



# Trade Hot Topics

## Small Vulnerable Economies and Fisheries Subsidies Disciplines: Issues, Debates and Alliances

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### Background

The narrowing of ambition of fisheries subsidies disciplines at the World Trade Organization (WTO) reflects the political conjuncture of at least three interacting dynamics. First, the apparent stalemate in earlier, more ambitious, negotiations has meant proposals for text require a lowest common denominator approach to achieve consensus. Second, in the broader context of a largely stalled Doha Round, fisheries subsidies were always contingent on a measure of horse-trading among dominant members over other agreements. Third, the rest of the world has not remained still: disciplines have and are being developed in other fora, such as the Sustainable Development Goals (SDGs). These developments indicate the political need for the WTO to act in order to secure delivery on the SDGs.

This issue of *Commonwealth Trade Hot Topics* reviews the current negotiation dynamics from the perspective of Commonwealth members, the majority of which comprise small island developing and coastal states. It summarises the proposals currently on the table, the negotiation process and

the major points of convergence and divergence. Finally, it outlines negotiation scenarios with a view to securing an outcome where the WTO delivers SDG 14 implementation.

### Post-MC10 submissions on fisheries subsidies

Since the WTO's Tenth Ministerial Conference (MC10) members continued to make submissions on subsidies to marine capture fisheries in 2016 and early 2017.<sup>1</sup> A number of post-MC10 proposals by members showing an interest in establishing disciplines on fisheries subsidies at MC11, which will take place in Buenos Aires in December 2017. In short, submissions from the African, Caribbean and Pacific (ACP) group of countries and the least developed countries (LDC) group each signals a willingness to continue debate on a multilateral basis, subject to special and differential treatment (S&DT)—whereas the EU submission and the joint submission of six Latin American countries offered advances in the technical debate.<sup>2</sup> Crucially, the fifth proposal, by Japan, indicated a possible roll-back to the stalemate of the late 2000s.<sup>3</sup>

Two additional points inform the context of the post-MC10 submission at the WTO. First, *silences* in

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1 This Trade Hot Topic has been prepared based on a background paper prepared by Campling and Havice (2017) in March 2017 in which the last known submission to WTO members included in the analysis is JOB/RL/8 by Japan, 28 February 2017, on 'Roles of RFMOs and national fisheries management authorities in maintaining fisheries resources and their implications for developing disciplines in the WTO'.

2 In addition to the original texts of the proposals, the following draws from summaries by WTO (2016, 2017a, 2017b).

3 For an overview of these debates and the political economic dynamics of the ad hoc alliances among WTO Members, see Campling and Havice (2013).

the submissions are a point of note: there have been no submissions from larger developing countries including China, Taiwan, Indonesia and India, whose fleets benefit from subsidy programmes. This could be interpreted in one of two ways: 1) in the context of the narrower scope of proposed bans and the continued push for S&DT (and their own ability to prevent differentiation in S&DT provisions), this group of countries is not concerned about the potential impact of current proposals; or 2) these countries are in 'wait and see' mode because the momentum of negotiations remains pedestrian, other priorities trump this rather narrow debate and MC11 can be used as a moment to intervene (much like China did in MC10, for example). Second, the proposals reintroduce discussion about 'capacity-enhancing subsidies', which had previously dropped out of discussions on the SDGs, the Trans-Pacific Partnership (TPP) and MC10, contributing to their narrowing of scope of the rules. The following summarises each of these proposals in turn.

### Proposals on the table

The EU proposal emphasises the need for a *multilateral* process. It focuses on prohibiting subsidies linked to *overcapacity*, including subsidies to enhance the capacity of existing vessels, for new vessel construction and for flag-based vessel transfers (EU, 2016). Subsidies to vessels engaged in illegal, unreported and unregulated (IUU) fishing (i.e. on flag-state and/or regional fisheries management organisation (RFMO) IUU lists) would also be prohibited. S&DT provisions for developing countries and LDCs exclude vessels less than 10m for subsistence fishing. Other vessel classes may receive capacity-enhancing subsidies if *targeted* stocks are not overfished and are well managed by international standards and if a management plan for the subsidised fleet is presented to the WTO Secretariat demonstrating that subsidies will not contribute to overfishing. Finally, the EU wants all WTO members to notify the WTO on any subsidies directly or indirectly supporting marine fishing activity.

The ACP proposal in November 2016 outlines principles and elements for discussion on fisheries subsidies rules, rather than legal text (ACP Group, 2016). Like the EU, the ACP group calls for prohibition of subsidies to IUU fishing and fishing vessels/activities affecting overfished stocks. Further disciplines could also be considered for capacity-enhancing subsidies. As a priority, disciplines should target subsidies provided to large-scale commercial fishing and distant water

fishing in high seas/other exclusive economic zones (EEZs). Besides subsidies for IUU fishing and overfishing and overcapacity, developing countries, including LDCs and small vulnerable economies (SVEs), should be permitted to provide fisheries subsidies for coastal and commercial fishing activities.

The LDC proposal echoes the key points made in the ACP proposal (LDC Group, 2016). These proposals reflect the position held by SVEs since the late 2000s—that disciplines should fall hardest on developed WTO members with large-scale distant water fishing (DWF) fleets, allowing developing countries and LDCs the policy space to provide subsidies to support the sustainable development of their domestic fisheries. The main new addition of the ACP and LDC proposals was to draw attention to subsidies that support fishing in the high seas.

The joint proposal from Argentina, Colombia, Costa Rica, Panama, Peru and Uruguay (2016) presents a practical framework to guide multilateral fisheries subsidies negotiations, based on an adaptation of the Trade Facilitation Agreement (TFA) approach. General disciplines for the elimination of subsidies contributing to IUU fishing and prohibition of certain forms of fisheries subsidies contributing to overfishing and overcapacity would enter into force no later than 2020. Developing countries and LDCs would be given a transitional period to implement disciplines on subsidies related to overfishing and overcapacity, as well as technical assistance for capacity-building.

There are key commonalities among the four proposals outlined so far. All have the shared objectives of reaching agreement by MC11 in December 2017 and achieving UN SDG 14.6 by 2020; similarly, all proposals call for across-the-board prohibition of subsidies linked to IUU fishing and overfished stocks, with no exemptions and some specified prohibitions (to be determined) on capacity-enhancing subsidies. Each proposal includes S&DT provisions for developing and LDC members, but to varied degrees in terms of the level of exemptions offered, transparency and notification requirements and capacity-building.

However, the proposal by Japan may serve to undermine this seeming emerging consensus, even around low-ambition disciplines. The principal argument returns to the initial position of the defensive Developed Members of the early 2000s: that there is no direct causal link between subsidies and depletion of global fish stocks and that fisheries

management is more important to sustainable fisheries than the regulation of subsidies.<sup>4</sup> Japan's proposal places considerable emphasis on the role of RFMOs in the sustainable use of fisheries resources, in essence arguing that RFMOs and other fisheries management bodies—not the WTO—are the appropriate sites for managing fisheries. Interestingly, it uses the example of International Commission for the Conservation of Atlantic Tuna (ICCAT) management of Atlantic Bluefin tuna, which it depicts as a success story of rational fisheries management because the 2014 Bluefin stock assessment revealed a surge in the Atlantic Bluefin spawning stock, leading to an increase in the total allowable catch in the fishery.

### The road to MC11

On 1 March 2017, the Negotiating Group on Rules Chair, Ambassador Wayne McCook (Jamaica), laid out several steps on how to proceed, noting that demanders were seeking an agreed outcome on fisheries subsidies disciplines at MC11 (WTO, 2017b). Part of this process includes technical briefing sessions with the Food and Agriculture Organization, the United Nations Conference on Trade and Development, the United Nations Environment Programme, the World Bank and RFMOs. Substantive issues for discussion revolve around the following:

1. What sorts of fisheries subsidies should be prohibited?
2. What role, if any, should RFMOs and/or fisheries management systems have in fisheries subsidies issues?
3. How to define subsistence, small-scale and artisanal fishing and what subsidies disciplines should apply to these sectors?
4. How could an agreement on fisheries subsidies address the future development needs of developing and LDC members without undermining sustainability?

DWF fleets pay ground-rent to coastal states to access their EEZs. There are different ways of doing this, and each has different implications in relation to fisheries subsidies disciplines. 'First-

generation' arrangements involve the allocation of fishing access in return for a financial payment. There are three main types of first-generation access agreements: government-to-government (the approach the EU uses); industry association-to-government (the approach used by fleets flagged by Japan and Taiwan, among others); and company-to-government. 'Second-generation' access arrangements involve one or a combination of two broad mechanisms: the allocation of access in return for the vessels registering locally and agreeing to use local goods and services through transshipment and/or landing of the fish domestically; and/or onshore investment in processing facilities in return for fishing access.<sup>5</sup>

A major example of a first-generation access arrangement is the Vessel Day Scheme (VDS) set up by eight Pacific SVEs that began to cooperatively manage their EEZs in 2008.<sup>6</sup> This high-profile success story of South-South cooperation saw the rate of return on the landed value of the catch grow from around 5–6 per cent to over 20 per cent (Aqorau, 2016). This, in part, explains the generally high proportion of fishing as a contribution to gross domestic product for the VDS countries (Federated States of Micronesia, Kiribati, the Marshall Islands, Nauru, Palau, Papua New Guinea, Solomon Islands and Tuvalu).

