



Potential Implementation Steps of a WTO Agreement on Fisheries Subsidies

GSI Policy Brief



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The IISD Global Subsidies Initiative (GSI) supports international processes, national governments and civil society organizations to align subsidies with sustainable development. GSI does this by promoting transparency on the nature and size of subsidies; evaluating the economic, social and environmental impacts of subsidies; and, where necessary, advising on how inefficient and wasteful subsidies can best be reformed. GSI is headquartered in Geneva, Switzerland, and works with partners located around the world. Its principal funders have included the governments of Denmark, Finland, New Zealand, Norway, Sweden, Switzerland and the United Kingdom, as well as the KR Foundation.

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Acronyms

ABNJ	areas beyond national jurisdiction
AFD	Agence française de développement
AUSAID	Australian Aid
EU	European Union
EU ACP	EU Africa, Caribbean and Pacific Partnership
DANIDA	Danish International Development Agency
FAO	Food and Agriculture Organization of the United Nations
FAO TCP	FAO technical cooperation projects
FOC	flags of convenience
ICEIDA	Icelandic International Development Agency
IUU	illegal, unregulated and unreported (fishing)
JICA	Japan International Cooperation Agency
LDC	least developed countries
MoU	memorandum of understanding
NORAD	Norwegian Agency for Development Cooperation
NZAID	New Zealand Aid
OECD	Organisation for Economic Co-operation and Development
RFMO	regional fisheries management organization
RFMA	regional fisheries management arrangement
SDG	Sustainable Development Goals (United Nations)
SOP	standard operating procedure
UNEP	United Nations
USAID	United States Aid
WB	World Bank
WTO	World Trade Organization



1.0 Background and Purpose of This Policy Brief

Negotiations on new rules to discipline fisheries subsidies are currently being held at the World Trade Organization (WTO), with the aim of reaching a multilateral agreement to prohibit harmful fisheries subsidies, in particular those that contribute to overfishing, lead to overcapacity, and support illegal, unregulated, and unreported (IUU) fishing. There are also concerns regarding the possible unfair benefits in terms of competitiveness for those WTO members that can afford to provide subsidies for their fishing industry.

Addressing the harmful effects of some subsidies is critical in supporting the Sustainable Development Goals (SDGs) adopted by all United Nations member states (2030 Agenda for Sustainable Development 2015). The WTO negotiations are pertinent to SDG 14 Life Below Water and are the focus of Target 14.6, which calls on governments to “prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated fishing, and refrain from introducing new such subsidies” by 2020. This target also recognizes that appropriate and effective special and differential treatment for developing country WTO members should be an integral part of the WTO negotiations.

WTO negotiations are working toward delivering an agreed text that will establish new rules for subsidy provision in the form of three main disciplines, focusing on subsidies that contribute to i) IUU fishing; ii) the fishing of overfished stocks; and iii) overfishing and overcapacity. However, there is currently very little guidance material available that could be used when implementing reform of fisheries subsidies, either in the context of a possible WTO agreement or simply through unilateral reform. There is existing research highlighting the impacts of different types of fisheries subsidies on different policy objectives (Martini & Innes, 2017, 2018), as well as a wealth of information on the reform of fisheries as a sector (see for example OECD, 2011, 2013). Nonetheless, more precise guidance about the implementation of WTO subsidy disciplines and subsidy reform will be an important and practical requirement subsequent to any WTO agreement and could be beneficial even if a WTO deal is not reached.

This gap in guidance material and the need to start thinking about how to implement subsidy reform—and what the practical implications for WTO members would be—are issues that IISD is aiming to address.

This policy brief thus sets out some ideas that may aid the implementation of possible new WTO rules. The brief focuses on capture fisheries only, not recreational fishing or aquaculture, as these activities fall outside the scope of ongoing WTO negotiations (WTO, 2018).

It is also important to note that fisheries subsidies are part of often-complex existing policy settings, including, but not limited to, broader fisheries policy and cannot be viewed in isolation. While recognizing that successful reform of fisheries subsidies requires a unified government approach and policy coherence across various agencies, this brief deliberately focuses as specifically as possible on direct implications of possible new WTO disciplines.



This brief is not intended to be a definitive statement of approach, and the following sections have been written with the intention of raising some issues that policy-makers and implementers will need to consider concerning the practicalities surrounding the implementation of WTO rules. We hope it will form the basis of more detailed guidance to be developed in the future.

Section 2 deals with the general implementation steps each WTO member could take to fulfill their obligations for subsidy reform under the negotiated and agreed rules. These steps can be taken irrespective of any specific discipline. This section also describes the potential difficulties that may arise for different WTO members dependent upon their own resources to further implementation of reform and the form in which data is collected and collated.

