. regarding technical assistance include general commitments and specific lists of areas of technical assistance that would support implementation of the obligations in the agreement.</p>
2. What technical assistance will be necessary to help WTO members implement the disciplines?	<p>A. Support to fisheries management, including monitoring control and surveillance.</p> <p>B. Support to subsidy policy reform and implementation of the agreement.</p>	

## 4. The Road Forward

While there is substantial high-level political expectation and momentum behind the negotiations on fisheries subsidies, their technical and legal complexity means it is not yet clear how the options on the table might be combined to deliver a comprehensive and effective outcome, as required by the Ministerial Decision on Fisheries Subsidies, to meet the SDG 14.6 deadline of 2020. Negotiations will need to make consistent progress over the next few months in reaching agreement on key policy questions. It might even be helpful to establish a milestone at which high-level representatives can take stock of, and endorse, progress made, enabling the details of the obligations to be ironed out before the WTO's Twelfth Ministerial Conference.

This policy brief has outlined the key options on the table in the core substantive elements of the current negotiating texts on fisheries subsidies. It has also identified key insights from research and analysis conducted for ICTSD that may help to clarify some of the implications of the various options on the table and the considerations for negotiators. Much technical work remains to be done to gain further conceptual clarity and to better understand the practical implications of the various options on the table. Crafting a comprehensive and effective outcome, moreover, will require flexibility and pragmatism from all WTO members.

## References

- Agnew, David J., John Pearce, Ganapathiraju Pramod, Tom Peatman, Reg Watson, John R. Beddington and Tony J. Pitcher. 2009. *Estimating the Worldwide Extent of Illegal Fishing*. PLOSOne.
- Appleton, Arthur. 2017. *Options for Improving the Transparency of Fisheries Subsidies*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
- FAO. 2016. *The State of World Fisheries and Aquaculture (SOFIA)*. Rome: Food and Agriculture Organization.
- OECD. 2017. *Support to Fisheries: Levels and Impacts*. Paris: Organisation for Economic Co-operation and Development.
- Schmidt, Carl-Christian. 2017. *Issues and Options for Disciplines on Subsidies to Illegal, Unreported and Unregulated Fishing*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
- Sumaila, U. Rashid. 2017a. *Small-scale Fisheries and Subsidies Disciplines: Definitions, Catches, Revenues, and Subsidies*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
- Sumaila, U. Rashid. 2017b. *Shared Stocks and Fisheries Subsidies Disciplines: Definitions, Catches, and Revenues*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
- Sumaila, U. Rashid, Vicky Lam, Frédéric Le Manach, Wilf Swartz and Daniel Pauly. 2013. *Global Fisheries Subsidies*. Brussels: EU Parliament.
- Swartz, W., U.R. Sumaila, and R. Watson. 2013. "Global Ex-vessel Fish Price Database Revisited: A New Approach for Estimating 'Missing' Prices." *Environmental and Resource Economics* 56: 467–80.
- Teh, Louise S. L., and U. Rashid Sumaila. 2015. "Trends in Global Shared Fisheries." *Marine Ecology Progress Series* 530: 243–254.
- UNEP. 2011. *Fisheries Subsidies, Sustainable Development and the WTO*. Anja Von Moltke (ed). Geneva: United Nations Environment Programme.
- Young, Margaret. 2017. *The 'Law of the Sea' Obligations Underpinning Fisheries Subsidies Disciplines*. Geneva: International Centre for Trade and Sustainable Development (ICTSD).
- World Bank. 2017. *The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries*. Washington, DC: World Bank. Environment and Sustainable Development series.

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### WTO: Paths Forward

*WTO: Paths Forward* is an ICTSD initiative that builds on the outcomes of the Eleventh Ministerial Conference in December 2017. The cycle of publications and events will provide a platform for discussion and analysis on possible options for WTO-based processes going forward and into the Twelfth Ministerial Conference in 2019. The issues selected for the initial series of policy briefs are agriculture, development, disciplines on domestic regulations in services, e-commerce, fisheries subsidies, fossil fuel subsidies, and investment facilitation.

Lead authors in the production of policy briefs under the *WTO: Paths Forward* initiative are Björn Dupong, Judith Fessehaie, Jonathan Hepburn, Rashmi Jose, Felipe Sandoval, and Alice Tipping. Editorial contributors are Christophe Bellmann, Andrew Crosby, Ingrid Sidenvall Jegou, and Ricardo Meléndez-Ortiz. Oleg Smerdov is responsible for layout and Colette Holden for proofing. Series Senior Editor and Production Manager is Fabrice Lehmann; overall Direction by Ricardo Meléndez-Ortiz.

ICTSD welcomes comments and feedback on this policy brief. These can be sent to [flehmann@ictsd.ch](mailto:flehmann@ictsd.ch).

### About ICTSD

The International Centre for Trade and Sustainable Development (ICTSD) is an independent think-and-do-tank, engaged in the provision of information, research and analysis, and policy and multistakeholder dialogue, as a not-for-profit organisation based in Geneva, Switzerland; with offices in Beijing and Brussels, and global operations. Established in 1996, ICTSD's mission is to ensure that trade and investment policy and frameworks advance sustainable development in the global economy.

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