### Levelling the playing field

Developed country members have historically deployed a very wide range of subsidies to national fleets. This is why some see proposed disciplines on subsidies as a classic strategy of 'kicking away the ladder' of development (Grynberg and Tsamenyi, 1998). Subsidies can *directly* undermine the potential of investors in SVEs to develop locally owned fleets because they find it harder to compete with highly subsidised foreign fleets. Subsidies can also *indirectly* undermine onshore development as SVE processors are often locked in to procure fish from (highly subsidised) DWF fleets. In the case of SVEs with marine fish processing facilities that depend on preferential access to the EU, processors are at the whim of the EU DWF fleet. Arguably, the key beneficiaries of trade preference arrangements access are the owners of the EU DWF

4 This argument is not without merit. Grynberg and Rochester (2005) pointed out that the dominant thinking in fisheries economics is that fish stock depletion in open access fisheries happens because of the absence of good fisheries management irrespective of whether subsidies exist or not. Although subsidies do most likely contribute towards enhancing the rate of depletion of fisheries resources, Grynberg and Rochester conclude that, 'This raises the key policy question of whether the current negotiations at the WTO on enhanced fisheries subsidies disciplines constitutes a 'second best' approach to fisheries management.'

5 On Spanish joint ventures in the fishing sector see Cantorna et al. (2009: 370).

6 Known as the Parties to the Nauru Agreement, this group first combined in 1982 when its members set up a sub-regional arrangement that sets terms and conditions for the licensing of tuna purse seine fishing.

fleet (Campling, 2015). Countries with preferential access that do not have an adequate domestic fleet represent a captive market for these companies.

But it is not simply a story of developed versus developing members at the WTO. A greater challenge relates to large developing countries—especially China—targeting fisheries in SVEs and other developing country EEZs and in the high seas. While fisheries subsidies debates stalled at the WTO in the early 2010s, subsidies by the Chinese government to expand and modernise its DWF fleet are growing (Ilakini, 2013). Subsidies include a wide range of tax incentives to DWF and to China's shipyards, and direct payments in the form of fuel subsidies and favourable loans and for developing fishing technologies. The rapid and subsidised expansion in China's fishing capacity is a major source of concern to SVE fishing industries. Many claim that the subsidised Chinese longline fleet was a major contributor to the collapse of the canning-grade albacore tuna price (FFA, 2013), which had the effect of putting locally based operators in SVEs out of business (Havice et al., 2014). In 2016, subsidies were found to continue to contribute directly to the profitability of at least two of the largest Chinese fishing firms engaged in overseas fisheries. Shanghai Kaichuang Marine International Company Ltd and CNFC Overseas Fishery Co. Ltd are both active in the Western and Central Pacific Ocean tuna fishery, as well as other fisheries worldwide.

Subsidies are provided by SVEs to domestic fisheries, using a range of policy rationales. The subsidies can be of crucial importance as a support to commercial fishing, keeping crew and boat owners in business when fish price drops—thereby preserving local fishing capacity when the vagaries of the market undermine otherwise viable operations. They can serve vital food security objectives, such as by offering people living in remote and/or rural areas small support that allows fishing boats to operate to provide fish at the level of the household and local community. And subsidies can also be important to kick-start and attract small businesses or to support more established operators to access export markets, such as in meeting strict public and private standards.<sup>7</sup>

An argument by SVEs in the late 2000s was that operating cost subsidies should be preferred to capacity-enhancing subsidies because the former

can be withdrawn when the need for subsidy dissipates (e.g. when a collapse starts to recover), whereas, once a boat has been built or modernised, it is extremely difficult to remove. However, well-organised boat owners can put political pressure on a government to maintain a support programme even when profitability has returned. One policy option here is a trigger mechanism where a subsidy is automatically withdrawn when an 'objective' measure is met (such as when market price recovers from a pre-agreed baseline, as per the EU tuna price subsidy). Another option is that the subsidy is only provided to the most vulnerable (such as the EU *de minimis* fuel subsidy, which is of relevance principally to small-scale operators) (Campling 2012).