Section 3 provides guidance on the implementation of subsidy reform for the three disciplines discussed at the WTO, i.e., related to IUU fishing, overfished stocks, and overfishing and overcapacity. The implications of the removal of subsidies on both larger and small-scale or artisanal fisheries are considered in relation to the three disciplines.

Finally, Section 4 considers the potential for a change in focus for technical assistance to assist with the implementation of subsidy reform.



2.0 Benchmarking and Planning for Subsidies Reform

2.1 Establish a Subsidy Inventory and Processes for Notification

Following any WTO agreement on fisheries subsidies, a key first step for all WTO members would be to develop an inventory of the relevant subsidies. Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) specifies that a subsidy exists if “there is a financial contribution by a government or any public body within the territory of a Member” and a benefit is conferred (WTO, 1994). The final negotiated text of any WTO agreement on fisheries subsidies will contain text related to the definitions of subsidies that would fall under the remit of the agreement.

Without documentation of subsidies being provided, the task of ensuring compliance with WTO rules and implementing subsequent reform will be difficult. The first step for any country would, therefore, be to document all subsidies being provided by the government or a public body, including information about the recipient, the reason for the subsidy, the providing agency, and the level of subsidy and any other information required.

Not all subsidies would be prohibited under any WTO agreement. Governments are likely to find, however, that a complete picture of the subsidies they provide would be useful for domestic policy purposes anyway. The inventory should, therefore, ideally include not just information about subsidies required by any WTO agreement but all other forms of support and relevant policies as well.

The format and method of collecting information for the inventory will need careful consideration, especially with regards to differing capacities and resources available to WTO members. An input methodology and format for data entry could be developed that is relatively simple and could be completed with minimal training and effort. The collection of such data at the national level, while primarily being a requirement for individual WTO members in the context of their WTO notification obligations, would also provide valuable information at the global level over the global distribution of subsidies and the overall level of reform needed. Such data collection will require both resources and political will.

Article 5 Section 5.19 and 5.20 in the WTO working document N/RL/W/274/Rev.6 (WTO, 2018) suggests that least developed countries (LDCs) should be exempt from providing the detailed notification requirements stated under Article 6 because this requirement may be too onerous for those members lacking the capacity to fulfill this obligation. However, supporting LDCs to collect this information, whether or not it is a requirement of the WTO agreement, would help ensure they had the information they might need themselves to take steps toward the reform of subsidies and would thus support a better global picture of fisheries subsidies. With this in mind, the provision of assistance to LDCs to collect such information takes on great importance.

Part of the work of developing national subsidy inventories will support existing (and any new) subsidy notification obligations under WTO rules. Currently, Article 25 of the ASCM defines



the procedure for annual notification of subsidies and provides that the content of such notification should be “sufficiently specific for other Members to evaluate the trade effects and understand the operation of notified subsidy programmes.” Notifications under Article 25.3 cover a range of information regarding the form, amount, objective, duration, and statistical data relating to the trade effects of subsidies.

Negotiations are continuing within the WTO regarding additional information that could be provided and whether notification requirements should be mandatory or “softened” due to capacity constraints. The process for notification should be such that it provides sufficient information from all WTO members to develop a functional inventory.

Discussions on notifications specific for fishing subsidies (WTO, 2018) have considered, in addition to the regular notifications under Article 25 as detailed above and with the proposed exception of LDC WTO members, a number of options regarding what additional detail should be provided.

Whatever rules are agreed about the content of notification, there will be a requirement for WTO members to update their notification processes, and this may have resource implications. Regardless of the discipline to which the data are relevant, new and improved recording arrangements will be needed, and this will be the responsibility of the national government and institutions of subsidy providers. Importantly, such efforts will require cross-ministerial coordination and political commitment. There will also be a need to share information between WTO members (and potentially donors), which may require international coordination.

Practical Steps and Consideration: Inventory and notification

- At the global level, it might be helpful to establish a format for the information to be collected and included in each WTO member’s inventory and for providing sufficient and detailed guidance on how to do so: there will thus be comparability across countries and confidence that the information provided is robust and comprehensive. Adopting such a common template would be useful in standardizing the scope and quality of information provided; however, it would also raise the questions of how it would be established and who should take responsibility for it.
- At a national level, who will be responsible for taking the lead in establishing and maintaining a national inventory and ensuring continuity?
- At a national level, what types of resources (financial and manpower) would be involved in completing an inventory, and is capacity development required in order to successfully complete an inventory?
- At a national level, what sort of process should be established to ensure that all agencies responsible for providing information are coordinated?
- At the national level, will IT systems need updating for the inventory and for notification purposes?



