



The Wto Agreement on Fisheries subsidies



Working group 1



Co-founded by the European Union

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Why to talk about WTO?

A little-known subject, but fundamental to understanding future changes in fisheries policies.

Much of the EU's legislation stems from multilateral agreements (agreements) at WTO level

It is important to know the results of negotiations in the WTO on the definition of the rules for subsidies to the fisheries sector.

It is appropriate to know the role of the EU (and the legal mechanisms that allow its action) in the WTO

The presentation will show:



What is a subsidy (FAO)



Main categories of fishery subsidies



Phases that led to the Fishery subsidies Agreement



Main aspects of the Fisheries Subsidies Agreement of 17 June 2022



The World Trade Organization (WTO) is responsible for defining the global rules of trade between nations, with the aim of creating an efficient and win-win trading system. It is attended by representatives of the national governments of the acceding states (to date 164 countries).
Both the European Union (EU) and the individual EU countries are members of the WTO.

Main activities of the WTO:

- international trade negotiations forum (e.g. Doha round)
- resolution of commercial disputes
- definition of legal rules for trade in the form of trade agreements
- monitoring of members' trade policy through the trade policy review mechanism



WTO members (Source: WTO)

EU objectives in the WTO



Main objectives:

- ☞ keep the world trading system fair, predictable and based on common rules
- ☞ modernising global trade markets so that European goods, services and investment can benefit
- ☞ follow the common WTO rules and make sure that others also comply with the rules
- ☞ make the WTO more open by interacting with both non-members and other international organisations
- ☞ bring developing countries into the WTO
- ☞ strengthen WTO support for sustainable trade policies worldwide

The European Commission has also put forward a first set of ideas to modernise the WTO and to adapt world trade rules to the challenges of the global economy.

The EU's role and objectives in the WTO

- EU Commissioner for Trade (DG TRADE) participates in the Ministerial Conference of WTO
- The European Commission represents the EU at the WTO General Council, which acts on behalf of the Ministerial Conference and meets regularly.

The Commission coordinates the EU's negotiating position with EU Member States in consultation with the Council's Trade Policy Committee.

The Commission regularly informs the European Parliament's Committee on International Trade (INTA) on WTO matters.

When an agreement is negotiated at the WTO, the Commission needs the formal authorisation of the Council and the European Parliament and then signs the agreement on behalf of the EU.

The Commission initiates and handles WTO complaints with the support of the Council and may propose retaliatory measures to the Council.

The Commission also regularly dialogues with other interested groups (civil society) on developments related to its WTO policy.



How the EU participates in WTO negotiations (from the TFEU)

From art.207 TFEU

3. Where agreements with one or more third countries or international organisations need to be negotiated and concluded, **Article 218 shall apply**, subject to the special provisions of this Article.

The Commission shall make recommendations to the Council, which shall authorise it to open the necessary negotiations. The Council and the Commission shall be responsible for ensuring that the agreements negotiated are compatible with internal Union policies and rules.

The Commission shall conduct these negotiations in consultation with a special committee appointed by the Council to assist the Commission in this task and within the framework of such directives as the Council may issue to it. The Commission shall report regularly to the special committee and to the European Parliament on the progress of negotiations.

4. ...omissis...



How the EU participates in WTO negotiations (from the TFEU)

Art. 218

1. Without prejudice to the specific provisions laid down in Article 207, agreements between the Union and third countries or international organisations shall be negotiated and concluded in accordance with the following procedure.
2. **The Council shall authorise the opening of negotiations, adopt negotiating directives, authorise the signing of agreements and conclude them.**
3. **The Commission**, or the High Representative of the Union for Foreign Affairs and Security Policy where the agreement envisaged relates exclusively or principally to the common foreign and security policy, **shall submit recommendations to the Council**, which shall adopt a decision authorising the opening of negotiations and, depending on the subject of the agreement envisaged, nominating the Union negotiator or the head of the Union's negotiating team.
4. **The Council may address directives to the negotiator** and designate a special committee in consultation with which the negotiations must be conducted.
5. The Council, on a proposal by the negotiator, shall adopt a decision authorising the signing of the agreement and, if necessary, its provisional application before entry into force.
6. The Council, on a proposal by the negotiator, shall adopt a decision concluding the agreement.

UE-WTO: Juridic items

Official Journal
of the European Union



English edition

Legislation



How the EU participates in WTO negotiations (from the TFEU)

Official Journal
of the European Union



English edition

Legislation

7. When concluding an agreement, the Council may, by way of derogation from paragraphs 5, 6 and 9, authorise the negotiator to approve on the Union's behalf modifications to the agreement where it provides for them to be adopted by a simplified procedure or by a body set up by the agreement. The Council may attach specific conditions to such authorisation.

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9. **The Council, on a proposal from the Commission, shall adopt a decision**

10. **The European Parliament shall be immediately and fully informed at all stages of the procedure.**

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Definition of subsidy (WTO)

Definition of subsidy (WTO SCM Agreement - art. 1):
https://www.wto.org/english/docs_e/legal_e/24-scm.pdf



a subsidy shall be deemed to exist if:



1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

☞ a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

☞ (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)¹;

☞ (iii) a government provides goods or services other than general infrastructure, or purchases goods;

☞ (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

Or

2) there is any form of income or price support in the sense of Article XVI of GATT 1994

And

b) a benefit is thereby conferred.

FAO Different categories of subsidies

FAO Different categories of subsidies

1. Direct financial transfers

2. Services and indirect financial transfers

3. Regulations

4. Lack of intervention

Source: [FAO]



All direct payments by the government to the fisheries industry.

These subsidies

- have likely a direct effect on the profits of the industry
- can also be negative (i.e. payments from the industry to the government)
- their cost (revenue) to the government can usually be found in the public budget
- its direct value to the industry will appear directly in the cash flow of the recipient firms.

Subsidies belonging to this category are easy to identify and it would generally not be difficult to find consensus when defining these subsidies.

Examples:

- ✓ Investment grants (e.g. to purchase vessels or for modernization)
- ✓ grants for safety equipment,
- ✓ vessel decommissioning programs,
- ✓ equity infusions, income guarantee schemes, disaster relief payments, price support, direct export incentives, etc.
- ✓ Profit-decreasing subsidies in this category would include, for example, various taxes and fees, and import/export duties.

FAO Different categories of subsidies



2. Services and indirect financial transfers



Any other active and explicit government intervention but which does not involve a direct financial transfer as specified under Category 1.

Category 2 subsidies are:

- services provided by the public sector
- indirect financial transfers, e.g. tax rebates.

Their cost may or may not be specified in the public budget the value to the industry does usually not appear explicitly in the accounting of the recipient industry.

Examples:

- ✓ Investment loans on favourable terms
- ✓ loan guarantees,
- ✓ special insurance schemes for vessel and gear,
- ✓ provision of bait services,
- ✓ indirect export promotion support, inspection and certification for exports,
- ✓ specialized training, extension, ports and landing site facilities,
- ✓ payments to foreign governments to secure access to fishing grounds,
- ✓ government funded research and development programmes, international cooperation and negotiations, fuel tax exemptions, investment tax credits, deferred tax programmes, special income tax deductions, etc.

FAO Different categories of subsidies

3. Regulations

Government regulatory interventions.

The government cost of Category 3 subsidies - usually an administrative cost - may be accounted for among other public expenditures for management and regulations and be difficult to identify.

The value to the industry does usually not appear directly in the accounting of the industry unless it is a profit-decreasing subsidy entailing an expenditure for the industry (for example, the obligatory procurement of a certain type of gear).

Examples:

- ✓ Import quotas,
- ