



WHAT'S THE CATCH?

New WTO rules that support healthy
fisheries and sustainable trade are within
reach... but will governments really come
home with their nets full?

The stakes are high...

The crisis of depletion now affecting fisheries the world over is one of the defining environmental and social challenges of the 21st Century.

- Around 38 million people fish for a living, and tens of millions more work in the processing sector.
- Billions of people depend on fish as a major source of dietary protein, a dependence that is particularly heavy in many of the world's poorest nations.
- Global demand for fish is already at an all-time high, and is projected to continue growing rapidly for years to come.
- But the productivity of wild-capture fisheries has been almost flat since the late 1980s, despite dramatic growth in global fishing capacity, which is now as much as 250% greater than can be sustainably utilised.
- According to the FAO, 76% of the world's fisheries now are fished to their biological limits or beyond, while fishery ecosystems have been disrupted by the depletion of the large predatory species favoured by consumers.



WHAT'S THE CATCH?

After years of study and discussion, governments are finally moving towards the adoption of international rules to curtail the practice of subsidizing overfishing. At the WTO, where the negotiations are underway, significant progress has been made towards a positive outcome. But the hardest work, both technically and politically, remains ahead.

The opportunity now presented to WTO members on fishing subsidies has been nearly a decade in the making. In the mid-1990s, when technical experts first began discussing the problem of inappropriate fishing subsidies, the issue was all but invisible to policy-makers and the general public. But as attention to the worldwide fisheries crisis has grown, so have calls to eliminate government programs that, in essence, pay fishermen to overfish. In November 2001, trade ministers in Doha committed governments to craft new WTO disciplines on fishing subsidies.

The importance of the WTO fishing subsidies talks has been highlighted by many leading governmental and non-governmental institutions, including the Food and Agriculture Organization (FAO), the U.N. General Assembly, the U.N. Environment Programme (UNEP), the Organisation for Economic Co-operation and Development (OECD), and the

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G-8 leaders of major industrialized nations. In 2002, heads of state at the World Summit on Sustainable Development in Johannesburg called successful completion of the WTO fishing subsidies negotiations one of the top eight global priorities for putting the world's fisheries back on a path to sustainability.

As the current round of global trade negotiations moves towards its final phase, the time for governments to turn words into action on fishing subsidies is now. This is a unique opportunity for the WTO to advance environmental and social sustainability in close harmony with its core trade liberalization agenda. The Doha mandate on fishing subsidies is thus an especially stark test of the WTO's maturity and direction as one of the world's leading intergovernmental institutions.

Artisanal fisherman casts net (artisanal fishing method),
Niger River near Mopti, Mali.
© WWF-Canon / Thomas SCHULTZ-JAGOW





South Africa: women at work
in a fish processing unit.
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“By the end of these negotiations, there is little doubt that the significant efforts made by Members in this Group will result in the drawing up of a very comprehensive set of rules prohibiting a whole range of subsidies which are currently allowed in the fisheries sector.”

European Communities
11 April 2005 (TN/RL/W/178)

So far, so good

At the heart of the WTO Negotiating Group on Rules, the talks on fishing subsidies have made good progress. To begin with, the political dynamics have steadily evolved. The talks opened with strong support from the coalition of *demandeurs* known as the “Friends of Fish” (Argentina, Australia, Chile, Iceland, New Zealand, Norway, Peru, Philippines, and the United States). The European Communities (EC) — originally a reluctant party — emerged in 2003 as an active proponent of new disciplines, around the same time that China also signalled its general support. A year later, Japan surprised many delegations by tabling a paper that for the first time clearly embraced a positive direction for the talks — a constructively engaged approach that Korea and Chinese Taipei (the only other delegations to have vocally opposed the negotiations) soon joined.

In spring of 2005, the talks took another big step forward when Brazil tabled a forward-looking paper calling for new rules to address harmful

fishing subsidies and suggesting ways such rules could take account of the special circumstances of developing countries.

Thus, a broad and diverse group of governments — including most of the world’s largest economies and major fishing powers — have now taken formal negotiating positions in favor of new WTO disciplines on fishing subsidies. Moreover, a common theme unites their views: all agree that new WTO rules should aim at eliminating subsidies that contribute to over-fishing and excess fishing capacity.