2.2 Design of a Subsidy Reform Program

Once an inventory has been made, the next step would be using it (alongside the country's fishing profile) to identify prohibited subsidies falling within the scope of WTO rules and to develop a reform program. However, WTO members might also wish to remove or alter other subsidies not falling within the WTO agreement.

Subsidies favouring both large-scale and small-scale vessels can lead to overfishing and over-exploitation by reducing operating costs. While large vessels receiving subsidies may individually have a greater negative impact on fish stocks, large numbers of small-scale vessels could also have detrimental impacts (Schuhbauer et al., 2017). Both large and small-scale fleets are the recipients of subsidies, with small-scale fisheries being the beneficiaries of subsidy support because of the view that they need special support given the income/poverty levels of those involved, and because the number of individuals involved represents a substantial number of potential voters.

There is a body of research that has not only collected information on the source and focus of subsidies but has also categorized whether such support is capacity-enhancing, beneficial, or has ambiguous effects (Sumaila et al., 2019; Sumaila & Pauly, 2006). Such information may assist with decisions about which subsidies WTO members wish to reform even if not within the scope of a WTO agreement. A recent report looking at the effects of six common forms of fishery support (income support, concessionary loans, vessel purchasing, port services, fuel tax concessions, and tariff and consumer subsidies), showed that all six could potentially encourage overfishing, although to varying degrees (Martini & Innes, 2018).

Subsidy reform should not be viewed as an isolated activity but as part of overall improvements in fisheries policy and management with important feedback loops and connections. For example, management decisions may have an impact on reducing the need for subsidies if they can improve stock status, and/or through alleviating some of the discomfort felt by the private sector in case of subsidy removal. In order to ensure that subsidy reform and other policy and management improvements are well coordinated, there may be a benefit to frame such reform within the wider context of the national fisheries strategy.

WTO members will also need to think carefully about how communities and current beneficiaries will be affected by reform, and whether they can, or should, be supported through any transition. A range of strategies for this may be possible, including moving away from the use of subsidies that contribute to excessive levels of fishing, or using funds instead to aid with transition e.g., diverting a subsidy contributing to overcapacity to one to be used for re-education or development of new skills to help fishers find alternative livelihoods.



Practical Steps and Considerations: Design of a reform program

- What subsidies must be reformed in light of a WTO agreement?
- What other subsidies might a WTO member like to reform?
- What will be the likely impacts or removing/reforming subsidies on different stakeholders?
- What mitigating measures can be put in place to aid with transition, and which of the current beneficiaries should be assisted with transition?

2.3 Communication and Consultation Around Transition Strategies

Reform of any established system is dependent on the understanding and agreement of various stakeholders, some of whom will have a high degree of interest and influence. Implementing subsidy reform requires that the rationale for change is explained carefully at a national level and includes a wide variety of stakeholders, many of whom will be key to effecting such change.

Communication methods should be developed according to stakeholder needs, recognizing that one size will not fit all. Effective stakeholder mapping and engagement with communities most affected by change should be the first stage of implementation of any reform. All of this may require the preparation of a communications strategy.

Practical Steps and Considerations: Communication

- Who are the stakeholders that would be affected by subsidy reform, and what is their level of influence and interest?
- Who will take responsibility and the lead on a communications strategy?
- How will communication messages and methods be tailored to best suit/reach different types of stakeholders e.g., the requirements for explaining subsidy reform to poor small-scale fishers will need to be very different from those required for government personnel in a ministry providing subsidies, or to large-scale commercial interests.

2.4 Coordinating Mechanisms

Information sharing and cooperation are key elements not only for compiling a detailed inventory and articulating a reform strategy and program but also for the successful implementation of subsidy rules and reform measures for all three disciplines. Coordinating mechanisms are integral to the whole process and should be developed alongside the other elements described above.



The main question for WTO members to answer in this regard is whether or not coordinating mechanisms are already in place between agencies awarding/managing subsidies and those engaged in research and control. If these are not present, then they should be established.

The early establishment of a coordination mechanism (for example, in the form of an inter-agency subsidy reform working group) will be critical. Any such mechanisms established for the purpose of the inventory and identification of reform steps could form the basis of the mechanism for seeing through the subsequent reform.

A key step would be to determine the “lead agency,” which is likely to be the ministry of fisheries or its fisheries department, with support from the ministries of finance and trade. However, many other institutions may need to be involved, including representatives of private sector beneficiaries of subsidies, to increase transparency and participation over necessary reform.