The analysis of the relationship between SVEs and subsidies to DWF is complicated by the fact that many SVEs benefit from these subsidies. In cases where DWF vessels are subsidised, even if the access payments themselves are not, state support for fishing operations necessarily comes to bear on the economics of access payments. If subsidies for a range of operational costs are disciplined and boat owners begin to absorb costs once paid for by their home or host state, this stands to affect the access payments they are able to make and/or the ways they make decisions about onshore investments and business transactions. For instance, the sale of goods and services to highly subsidised fleets is crucial to several SVEs. For example, if subsidies to EU DWF end, it is highly likely that the fleet will collapse. This would reduce the sale of goods and services because, for example, EU DWF has higher local expenditure than China's DWF, for example. For instance, a study conducted on the net benefits to the Seychelles economy from its articulation with EU DWF found that locally retained expenditure by fishing vessels was substantially more important to the economy than licence fees and the EU financial contribution for fishing access (Campling et al., 2009). This retained expenditure (in foreign exchange) depends on attracting EU vessels (principally French- and Spanish-owned) to Port Victoria for unloading, transshipment, bunkering and taking on other supplies.

Finally, the developed country DWF industry may have better working conditions, which is used as

7 Demanding food safety standards, particularly those applied by the EU and individually by its member states, can be seen as either a barrier to developing country producers or a catalyst for their functional upgrading (Henson and Jaffee, 2006). Either way, public and private standards have expanded substantially in importance over the past 20 years. Public standards are a central regulatory mechanism in agri-food chains, and private standards are a key tool of global value chain governance by lead firms.

social justification for the high subsidies these countries pay. This is of crucial importance for crew from SVEs (such as Fiji, Kiribati, Madagascar and Seychelles) and other ACP crewing countries (such as Ghana, Côte d'Ivoire and Senegal). French, Spanish and Japanese boat owners and managers regularly complain that regulatory mechanisms make their crew costs very high compared with those for competing purse seine fleets from Taiwan and Southeast Asia (Campling, 2012). Further, EU employment law requires that EU DWF crew receive two months of paid holiday—including transfers—for each four months of work onboard.<sup>8</sup> EU DWF crew also receive several days of holiday when the fish is offloaded, whereas crew on Filipino and Taiwanese boats often do the stevedoring themselves (ibid.).

In sum, the global and transnational nature of many fisheries—even smaller-scale fisheries that connect to global markets—and the range of subsidy types that can be applied by both home and host states to fishing companies and related upstream and downstream activities mean there is no single uniform explanation of the impacts of fisheries subsidies on economic and environmental outcomes for SVEs, which have a wide range of interests among themselves. This heterogeneity in part contributes to the complexity of analysing the potential implications of proposed fisheries subsidies disciplines at the WTO.

Nonetheless, even though there are very different concerns within the SVEs, is it possible to identify several points of convergence and divergence, including:

- The relative degree of socio-economic dependence on fisheries;
- Whether the economy is oriented more to onshore fish processing, a base for foreign and/or locally based fishing vessels, the collection of access revenue and/or recreational fisheries (e.g. tourism);
- The relative importance of subsistence/artisanal fisheries to domestic food security;
- The development *aspirations* of individual SVEs in relation to fisheries in their EEZs;
- The specific conditions of the fishery (e.g. which stocks are—or are close to being—in an overfished state and what the interaction with current fishing activities is);

- Whether or not crew from SVEs matter;
- Whether or not there is some degree of symbiosis with a subsidised DWF fleet, such as the interlocking nature of the EU fisheries trade preferences and its subsidised fleet with certain SVEs.

### Shaping the agenda

Fisheries subsidies have not yet been challenged under the WTO's existing agreement on subsidies and countervailing measures, for four main reasons. First, it is difficult to identify and prove a 'trade distortion' for fish products since the same species normally fetch widely different prices because of complex quality and market differentials. Second, the WTO's analytical emphasis on exchange/trade means subsidies are defined mainly in terms of export distortions, which the Agreement on Subsidies and Countervailing Measures (ASCM) suggests should be assessed by examining negative trade effects such as market share or prices in an export market. But this makes the ASCM structurally incapable of capturing fisheries subsidies because they distort how production happens, rather than trade (Schorr, 2004). Third, countries have been reluctant to take a fisheries subsidies case to the WTO dispute settlement mechanism for fear of turning a lens on their own subsidy policies. Finally, notifications of fisheries subsidies under the ASCM are notoriously scant (WTO, 2010).

