



March 2017

WWF PRELIMINARY COMMENTS
on
The current negotiations to end harmful fisheries subsidies in the WTO

WWF has been engaged in the analysis and advocacy of reforms on fisheries subsidies in the WTO since 1998. We are pleased to see a resurgence of proposals and discussions on fisheries subsidies in the WTO since the last quarter of 2016.

With these comments, WWF

- i.) wishes to underline the vital importance of fisheries subsidies reform as one of the quintessential issues in the interface of trade, environment and development;
- ii.) calls on WTO members to seize the unique opportunity in the months ahead towards the 11th WTO Ministerial Conference (MC11) in December 2017 to accomplish the task they have assigned themselves - to adopt strong, effective new rules that put an end to subsidized overfishing; and
- iii.) offers some initial and non-exhaustive thoughts on recent proposals made to the WTO Negotiating Group on Rules.

It is well past the time for governments to make real commitments to end the trade distortions and environmental harm caused by fisheries subsidies.

The recent adoption by world leaders of the UN 2030 Agenda for Sustainable Development, which includes a specific Sustainable Development Goal on oceans (SDG 14) and an explicit target to reform fisheries subsidies by 2020,¹ provides renewed impetus to craft an effective and meaningful set of WTO disciplines on fisheries subsidies.

Securing a robust outcome on fisheries subsidies in the WTO is pivotal in achieving governments' commitments to the UN 2030 Agenda of having resilient coastal communities, healthy fisheries and sustainable and equitable trade.

The need for fisheries subsidies reform

The crisis of depletion affecting fisheries the world over is one of the defining environmental and social challenges of our times. Over a billion people depend on fish as their primary

¹ SDG 14.6 : By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation.

source of protein and a hundred million are directly dependent on fishing for their livelihoods. But the productivity of wild capture fisheries has been flat since the late 1980s despite dramatic growth in global fishing capacity. According to the FAO, 89.5% percent of the world's fisheries are fished to their biological limits or are overfished².

While fisheries subsidies that support conservation and improved fisheries management can in principle have some positive impact on the sustainability of fisheries, governments now widely acknowledge that many fisheries subsidies contribute to overcapacity and overfishing and have harmful and distorting effects on both the environment and trade. Indeed, estimates indicate that of the \$35 billion in global fishing subsidies, capacity-enhancing subsidies constitute over \$20 billion, representing 25% of the landed value of global marine catch.³ According to the World Bank and FAO, the reported global fleet has more than doubled in size over the past four decades⁴.

Subsidies that enhance revenues or reduce costs increase incentives for participation and fishing effort. To the extent that fishing capacity remains in use because of subsidies, the necessary restructuring of the sector through capacity reductions is prevented. In turn, the chronic excess capacity that exists in most countries creates powerful interests in support of ongoing subsidies and continued high fishing quotas and fishing effort, leading to persistent overfishing.

The need for action in the WTO

WWF is encouraged by the positive engagement and the sense of urgency by some WTO members to come up with meaningful outcomes at MC11. A number of governments tabled proposals on fisheries subsidies in the WTO Negotiating Group on Rules in the last quarter of 2016. They include:

- The **European Union (EU)** which tabled a negotiating proposal to 'start defining the possible disciplines and to engage in text-based negotiations on fisheries subsidies' (TN/RN/GEN/181).
- **Rwanda**, on behalf of **the African Caribbean and the Pacific (ACP) group** of countries proposed some 'principles and elements for discussion as an input to stimulate constructive engagement ' (TN/RL/GEN192).
- **Peru, Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay** presented a joint 'framework to guide the multilateral negotiations using the Trade Facilitation Agreement as reference for adaptation to the fisheries subsidies negotiations' (TN/RL/GEN 183).
- **Benin, on behalf of the LDC Group** proposes elements of discussion on fisheries subsidies disciplines, building upon an earlier submission in 2016 (TN/RL/GEN184).

² FAO (2016) State of the World's Fisheries and Aquaculture (SOFIA), Rome, Italy.

³ U.R. Sumaila et al, Global fisheries subsidies: An updated estimate. Marine Policy (2016). Data for 2009.

⁴ World Bank. 2017. The Sunken Billions Revisited: Progress and Challenges in Global Marine Fisheries. Washington, DC: World Bank. Environment and Sustainable Development series. doi:10.1596/978-1-4648-0919-4.