Coordination between government institutions may require the establishment of memorandums of understanding (MoUs), standard operating procedures (SOPs), as well as information technology (IT) systems to generate automatic information sharing. These mechanisms may just be internal to a WTO member; however, they could also be regional if fleet segments are fishing in other WTO member states or if the specific discipline is triggered by, or in relation to, coastal, flag, or port state competencies.

Practical Steps and Considerations: Coordination mechanisms

- Which agency will lead and coordinate this process, and are there any resource issues in doing so?
- Which other organizations (government and private sector) need to be involved, and has a coordination body/mechanism been established to involve them all?
- Are MoUs necessary between government agencies, and if so, what do they need to cover (e.g., data sharing)?
- Has a system of information sharing been developed for national and regional agency use?



3.0 Discipline-Specific Implementation Steps

3.1 IUU Fishing Subsidies Discipline

3.1.1 Background

IUU fishing is harmful to the marine environment in that it can deplete fish stocks that may already be under extreme pressure and have a negative impact on marine habitats. There are also concerns over the impact on the fishing industry in terms of trade and competition distortion, and over the negative impact of IUU fishing by some operators on others and on communities dependent on fish resources.

The WTO negotiating group on rules relating to fisheries subsidies is working toward closing the loop on IUU practices that are being supported by subsidies. The overarching aim is to eliminate subsidies that contribute to IUU fishing. However, further discussions are still needed to agree on how exactly the discipline will be designed. A key point is that the discipline (as currently discussed) is likely to be triggered by a “determination” of IUU fishing. Under the WTO agreement, WTO members would be required to withdraw subsidies from vessels or operators that were the subject of a determination, but would not be obliged to make the determinations themselves.

3.1.2 Gathering Information on Infringements

The initial step regarding implementation would be to ensure that the full details of any fishing vessel or operator with a record of one or more infringements are adequately recorded by the authority making a determination of infringement. Such authority could be a subsidizing state, coastal state, flag state, or port state, as well as a Regional Fisheries Management Organization (RFMO). The information collected must be sufficient to allow an identification of whether the vessel or operator received subsidies, and from whom. Information that could be collected includes licence numbers, the registered port, and contact details for the owner and/or vessel operator in receipt of subsidies as well as the date and details of any previous resolved and unresolved infringements.

Gathering such information will require inter-agency and cross-border cooperation. Some information could come from the RFMOs’ lists of operators and owners with IUU infringements. However, this would not provide sufficient or comprehensive information of all relevant instances of IUU, given the mandates of RFMOs for some but not all species, and the fact that illegal fishing also takes place within exclusive economic zones (EEZs). Each WTO member would ideally collect infringement data for foreign or nationally registered vessels found to be conducting IUU fishing activities in its own waters. The collection of information on infringements may require cooperation between different government agencies at the national level, for example between a fisheries department and the coastguard and/or marine police, where such organizations have a mandate for fisheries control, inspection, and enforcement. The list of infringement data would then be transmitted to the country’s agency in charge of subsidies. Infringement data for foreign vessels could be notified to the WTO. Because a WTO member’s subsidy obligation may be triggered by determinations by other



states, governments could consider how they will ensure they have access to information about other parties' determinations.

While WTO negotiations are focusing on IUU fishing vessels or operators, WTO members may also wish to consider, as a matter of broader policy coherence, the withdrawal or prevention of subsidies for any post-harvest businesses in the supply chain found to be handling IUU-caught fish. This could require identification of processors, buyers, and transporters who receive subsidies and who are found to be handling IUU fish.

Practical Steps and Considerations: Gathering information on infringements

- Has the lead agency responsible for collecting infringement data been identified, and have appropriate relationships been established between agencies?
- Have infringements in the post-harvest sector (down the supply chain) been considered?
- Has the resourcing for this work been considered, along with roles and responsibilities?
- Are IT systems in place between agencies to link databases of those receiving subsidies with those found to be engaged in IUU fishing behaviour?

3.1.3 Sanctions System Reform and Mechanisms for Withdrawal of Subsidies

The key to reform is ensuring that mechanisms are set up to ensure there are no legislative or other barriers for efficient and timely withdrawal of subsidies from vessels/owners with infringements. If subsidies legislation does not allow for the withdrawal of subsidies for infringement, then reform is needed to ensure that it does. In the case that new WTO disciplines establish a minimum duration for the prohibition, members will also need to assess how this fits with existing rules for subsidy eligibility, and potentially adapt them accordingly.

Governments could consider two implementation steps: an ex-ante system to ensure new subsidies are not provided to those operators with a record of infringements, and then an ex-post system to ensure that existing ongoing subsidies are withdrawn from operators with infringements. Both these steps require information gathering and a coordination mechanism to identify the vessels, owners, and potentially other actors in the supply chain with a record of infringements.