Within this context, there is an opportunity available to SVEs to shape the agenda. Three scenarios for a SVE proposal to the WTO are identified, which the following might be useful for feeding into:

*Scenario 1:* The SVEs make no proposal because of limited scope and limited gains.

*Scenario 2:* An SVE proposal echoes the core points of the LDC and ACP submission points, with the aim of showing a broad voice across this coalition and to push on the development dimension.

*Scenario 3:* An SVE proposal echoes selected elements of the LDC and ACP submission points (e.g. on the disproportionate reporting burden) and elaborates on one or more issue areas, such as S&DT based on a *de minimis* provision, the definition of subsistence/artisanal fishing and/or the language of 'targeted stocks'.

Should SVEs continue to agree that an agreement at MC11—even on low-ambition fisheries subsidies disciplines—is in their interests, alliances

<sup>8</sup> Skippers and engineers (almost always Spanish or French citizens) receive four months' holiday for every four months.

could be crafted and momentum secured. This could help secure an outcome whereby the WTO delivers on the trade-related SDG implementation, of which SDG 14 is just the first test. This would be a win not only for the WTO and the SDGs but also for small island developing states, which have an overwhelming economic dependence on the oceans and the fisheries sector for livelihoods and formal employment opportunities.

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# International Trade Policy Section at the Commonwealth Secretariat

This Trade Hot Topic is brought out by the International Trade Policy (ITP) Section of the Trade Division of the Commonwealth Secretariat, which is the main intergovernmental agency of the Commonwealth – an association of 52 independent states, comprising large and small, developed and developing, landlocked and island economies – facilitating consultation and co-operation among member governments and countries in the common interest of their peoples and in the promotion of international consensus-building.

ITP is entrusted with the responsibilities of undertaking policy-oriented research and advocacy on trade and development issues and providing informed inputs into the related discourses involving Commonwealth members. The ITP approach is to scan the trade and development landscape for areas where orthodox approaches are ineffective or where there are public policy failures or gaps, and to seek heterodox approaches to address those. Its work plan is flexible to enable quick response to emerging issues in the international trading environment that impact particularly on highly vulnerable Commonwealth constituencies – least developed countries (LDCs), small states and sub-Saharan Africa.

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ITP undertakes activities principally in three broad areas:

- It supports Commonwealth developing members in their negotiation of multilateral and regional trade agreements that promote development friendly outcomes, notably their economic growth through expanded trade.
- It conducts policy research, consultations and advocacy to increase understanding of the changing international trading environment and of policy options for successful adaptation.
- It contributes to the processes involving the multilateral and bilateral trade regimes that advance more beneficial participation of Commonwealth developing country members, particularly, small states and LDCs and sub-Saharan Africa.

## ITP Recent Activities

ITPs most recent activities focus on assisting member states in their negotiations under the WTO's Doha Round and various regional trading arrangements, undertaking analytical research on a range of trade policy, emerging trade-related development issues, and supporting workshops/ dialogues for facilitating exchange of ideas, disseminating informed inputs, and consensus-building on issues of interest to Commonwealth members.

## Selected Recent Meetings/Workshops Supported by ITP

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5 May 2017: Making UK Trade Work for Development Post-Brexit, Expert Group Workshop held in Oxford, United Kingdom in collaboration with the Blavatnik School of Government.

21 - 22 March 2017: Ad Hoc Intergovernmental Expert Meeting: Trade-related Fisheries Targets under Sustainable Development Goal 14, held in Geneva, Switzerland in partnership with UNCTAD, FAO, UNEP, ACP, IOI.

10 March 2017: Commonwealth Trade Ministers' Roundtable Meeting held in London, United Kingdom.

10 - 12 November 2016: Workshop on Productive Capacity and LDC Graduation, held in Beijing, China in partnership with UN DESA and Peking University.

1 - 2 November 2016: Update of Post-Nairobi and Preparation for MC 11, held in Port Vila, Vanuatu in partnership with WTO, EIF and PIFS Secretariat.

27 - 28 September 2016: Implementing the Sustainable Development Goals and Achieving Inclusive Trade, WTO Public Forum, held in Geneva, Switzerland.

21 July 2016: Fostering Green Economies through Trade, Investment and Innovation, UNCTAD 14, held in Nairobi, Kenya.

27-29 May 2016: Tracking Progress and Acceleration Transformation, LDC IV Monitor, held in Antalya, Turkey.

12 - 13 May 2016: Caribbean Regional Consultation on Recent Developments in Trade, held in Port of Spain, Trinidad and Tobago.

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