This emerging political consensus has also been reflected in some basic areas of agreement among the technical proposals that have been made so far. Most importantly, there appears near unanimous agreement among active delegations that WTO rules should include a new “red light” prohibition on certain fishing subsidies, and that at a minimum this prohibition should cover subsidies that lead to overfishing and excess fishing capacity. Negotiating proposals so far have also been united in their support for granting “special and differential treatment” to developing countries. Indeed, as discussed below, governments have shown an unusual willingness in the context of the fishing subsidies talks to engage early on issues of concern to developing countries.

In short, while there remain disagreements over a number of significant questions, the fishing subsidies negotiations have gathered substantial momentum and focus.

Full speed ahead?

But if it has been relatively smooth sailing for the fishing subsidies negotiations thus far, there is still some difficult navigating yet to come. Governments have just begun discussing some of the toughest challenges at the core of these talks. There are at least six key issues that must be resolved if the fishing subsidies negotiations are ultimately to succeed, including:

- How will new rules effectively prohibit the most harmful types of fishing subsidies?
- How will new rules allow the use of subsidies that promote sustainable fishing, without opening dangerous loopholes?
- How will new rules give genuine protection to developing country interests, without abandoning a focus on sustainability?
- How will new rules take appropriate account of the “fisheries context” (when necessary), without drawing the WTO beyond its institutional competence?
- How will new rules remove the veil of secrecy that still prevents public access to useful information about fishing subsidy payments?
- How will new rules ensure a role for intergovernmental institutions outside the WTO, such as the FAO and regional fisheries management organizations?

WWF has offered detailed answers to each of these questions in its

technical treatise, *Healthy Fisheries, Sustainable Trade*. Only a brief discussion of the key dimensions is possible here.¹

Red light, Green light

As mentioned above, there is already broad agreement that new WTO rules should include a “red light” prohibition on at least some fishing subsidies. But what kind of red light will it be? Broad or narrow? Strong or weak? Some governments are calling for a blanket ban on all subsidies to the fishing industry, with only limited and specific exceptions. Others only want to ban a few narrowly defined programme types. But looking beyond the rhetoric, it is clear that the negotiations have already moved past these simplistic and polarized formulas.

In fact, there already appears to be wide agreement that a red light should have the effect of banning subsidies that contribute to overfishing and overcapacity. And although it has received less technical attention, most governments also appear open to a ban on subsidies to IUU fishing.

Negotiators have also made some progress towards identifying certain classes of subsidies that should fall outside of a red light ban. For instance, new rules will not likely prohibit subsidies for vessel decommissioning, for fisheries management services, or for the purchase of access for

Paying the Pirates:

Especially disturbing is the link between subsidies and “illegal, unreported, or unregulated” (IUU) fishing. While the secrecy surrounding subsidy programmes—and the covert nature of pirate fishing—has made “smoking gun” evidence hard to obtain, many governments and non-governmental experts agree that some subsidies benefit criminal fishing operations.

¹ This issues brief should thus not be viewed as a WWF position paper. Copies of *Healthy Fisheries, Sustainable Trade* are available at www.panda.org/trade



Australian Customs Officers aboard an inflatable boat approach an illegal fishing vessel
© Australian Customs Service

foreign fleets to developing country fishing grounds. It is also clear that developing countries are likely to enjoy at least some degree of relaxation of a new red light, as they are accorded “special and differential treatment” adapted for the fishing subsidies context.

The contours of a strong but balanced red light provision have thus begun to come into focus. But there remains a lot to negotiate. More discussion of particular classes of fishing subsidies will be needed before the limits of a new ban can be made more precise. Governments will also need to clarify what disciplines will apply to subsidies that fall beyond a red light prohibition. Exceptions to the red light will have to be carefully qualified, and, new rules will likely need to include new “amber light” provisions to allow some permitted subsidies to be challenged if they cause demonstrable production distortions.

And, of course, textual options for the language of a new red light will soon have to be put on the table. Whatever approach such options take, a robust outcome will depend heavily on two things:

- regardless of its specific vocabulary, the red light should clearly cover the most dangerous kinds of fishing subsidies (capacity- and effort-enhancing subsidies, subsidies to IUU fishing, and domestic price supports); and
- subsidies falling outside a new red light should remain subject to effective discipline, with the burden of proof to justify fishing subsidies often resting on the subsidizing government.