For some LDC and developing country WTO members, the ability to react rapidly to infringements may be difficult, and a period of transition and technical assistance may be required to establish such mechanisms.

It may also be beneficial, as a matter of broader policy coherence, to establish legal instruments at the national level to require beneficiaries of subsidies found to be engaged in IUU behaviour to pay back the subsidies. Although not necessarily required under a WTO agreement, this would serve to better discourage IUU fishing.



Practical Steps and Considerations: Sanctions system and mechanisms of withdrawal

- Is there a mechanism to identify all vessels with an infringement record?
- Is sufficient information collected to identify owners and/or operators of vessels with an infringement record who receive subsidies?
- Are procedures in place to prevent the provision of subsidies to, or withdraw subsidies from, vessels or operators with a record of infringements in a timely manner?

3.2 Overfished Stocks Discipline

3.2.1 Background

The FAO (2018) has indicated that 33% of assessed fish stocks are overfished globally, with an additional 60% considered to be fished at their maximum sustainable level. The implications of overfishing are both ecological and socioeconomic. Fish play an important role in marine ecosystems and in the stability of food webs. Coastal communities rely on fishing as a source of food security and income, and consumers rely on fish for protein and micro-nutrients.

Discussions at the WTO have included the idea that a subsidy prohibition would apply when a subsidy negatively affects a fish stock that is already in an overfished condition, or in situations where an overfished stock is not recovering or is facing continuing depletion.

Given that subsidies have multiple and varying effects on fish stocks, there is a real need to better understand their impacts in order to support and guide governments in the reform process. Once the inventory of subsidies (Section 2.1) is completed in sufficient detail, analysis is required to determine which subsidies are being given to beneficiaries fishing overfished stocks.

3.2.2 Determination of Overfished Stocks

In order to reform subsidies for the fishing of overfished stocks, the first step would be to determine which fish stocks would qualify for the designation. In WTO discussions, two main options have been proposed for determining which stocks should be considered overfished under the new rules: (1) using an objective definition of what an overfished stock is, or (2) indicating that overfished stocks are those recognized as such by the WTO member under whose jurisdiction the fishing is taking place or by a relevant RFMO.

Discussions within WTO negotiations have highlighted differences of opinion on the treatment of unassessed stocks. Many WTO members are “data-poor,” and stocks within their EEZs may not be assessed through traditional scientific methods based on stock surveys and modelling, if at all. Therefore, an understanding of what is overfished may require different approaches. As a result, it may be necessary for WTO members to determine through other indicators (such as trends in catch per unit of effort) whether stocks are considered overfished.



In the case of shared (straddling) stocks, mechanisms may be necessary to share information between relevant WTO members over the state of the stock and the subsidies being provided. Governments with vessels that fish outside their national jurisdiction could consider how they will ensure they have information about the status of the stocks their fleets exploit.

Another issue of consideration is that the status of stocks changes over time, either positively with improved management arrangements, or negatively if over-exploitation is allowed. Stock assessment can be costly. Consequently, decisions will need to be made about the periodicity to be used when determining whether stocks are overfished or not, and therefore whether subsidies should be removed. It may be appropriate to take a differentiated approach either based on the commercial significance of the stock, or the inherent vulnerabilities of stocks that may differ from each other based on factors such as fecundity, etc.

Practical Steps and Considerations: Determination of overfished stocks

- Are there sufficient data collected to be able to use formal stock assessment methods to determine if a stock is overfished, and if not, can alternative methods be used?
- How can capacity for stock assessment be enhanced where it is lacking?
- How often should assessment of different stocks take place, given the costs involved?

3.2.3 Implementation of Subsidy Reform

Once an estimation of vulnerable or overfished stocks has been carried out and agreed among national institutions, the next stage would be to consider which subsidies should be withdrawn and from whom. This may require both amendments to subsidy eligibility rules to reflect stock status decisions and a coordination mechanism in place between agencies awarding subsidies and agencies managing fisheries.

Governments will need to decide, in this context, how they wish to implement the rule in the case of multispecies fisheries. For example, if a fishery is multispecies and targeted by different gear/metiers, but only one of those species is considered overfished, governments may decide to remove subsidies from fishers only if they are deemed to be targeting and catching the overfished species, or, on a more precautionary basis, even if they catch significant amounts of it as bycatch.

Again, the issue of data availability may be a critical one in effectively designing and implementing subsidy reform. Data gathering systems may need to be established or strengthened. This may require coordination and agreement between government agencies, research institutes, and fishing communities.