The above cited textual proposals on fisheries subsidies so far contain some steps in a much needed direction, and the call for agreed outcomes by MC11 in December 2017 is welcome. However, the proposals – particularly, if taken individually – remain far from what will be needed to form WTO rules that deliver robust and holistic results.

In the following we offer initial and non-exhaustive comments related to certain elements of the reform proposals that are of particular importance to WWF.

1. Prohibition of harmful fisheries subsidies

WWF calls for the prohibition of the most harmful fisheries subsidies. These include subsidies that have the most direct impact on fisheries production and productivity such as subsidies that increase fishing capacity or effort and subsidies that contribute to ‘illegal, unreported and unregulated’ (IUU) fishing.

Subsidies that enlarge already oversized fleets or that encourage fishing effort in an overfished fisheries obviously have a negative impact on competing producers and on resources alike. Subsidies that contribute to IUU fishing - apart from their illegitimacy - can also have dramatic impacts on the level of production, whether by causing rapid resource depletion or by allowing pirate competitors to escape from the costs of regulation.

a) Ensuring a holistic scope of the prohibition of harmful fisheries subsidies

Limiting the scope of the prohibition to capacity enhancing subsidies is not enough:

WWF finds it disappointing that the EU proposal limits the focus of the prohibition to capacity enhancing subsidies (Art 1). While curtailing capacity enhancing subsidies is critical, the EU proposal ignores the call to end subsidies that directly support fishing activity or ‘effort’ as it is called in the technical jargon of fisheries management.

The dual reference to ‘overcapacity’ and ‘overfishing’ is hardly accidental⁵. These paired words capture the two ways that fisheries subsidies most directly cause resource-depleting production distortions: by lowering the fixed costs of productive capital, and by lowering the variable costs of production itself. Subsidies for increasing capacity are harmful both in motivating increased fishing activity and in creating strong incentives to undermine management plans. The extreme overcapacity in the global fishing sector is such that focusing on limits to additional capacity alone will be insufficient to stop overfishing and the rapid depletion of global fish populations.

Overfishing is an activity that can lead to overfished stocks. Subsidising overfishing, for example by reducing operating costs, will not only induce greater fishing effort than would otherwise prevail, but, like overcapacity, can also undermine management efforts. Even if stocks can be rebuilt with the implementation of science-based catch limits, subsidised effort will challenge the enforcement of catch limits and the ability to maintain stocks at healthy levels as it continues to put pressure on stocks.

⁵ David K. Schorr (2004) Healthy Fisheries, Sustainable Trade : Crafting New Rules on fishing subsidies in the World Trade Organization, WWF. Washington DC

Limiting the scope of the prohibition to large scale industrial or commercial fishing is not enough:

WWF finds the ACP and LDC proposals to primarily target large scale industrial or commercial fishing within the scope of the prohibitions problematic, as this appears to imply an exemption of all artisanal fishing from the scope of prohibitions. Experience has shown that under the wrong circumstances, subsidies to artisanal fishing can have very negative economic and environmental consequences⁶.

The small technological or economic scale of a fishery does not make it safer to subsidise; inappropriate subsidies can in fact do particular damage to such artisanal fisheries and can thus have counterproductive consequences in terms of undermining the availability of food, and income for coastal communities. The increasing physical and commercial interplay between artisanal fishers and their international competitors also means that subsidies to artisanal fisheries can have much more than local consequences.

In short, small scale/ artisanal fishing is not necessarily less competitive or more sustainable than large scale fishing. However, what is different is the special difficulty often faced by artisanal fishing communities in developing and least developed countries in rising out of subsistence poverty to sustainable commercial activity, which needs special consideration under new WTO rules.

b) Going beyond the hortatory call to ban subsidies that contribute to illegal, unreported and unregulated (IUU) fishing

Beyond a simple statement of prohibition as regards subsidies that contribute to IUU fishing, the FAO International Plan of Action on IUU fishing⁷ should be considered as a reference. It includes, amongst others, measures such as a) banning enterprises and vessel operators that have been involved in IUU from receiving future subsidies, and b) requiring the withdrawal of entire subsidy programmes where a programme or a subsidized fishery of committing 'serious infringements', which for WWF includes a track record of being tainted by a pattern of IUU abuse.

c) Covering all subsidy programmes affecting wild capture fisheries

The ACP and LDC proposals suggest excluding subsidies to fisheries within their exclusive economic zones from prohibitions, which WWF finds worrying. WWF believes that WTO disciplines should cover all significant fisheries subsidies programmes, regardless of geographic scope, whether high seas, EEZs, littoral or inland fisheries. Limits to a specific geographic scope do not appear to make sense. Also, a number of fish stocks straddle between the EEZs and the high seas. According to FAO⁸, most of the species that form straddling stocks also form fish stocks entirely located within EEZs, and some of them may

⁶ WWF (2008) Small Boat, Big Problems, Gland, Switzerland.
https://www.wto.org/english/forums_e/ngo_e/posp72_www_e.pdf

⁷ <http://www.fao.org/docrep/003/y1224e/y1224e00.htm>

⁸ <http://www.fao.org/docrep/009/a0653e/a0653e0b.htm>

also make up high seas fish stocks. Sumaila⁹ also reports a strong ecological and economic sharing of fish catches between EEZs and the high seas.

In categorical terms, this means that all significant types of subsidy programmes need to be covered, including the subsidy elements of government payments for access by national fleets to fisheries in foreign EEZs. WWF recognises both the role access agreements often play in the development strategies of many developing countries, and the status given to access agreements by the UN Convention on the Law of the Sea (UNCLOS). Hence, this is not a proposal to ban government-funded access agreements, but rather WWF proposes subjecting such arrangements to certain disciplines to address issues such as preventing overfishing, unfair competition and lack of transparency.

2. Taking account of the special needs of developing and least developing countries

WWF recognizes the fact that the heaviest economic and social dependence on fisheries is in developing and least developed countries. WWF therefore calls on WTO members to carefully consider the scope, purpose and legal effects of creating special and differential Treatment (S&DT) within new WTO rules.

It appears that the question at hand should not be focused on “*what kinds of subsidies should be allowed*”, but rather on “*what conditions and potential flexibilities in the conditions for S&DT should be allowed*”. WWF for example supports flexibilities for subsidies to subsistence fishers, as outlined in the EU proposal (Art 4.1). However, we caution against allowing this policy goal to become an unintended loophole in new fisheries subsidies disciplines. We remain especially concerned with the EU proposal to base such distinction partly on vessel size — as vessel size has little to do with the level of social or economic organization of a fishery, or with its ability to cause depletion of fish stocks or its readiness for regulatory management.

Overall, the perils of subsidies in the absence of effective management, enforcement and transparency requirements cannot be ignored, regardless of the economic or social context. WWF strongly urges all WTO members to invest in rudimentary fisheries management such as ‘counting boats and counting fish stocks’ to ensure a balance between available fishing resources and fleet capacity.

3. Mechanisms on transparency and accountability

WWF is pleased with the recognition of the need to include measures to improve transparency in all the proposals. We would like to see more transparency measures that include the identity of enterprise receiving subsidies, how the subsidies are applied, information about the particular fisheries affected by a given subsidy program (e.g. catch data, stock status, fleet capacity, management measures), and the subsidy amounts on a per vessel, per fleet, and per fishery basis.

We believe that WTO notification rules for fisheries subsidies must also be enforceable. There must be real and significant legal consequences when governments fail to notify their programs. To continue with business as usual would risk continuing the tradition of hollow

⁹ <http://www.nature.com/articles/srep08481>

notifications, and would ignore the special information needs on which enforcement of fisheries subsidies rules will depend.

We support the proposal of an advisory mechanism, as put forward by Peru et al., to include technical experts from other intergovernmental organization during the negotiations - they could, for example, explain and clarify some of the working definitions and terminologies used in the fisheries and trade contexts. This would help prevent the WTO from overstepping its competence and at the same time foster policy coherence with UN agencies such as FAO, UNEP, UNCTAD and others. WWF would like to encourage a discussion on the specifics of Peru et al.'s framework approach.

WWF strongly endorses the calls for technical assistance and cooperation as a vital element to help LDCs and Small Vulnerable Economies (SVEs) to comply with WTO disciplines on fisheries subsidies. We would therefore urge all members to develop this part of the disciplines, bearing in mind the obvious need for technical and financial assistance to improve fisheries management, enforcement and transparency to effectively design regulatory measures national legislation and implement the disciplines.

To conclude, WWF urges WTO members to use the limited time left towards MC11 to work together and demonstrate that they are capable of fulfilling their critical mandate to reform fisheries subsidies, a WTO mandate originally issued at the Doha ministerial meeting, refined at the Hong Kong ministerial meeting and now reinforced by the UN SDG 14.6 target.

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