Safe harbours for sustainability and development

If governments are to accept a strong and effective prohibition on harmful fishing subsidies, there will also have to be clear protections granted for the use of positive subsidies where they are needed. In particular, this will require a carefully crafted “green light” for subsidies that help achieve sustainable fishing, and effective “special and differential treatment” (S&DT) for developing countries.

Encouraging sustainability

Not all fishing subsidies are bad news. As many governments recognize, under the right circumstances properly designed subsidies can play a positive role in helping the world achieve healthy and sustainable fisheries. Alongside a ban on harmful fishing subsidies, new rules will need to permit the use of beneficial subsidies such as payments to decommission fishing vessels (“buy-back” programs), to promote the adoption of cleaner fishing techniques, or to improve the assessment of stocks and the monitoring of fishing activities. Preliminary negotiating proposals have already been tabled for a “green light” allowing such subsidies, but the idea is not yet universally accepted. The sooner negotiators begin to grapple seriously with need for a green light, the better.

But no fishing subsidies should be given a blank cheque — not even subsidies meant to promote sustainable fishing. For one thing, “green” subsidies do not always work as intended. Too many buy-back programs, for example, have ended up increasing fishing capacity instead of reducing it. And when negotiators sit down to craft new fishing subsidies rules,

they will have to ensure that even green subsidies do not contribute to overfishing or to widening the competitive gap between rich and poor producers. To do this, a new green light for environmentally friendly fishing subsidies will have to be narrowly drawn and subject to strict conditions. The rules should also make it easier for developing countries to challenge possible abuses of the green light by more advanced economies.

An emphasis on development

The “development” dimension of the fishing subsidies issue will need a lot of attention in its own right. Coastal developing countries — and particularly small island states — are in a delicate position. On one hand, they are among the most likely to be

Funae fishermen sorting tuna after the catch.
Sulawesi/Indonesia
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Producers are People Too

The very first paragraph of the WTO Charter makes clear that when the organization was founded in 1994 it was meant to serve the broad public interest,

and not just promote the profits of export-oriented multinational corporations. The preambular text states that WTO members:

Recogniz[e] that their relations in the field of trade and economic endeavour should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development; (emphasis added)

But in practice the WTO has worked almost exclusively to benefit companies in search of foreign markets. This has meant that subsidies are subject to effective WTO discipline only if they directly distort export sales. For fishermen—who must catch fish before they can sell them—such rules do little to prevent subsidies that lead to depleted stocks.

Fortunately, the current negotiations are aiming to address subsidies that distort fisheries production, and not just fish exports. By broadening WTO subsidies rules to benefit fishermen and not just fishmongers, the WTO can help level the playing field and combat overfishing.



“...the importance of this sector to developing countries...”

Doha Declaration, 28

Ministers in Doha had good reason to call for special attention to developing country concerns in the fishing subsidies negotiations:

- dependence on fish for food is especially high in many developing countries;
- the vast majority of the world's fishermen are from developing countries;
- fisheries are often the “employer of last resort” in poor coastal communities;
- developing countries account for more than 50% of fish exports annually;
- fish exports give developing countries more hard currency earnings than exports of coffee, bananas, rubber, tea, and rice combined;
- developing countries often must compete with subsidized foreign fleets, even in their own EEZs.

injured by harmful fishing subsidies, at least ninety percent of which are granted by major industrialized economies.² Subsidized first world fleets often compete directly with developing country communities for access to fish stocks and export markets. In more than a few cases, these industrialized distant water fleets have been paid by their governments to take their boats elsewhere after depleting their own national fishing grounds. Developing countries have a lot to gain from new WTO rules to discipline these and other subsidies that place their fishers at a clear disadvantage.

Developing countries also stand to gain from rules that discourage the use of harmful fishing subsidies by fishing nations everywhere. Even fishing subsidies granted by developing countries can distort production and trade, and sometimes have proved highly damaging to domestic fisheries resources when applied without attention to good fisheries management.