The mechanics of subsidies removal will need to be considered. Options could involve immediate and permanent cessation, temporary cessation, or phaseout. Choices for the use of these different options could rely on monitoring the effect of reforming or removing the subsidy to provide feedback on the status of the stock over time. The benefit of having a varied



response would allow WTO members to tailor their responses based on how certain they are over the status of stocks, and potentially to provide time to determine if other management measures being put in place to aid with stock recovery are working or not (since if they are, subsidy reform may not be required).

For example, in data-poor or capacity-limited WTO members, technical assistance could be provided to develop a suitable methodology to identify vulnerable stocks and establish harvest-control rules once a particular threshold/indicator of stock status has been reached. If these mechanisms are unsuccessful and some of the factors mentioned above become apparent, this would then activate changes to subsidies that are found to encourage overfishing e.g., price support mechanisms, fuel subsidies etc. The socioeconomic impact of changes to the provision of subsidies, especially for small-scale coastal fishing communities, would be an essential element in deciding the scale of change and where change would be most effective in contributing to improved stock status.

Practical Steps and Considerations: Subsidy reform in the case of overfished stocks

- Do existing subsidy rules enable a link to be made to stock status?
- Is there a system in place to allow coordination between agencies awarding/ managing subsidies and research and science agencies?
- How precautionary should removal of subsidies be if stock status is not well known?
- What approach is to be taken to the mechanics of reform in multi-species fisheries?
- What options for reform should be used for subsidies provided to those fishing for overfished stocks that are also the subject of other management improvements aimed at improving stock status?

3.3 Overfishing and Overcapacity Discipline

3.3.1 Background

Subsidies likely to result in overcapacity and overfishing include those serving to reduce the cost of fishing or increase revenue. Examples are the renewal of boats and engines, port development, marketing, processing and infrastructure support, fuel subsidies (including tax exemptions) and financial payments by governments to third countries for access to fishing grounds (in case these costs are not recovered from the industry).

Recent research on the scope and magnitude of subsidies provided to fisheries found that, in most cases, they enhance the capacity of fleets to catch more fish (Sumaila et al., 2019). The total amount of fishing subsidies provided by public entities in 2018 was around USD 35.4 billion, the majority of which was provided by countries higher on the Human Development Index (HDI). Despite the fact that not all subsidies are supporting increased capacity (and the total may have decreased slightly over the last 10 years), capacity-enhancing subsidies are still huge and generally favour larger-scale vessels.



3.3.2 Implementation Under Different Approaches

At its simplest, fishing capacity means the ability of the fleet to catch fish, but there are many methods to measure capacity. Common indicators of capacity include the number of boats (effort), their size (length, tonnage), horsepower (kW, hp), and effort (days at sea). Capacity can be enhanced through technological advances, including greater gear efficiency and selectivity, and the ability to find fish with greater ease (e.g., sonar), which is not always easily measured. This “technological creep” may offset efforts to reduce capacity through the removal of vessels. Equally, capacity may increase simply because more fishers are trying to catch fish as a food source to feed a growing community or as the only means of income.

WTO negotiations are currently considering several approaches to discipline subsidies that contribute to overfishing and overcapacity.

Under one approach, of which several variations have been proposed, subsidies would be prohibited if they contribute to overfishing and overcapacity, or in situations characterized by overfishing and overcapacity. In that context, some WTO members have proposed defining the meaning of overfishing and overcapacity with more detail, and others have suggested focusing on the prohibition of subsidies that reduce operational costs or capital costs of fishing and fishing-related activities.

Governments implementing a discipline along these lines would need to be aware of—and potentially be guided in—the many technical considerations associated with individual units/measures of capacity or effort, how to measure them (far from straightforward in many cases), and how to verify data being provided. The degree of excess capacity or effort would also need to be assessed, including any lack of balance between the fishing capacity and effort of a particular fleet or country, along with the levels of both capacity and effort that the resources can sustain.

To determine overcapacity or overfishing, governments would need to choose which relevant indicators should be used to determine whether fishing capacity and effort are in balance with what the stocks can sustain, and track these indicators over time. Decisions over the selection of specific indicators or combinations of them would have significant implications in terms of feasibility (given the complexities involved), and data collection obligations and costs for different WTO members. Simple indicators can be used, but these may involve a more imprecise measure of whether or not capacity and effort are excessive.

An alternative approach to subsidy rules regarding overcapacity and overfishing has been proposed by several WTO members. This proposal suggests that capital and operating cost subsidies provided to large-scale industrial fishing would be prohibited, with an exception for developing countries within their EEZs and potentially for fishing rights allocated by RFMO. This proposal is based around the perceived need for a more flexible approach where capacity-enhancing subsidies may be accepted as part of programs supporting artisanal and small-scale fisheries or the development of domestic fleets at the expense of foreign ones in developing country waters. Defining concretely the types of subsidies that would be prohibited would in practice avoid the need for measuring capacity and effort, or for identifying and agreeing appropriate indicators.



