



Subsidies and the Current Negotiations at the WTO

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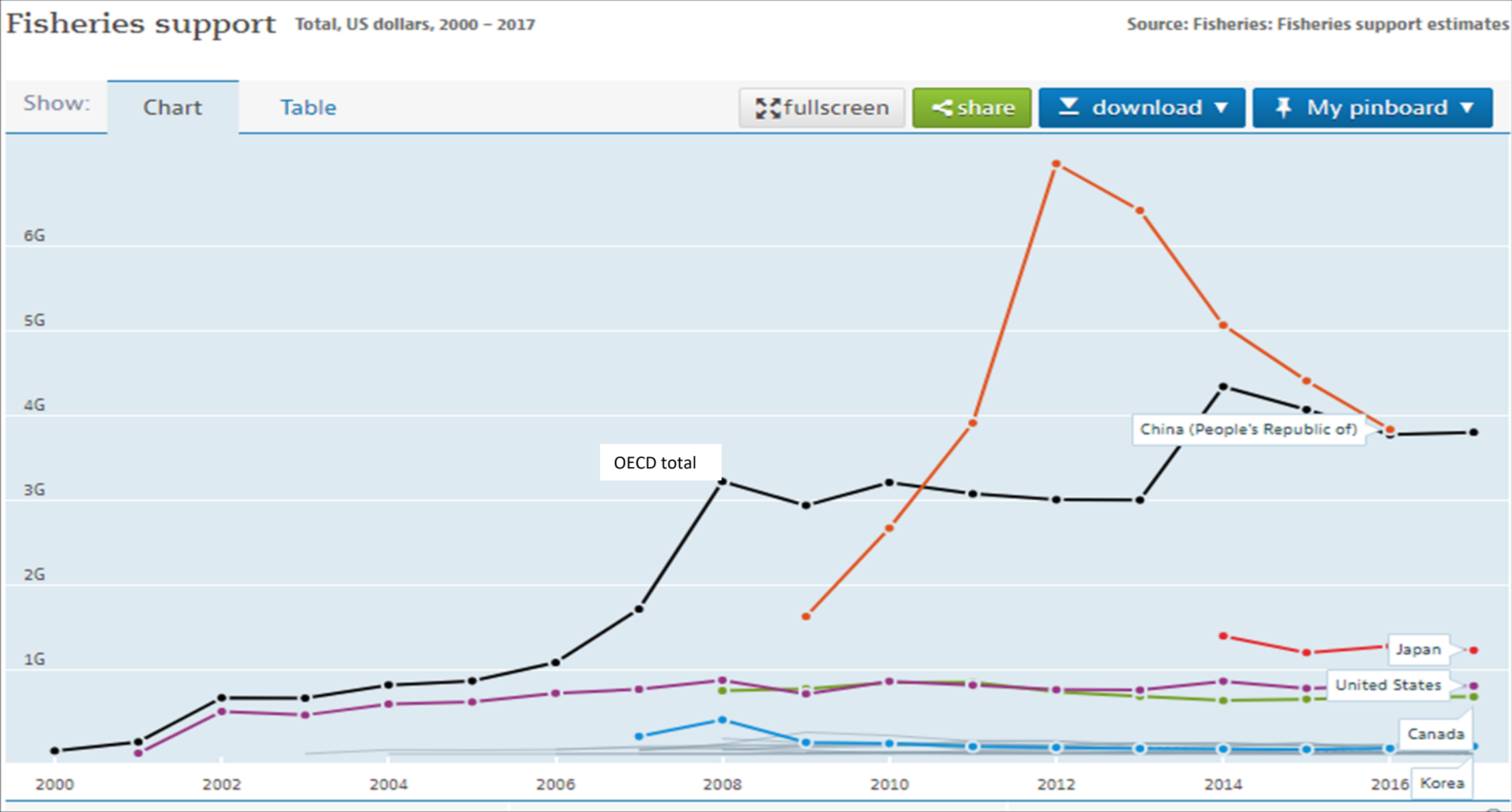
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Developing Countries and the Major Concepts involved at the WTO Negotiations on Fisheries Subsidies

Mr. David-Vivas, Legal Officer

Division on International Trade and Commodities, UNCTAD, Geneva – Switzerland

Public support to Fisheries at the Global levels (2000-2017)



Source: OECD (2020).

Status of the WTO fish subsidies negotiations



- Negotiations have lasted for more than 20 year
- SDG 14.6 gave a huge impulse to negotiations
- Negotiating documents are usually restricted
- **We have a now a second revision of the Chair's consolidated text (RD/TN/RL/126/Rev.2)**
- Negotiation phase has been intensified by negotiations clusters with the assistance of "friends of the Chair" on specific topics
- **Most of the draft text still is under square brackets [...]**
- UNCTAD, FAO and UNEP have been providing advice under their **Inter Agency Plan of Action** with their specific mandates over the duration of negotiations

Structure of the Chair Draft text (RD/TN/RL/126/Rev.2).