But if developing countries stand to benefit from new fishing subsidies rules, they may also have a lot to lose if new WTO rules are not properly crafted. Fisheries are critical to the food security, livelihoods, and development of many poorer countries, whose fishing industries are often underdeveloped and

— at least in some cases — whose fisheries remain underexploited. New rules will have to accommodate the legitimate need of these countries to make public investments in their fisheries sector.

In particular, developing countries active in the negotiations so far have been concerned with three issues:

- the right to subsidize “artisanal” fishing;
- the right to develop local industries, including with an export orientation; and
- the right to receive government-to-government payments under “access agreements” for foreign fleets.

These issues are not simple, but all require serious attention. In addition, new rules will need to take account of the fact that some developing countries are already major global fishing powers, and thus are in quite a different position from developing countries in need of S&DT in the fisheries sector.

As WWF has discussed in a separate publication³, governments will need to find balanced solutions that safeguard development without opening dangerous loopholes.

² Based on 1996 data, 90% of fishing subsidies are granted by Japan, the EC, the United States, Canada, Russia, Korea, and Chinese Taipei. See *Healthy Fisheries, Sustainable Trade* at p. 12 & fn. 4

³ *Fishing Subsidies: Issues for ACP Countries* (WWF 2004)



Focusing on fisheries — the basic unit of production

Most subsidies to the fishing industry today are dangerously divorced from sound fisheries management policies. In fact — because fishing subsidy programs are often viewed as components of an industrial or social policy rather than as tools for sustainable resource management — governments frequently have little idea how their subsidies are affecting the health of specific fisheries and the marine environment.

If they are to confront the harmful production distortions caused by fishing subsidies, governments must craft new WTO rules that

move towards the administration of subsidies on a fishery-by-fishery basis. Above all, this means three things: the rules must sometimes take account of conditions at the fishery-specific level; governments must begin to include fisheries-specific information in their mandatory WTO subsidies notifications; and the WTO must establish new institutional mechanisms to ensure that the administration of new WTO fishing subsidies rules is done with the appropriate involvement of experts and intergovernmental organizations competent in fisheries policy.

Management Matters

The wide support emerging for a strong and broad red light on certain fishing subsidies reflects a shared understanding that in today's overfished world some kinds of subsidy programs are simply too dangerous to allow. Much like in the

case of the existing WTO ban on export subsidies, such subsidies are considered harmful *per se*. These can be prohibited on the basis of their program design, without reference to specific contexts or actual impacts.

But as the WTO talks move towards balancing a broad prohibition with rules to permit beneficial subsidies that contribute to sustainability or development, the question of fisheries context must inevitably arise. The reason for this is simple: where fisheries management is inadequate, the risks are sharply higher that a subsidy will cause excess capacity or overfishing, or even wind up supporting pirate IUU fishers. If new rules ignore this fundamental fact, subsidies that are permitted under an eventual green light or under S&DT provisions for developing countries could easily wind up causing harmful distortions or even being used to

When is a Fishery “Patently Undermanaged”?

There may be plenty of debate over the best way to manage a fishery . . . but not about what really bad fisheries management looks like.

In 1995, member governments of the United Nations agreed to a global **Code of Conduct for Responsible Fisheries**. A year later, the FAO issued a checklist to help fisheries managers implement the Code. With these instruments—and others such as the FAO international plans of action on fishing capacity and on IUU fishing—it is possible to articulate universally subscribed “indicators of minimum adequate management” for all fisheries. A few examples might include:

- data-based stock assessment;
- fishing capacity assessment;
- science-based limits on catch, capacity, or fishing effort;
- basic monitoring and control
- cooperative management of transboundary or migratory stocks.

Where rudimentary elements of management such as these are not in place, the fishery should be considered “patently undermanaged”—and most subsidies to such a fishery should be highly suspect, if not banned absolutely.

circumvent new red and amber light rules.

Governments must find a way for new rules to look at the conditions in specific fisheries while simultaneously making sure that WTO does not take on questions that go beyond its institutional mandate or competence. New WTO rules will at times need to take account of the “fisheries management context” without becoming entangled in debates over fisheries policy. But how?