The implementation of this approach would be much more straightforward if the inventory discussed earlier was completed in a way that provides the information to clearly identify subsidies that are provided to small-scale vs. large-scale vessels and whether subsidy recipients fish within EEZs or on the high seas. Compliance with new disciplines might involve amending subsidy eligibility rules so that they clearly distinguish between large and small-scale vessels, and for developing country WTO members, identifying whether recipients fish outside the EEZ.

Another idea proposed by other WTO members would consist of “capping” the level of subsidies being provided based on a variety of possible formulae or metrics to determine caps and reductions. In terms of implementation, the first stage for any country—if this approach gets agreement—would be establishing its total level of subsidies and how the total relates to its capped amount (if any). A thorough subsidy inventory would help not only to establish this total level but would also be crucial to the process of ensuring that subsidies remained below capped levels (if any). It would also be critical in planning and executing any reductions in subsidy levels that might be agreed under this approach.

Some WTO members have proposed a prohibition of subsidies to vessels not flying the flag of the subsidizing WTO member but that are owned by nationals of that WTO member. Vessels flying flags of convenience (FOC) and the practice of flag hopping have allowed those engaging in IUU fishing and overfishing to evade monitoring, surveillance, and control measures, especially in distant waters where the flag state does not have the resources or ability to control fishing activity. Companies that use FOCs are usually found in WTO member states, which combined have the largest distant water fishing fleets. According to proponents, approximately 15% of fishing vessels are using FOCs (TN/RL/GEN/201/Rev. 1).

Finally, an additional idea that has been proposed would consist of disciplining subsidies that support fishing or fishing-related activities in areas beyond national jurisdiction (ABNJ). Fishing-related activities include direct support for fishing support vessels involved in refrigeration and transport, or in providing refuelling services. Some WTO members have recently proposed that all subsidies for fishing and fishing-related activities in ABNJs should be prohibited. The proposal noted above on the removal of subsidies to vessels flying FOCs would complement this suggestion since such vessels are often operating in ABNJs.

The practical steps and considerations under this discipline would depend strongly on the approach (or combination of approaches) finally adopted.



4.0 Role of Technical Assistance

4.1 Background

Technical assistance requirements are not the focus of this policy brief per se, as they will depend very much on each WTO member's circumstances and capacity constraints. Some WTO members might need assistance with reform steps, while others might not, being perfectly capable of implementing reform and taking necessary steps themselves. However, it is very likely that many members would benefit from external technical assistance. Some of the proposals tabled at the WTO have suggested some areas where technical assistance could be helpful.¹ This section thus specifically considers the possible role of donors and external assistance.

Whether or not there is a WTO agreement on the rules surrounding subsidy reform, there seems to be widespread agreement that subsidies that are seen as harmful should be removed, but less agreement on how they should be removed.

Fisheries subsidies reform is likely to require consideration of subsidy policy settings and their fisheries management context. A wide range of assistance is available for fisheries management.

Developing country WTO members may be able to generate support from different types of donors, and in the form of different types of projects as follows:

- Types of donors (with known interest in fisheries)
 - International: WB, FAO, UNEP, EU, USAID
 - Bilateral: NORAD, Danida, JICA, NZ, AUSAID, ICEIDA, AFD
 - Charitable Foundations (e.g., Pew Charitable Trusts)
- Types of projects
 - Single-country support and one-off projects, e.g., FAO Technical Cooperation Projects
 - Country programs, e.g., Danida, EU
 - Regional/multi-country, e.g., EU ACP²-wide projects, World Bank

For donors, this may be an appropriate time to consider how new technical assistance measures could enable those WTO members that lack capacity to adhere to new rules and implement reform. Some WTO members may benefit from support to ensure their fisheries science and management capabilities are sufficient to monitor IUU fishing, measure and assess stock status and overcapacity, and implement subsidy reform to address challenges these areas. Because a wide range of technical assistance on fisheries management is already available, donors might, in particular, consider how technical assistance could support WTO members' subsidy reform efforts.

¹ See Paragraph 5.15 of TN/RL/W/274/Rev.6.

² Africa, Caribbean Pacific



A data visualization tool was recently developed to provide an overview of information from the OECD Creditor Reporting System, including all technical assistance and capacity-building programs related to fisheries. In total, 8,329 projects from 145 donor agencies, 33 donor countries, and 16 donor international institutions were found over the period from 2012 to 2017. The total value of all these fisheries-related assistance projects was USD 3.4 billion. Importantly, this research shows no evidence of donor support for subsidy reform. It also indicates that there seems to be far less assistance for combatting IUU fishing and conducting stock assessments in comparison to capacity building for fisheries management more generally (The Pew Charitable Trusts, 2019).