Scope & definitions

A three pillar set prohibitions on harmful subsidies

- Subsidies to IUU fishing
- Subsidies concerning overfished stocks
- Subsidies concerning over capacity and overfishing + potential cap and reduction clause
- Some forms of special and differential treatment within the prohibitions

Horizontal special and differential treatment

Technical assistance and transparency

Institutional arrangements

Dispute settlement

Final provisions



Scope and definitions

- **Specific Subsidies** as defined by WTO Agreement on SCM:
 - A financial contribution by a government or any public body
 - Specificity: sector, region, industry or enterprise
 - Regardless of this, **fuel subsidies** may be covered under the new fish subsidies disciplines
 - In principle, **access agreements payments** are not considered subsidies
- Focus on harmful subsidies to "vessels" & "operators"
- Not applicable to aquaculture or freshwater fishing
- "Fish" includes all living marine species
- "Fishing" includes **all harvesting and transshipment activities plus processing and packaging before landing**



Pillar I: Prohibition to subsidies that contribute to illegal, unreported and unregulated (IUU) fishing

- **No Member shall grant or maintain any subsidies to a vessel [and operator] engaged in IUU fishing...**
- In principle, no obligation to make a IUU determination **but regulations and systems must be in place to identify and tackle subsidies to IUU fishing**
- Who makes the "**determination**"? Coastal Member, **Flag State, Subsidising Member**, Port States, RFMOs/A?
- What **Standards**, if any, should apply to the "determination"? based on positive evidence, due process, applicable international law?
- Issues of **nature, gravity & repetition** are to be considered
- Prohibition would be in place as long as the sanction for IUU fishing still is in place
- Exception for Developing countries and LDC regarding **unreported and unregulated fishing** within their territorial waters



Pillar II: Prohibition to subsidies concerning overfished stocks

- **No Member shall grant or maintain subsidies any subsidies for fishing or fishing related activities regarding an overfished stock in any of the following situations:**
 - Lack of recovery
 - Continuous reduction
 - Overfished (below MSY or other alternative reference point)
- **Who recognises/defines a stocks as overfished?**
 - Members over their own jurisdiction or RFMO/As. Members' Determinations prevail.
- **No application of the prohibition, if subsidies are implemented and/or other appropriate measures to ensure rebuilding of stocks above MSY (reverse S&DT?)**
- **Exception for LDCs within their territorial sea**



Pillar III: Subsidies concerning over capacity & overfishing + potential cap and reduction clause

- **No Member shall grant or maintain any subsidies for fishing or fishing related activities that contribute to overcapacity and overfishing**
 - Negative list approach: **operational and capital costs**
 - Marine jurisdiction approach: contingent upon and tied to activities in the **high seas**
 - Notification, cap & reduction approach: **volume mechanism**
- **No application of the prohibition, if measures are implemented to maintain stocks at MSY (Reverse S&DT?)**
- Exceptions for LDCs for operational and capital costs
- Exceptions for developing countries for operational and capital costs within areas of jurisdiction
- Exceptions for developing countries under a cumulative criteria
 - GNI per capita + % of marine capture + distant water fishing + % of Agricultural GDP



Horizontal special & differential treatment

- **Exceptions for Artisanal Fisheries** (recent proposal by Ecuador and Chile).
- Subsidy prohibitions for overfished stocks, and overfishing and overcapacity shall not apply to:
 - low income, resource-poor or livelihood fishing and fishing-related activities at sea with the aim of, among others, ensuring food security;
 - Provided that these activities are performed within the territorial sea
- Transitional period for LDCs
- Exercising due restraint in raising matters related to LDCs
- **Recognition of SIDS as a Group for the purposes of S&DT?**



Technical assistance & transparency

- **Technical assistance** by developed countries and developing countries declaring themselves in a position to do so, for the purpose of implementing the disciplines
- **No reference to support by FAO, UNCTAD or UNEP**
- Article 25 of the WTO SCM Agreement **notification + system**
- + list of vessels/operators having engaged in IUU fishing and fish access agreement
- There could be **extended notification requirements** (see next slide)

Comparative notification requirements as per article 25.3 of the WTO ASCM and in Chair document (WTO TN/RL/W/274/Rev.6)

WTO SCMA Art. 25.3: "Notifications"	WTO TN/RL/W/274/Rev.6 - Art 6.: "Notification and [Transparency] [Surveillance]"
(i) Form of a subsidy	(a) [programme name, legal basis, and granting authority for the programme;]
(ii) Subsidy per unit, or the total amount or the annual amount budgeted	(b) [level and type] [amount and nature] of support provided
(iii) Policy objective and/or purpose	(...)
(iv) Duration/any other time limits attached	(...)
(v) statistical data (assessment of trade effects)	(j) [total [imports and] exports [per species] [for which the subsidy is provided]]. (f) [catch data [by species] in the fishery for which the subsidy is provided]; (g) [status of the fish stocks in the fishery for which the subsidy is provided (i.e., overfished, fully fished, or underfished)]; [fleet capacity in the fishery for which the subsidy is provided];
To whom and how the subsidies are provided	(c) [type or kind of marine fishing activity that the programme supports]; (d) [vessels and operators fishing in ABNJ areas beyond national jurisdiction, for which the subsidy is granted];
Not covered	(e) [name of the recipient and, where known, name and identification number of the fishing vessel];
Not covered	(i) [conservation and management measures in place for the [relevant] fish stock [for which the subsidy is provided]] [as well as any relevant fishing capacity management plans];
Not covered by article 23.3 as it does not seek to address non-specific subsidies.	6.2. "[to the extent possible,] information in relation to other subsidies that the Member provides to [[persons engaged in] fishing [or fishing-related activities]] [the fisheries sector] that are not covered by Article 6.1, in particular [aquaculture and] [fuel subsidies].". "information related to non-specific subsidies such as for the provision or use of fuel or for schemes that can be reasonably be expected to result in the provision or use of fuel (...)
Not covered	6.5. "[on an [annual basis] of any list of vessels [and operators] that it has [identified] [determined] as having engaged in IUU fishing.]".