The key is to limit the kinds of questions the WTO asks. The WTO should not be in the business of judging whether a fishery is healthy or well-managed, because such questions are often subject to debate among fisheries experts. But there is now a fairly clear global consensus on what constitutes the basic minimum elements of an adequate management regime — such as the assessment of fish stocks and the setting of catch limits, or the existence of basic controls over fishing capacity or effort. Where these or other basic minimum elements of adequate management are absent — that is, where a fishery is “patently undermanaged” — the only subsidies that should be allowed ought to be those that help establish these fundamental management tools. Similarly, if a fishery has already been identified by a competent authority as depleted (or otherwise overfished) — that is, where a fishery is “patently at risk” — only subsidies that help rebuild stocks, decrease capacity, or improve management should be allowed.

Rules based on the approach just suggested would not be perfect from a pure policy perspective,

because many fisheries that would pass the “patently at risk” or “patently undermanaged” tests are nevertheless poorly managed. But it is important to recognize what the WTO can and cannot do. It cannot become the world’s enforcer of good fisheries management norms. But where fisheries fall obviously short of global standards of minimum management or biological health — situations in which subsidies are especially likely to cause dangerous production distortions — WTO rules can and should limit what governments can subsidize.

An End to Subsidies Secrecy!

At the end of the day, real reform of fishing subsidies practices will depend on more than just well-crafted rules. The new norms that WTO members adopt will remain little more than words on paper if governments do not put an end to the universal practice of hiding critical information about their fishing subsidy programmes.

As WWF and other observers have repeatedly pointed out, public access to information about fishing subsidies is shamefully poor. Current WTO rules, which require governments to notify all programs that fall within the WTO’s definition of a “subsidy”, are honoured in the breach, with the great majority of fishing subsidies either unreported or so thinly reported that little useful information about them can be obtained.

In the negotiations so far, there has been some initial talk about the importance of transparency and enforcement as elements of new WTO fishing subsidies rules- and one delegation (the E.C.) has tabled an initial proposal that includes elements of a new technical approach. But it remains to be seen whether any of this talk is serious. In the months

ahead, the notification issue will need increased attention, with two particular goals in mind:

- WTO notification rules for fishing subsidies must be enforceable — that is, there must be real and significant consequences when governments fail to notify their programs. Among other things, there should be legal consequences, such as making any fishing subsidy that is not notified automatically subject to red light prohibition.
- WTO notification need to be tailored to require information about the actual uses of fishing subsidies — including, for example, the identity of enterprises receiving subsidies, how subsidies are applied, the particular fisheries affected by a given subsidy program, and subsidy amounts on a per vessel, per fleet, and per fishery basis.

Reaching Out

Another area in which governments have begun to recognize a need, but where little concrete progress has been achieved in the negotiations, is the need for the WTO to reach out to experts and intergovernmental organizations (IGOs) with competence in the field of fisheries management, such as the FAO regional fisheries management organizations, and UNEP. Even well crafted fishing subsidy disciplines are likely to raise some questions that it would not be proper for the WTO to answer alone.

There should be nothing particularly new or disturbing in the suggestion that the WTO establish formal links with other IGOs, or even give them a measure of binding authority over aspects of WTO rule implementation. The WTO already has such

The broader WTO context:

Fisheries is obviously not the only area in which WTO rules can have a real impact on natural resources, poverty, and the environment. Whether the focus is on hunger or climate change, urbanization or deforestation – or on a host of other major global challenges confronting governments today – trade and investment flows make a difference.

If the international response to these challenges is to be effective, the institutional and intellectual walls that separate policymaking in the fields of “trade, “development”, and “environment” will have to be replaced with interdisciplinary governance.

By delivering a strong outcome to the current fishing subsidies negotiations, WTO members can take one real step in the right direction.

relationships with the International Monetary Fund (IMF), the World Customs Organization (WCO), the Codex Alimentarius Commission, and others. Negotiators should also consider establishing a Permanent Group of Fisheries Experts as an adjunct to the WTO, modelled in part after the existing Permanent Group of Experts that assists in the administration of current WTO subsidy rules.

What will the real catch be?

The WTO fishing subsidies negotiations have made significant progress. But even the best fishing net in the world cannot feed anyone until it is filled with fish. Governments have only limited time left to fulfil the mandate issued in Doha and reinforced by heads of state at the World Summit on Sustainable Development. The progress made to date shows clearly that governments that can agree meaningful new rules on fishing subsidies. The only question is whether they will.

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