This research also shows that many projects may contribute to enhancing fishing capacity, particularly in Africa and Oceania. These projects are likely to include both the development of offshore fleet capacity to reduce the reliance on third-country agreements and/or support for small-scale fishers to update or replace engines.

This may be an opportune time for donors to reconsider their aims with regards to technical assistance, and perhaps consider new forms of support to developing countries.

4.2 Types of Future Assistance

The concrete steps required for implementing a possible WTO agreement and reforming subsidies suggest that new thinking may be required by donors on how they can best support this reform and assist countries in removing harmful types of subsidies or shifting toward what can be classified as “good” subsidies.

Sections 2 and 3 of this policy brief have suggested a variety of possible actions that are likely to be needed and for which donor support may be necessary in some circumstances. Some actions cut across subsidies disciplines, and some are specific to the three disciplines.

What may be most beneficial in the context of any WTO agreement on subsidies is for donors to consider projects focused specifically on compliance with any WTO agreement and the steps needing to be taken. Even if a WTO agreement is not reached, there may be a strong argument for projects with a focus on subsidy assessment and reform given the obvious and significant negative impact of many subsidy programs. Many WTO members need support in planning for—and implementing—subsidy reform programs.

However, even before that, a useful first step for donors to consider supporting would be the development of general guidance on how to implement any WTO agreement and/or introduce subsidy reform. A possible WTO agreement, if agreed, will provide the basis for what should be done but not how to do it. Some of the ideas in this paper serve to signal possible content of such a guidance document, but much more thought would need to go into its contents with sufficient resources provided for its development.

Development of such a general guidance document (and providing practical advice and steps) could be of huge benefit whether there is a WTO agreement or not. However, it would best be prepared once it is known whether or not a WTO agreement will be reached, as its focus would depend strongly on its existence. Such guidance would provide WTO members with an understanding of exactly what needs to be done for the planning and implementation of



subsidy reform and how. It would help ensure more robust and impactful reform programs and while preventing individual projects from having to “reinvent the wheel” each time in determining how to adhere to WTO rules and implement reform in a specific country. The guidance document could include advice on establishing a protocol for assessing the need for donor support for subsidy reform.

Donor-supported projects could thereafter seek to assist with the implementation of WTO rules and/or subsidy reform more broadly based on the guidance available.



5.0 Conclusion

This brief has considered the practical implementation of subsidy reform in light of the ongoing negotiations on fisheries subsidies at the WTO. It has therefore focused on those subsidies that are considered to have a potentially negative impact on the environment, economic well-being, and livelihoods through their support for IUU fishing, for operators fishing overfished stocks, and which contribute to overfishing and overcapacity more broadly. Such impacts can be considered to be direct or indirect when subsidies are provided at various stages throughout the supply chain, but the ultimate effect is very evident, i.e., damage to the marine environment and undermining of coastal livelihoods.

Some subsidies can also be considered beneficial: these include those that support the development of fisheries management plans, stock assessment, and monitoring methodology as well as setting up harvest-control rules and the restoration of habitats to encourage stock rebuilding. Support for improving safety at sea is also considered to have a positive impact.

Irrespective of WTO negotiations and possible multilateral rules on fisheries subsidies, subsidy reform for many WTO members would be beneficial. This is especially important since concern regarding the negative effects of fishing is growing as a result of greater evidence being available on the damage to finite marine resources, which could be attributable to fisheries subsidies.

In WTO negotiations on the three disciplines, there have been proposals for special and differential treatment, including longer implementation timeframes for WTO members without the capacity to rapidly execute reform measures to comply with WTO rules. There is also concern that abrupt withdrawal of fishing subsidies may have a negative effect on communities for which fishing is small-scale and a mainstay of livelihoods. These WTO members may need assistance with reform.

This paper has highlighted practical steps and considerations all WTO members could consider in order to implement reform in each of the three disciplines currently discussed at the WTO, should they be agreed. Such implementation and reform efforts will require capacity and resources that some WTO members do not possess and for which outside support will be particularly useful.

Traditional support in relation to fisheries is not focused on subsidy reform: this is a gap that needs to be considered by all donor agencies. When planning project support, donors may wish to better consider and assess: i) the potential impacts of their projects in contributing to overfished stocks and overcapacity, and ii) the design of projects with a specific mandate to review and reform subsidy provision, especially within the context of any WTO agreement on fisheries subsidies—but even outside of it if such an agreement is not reached.



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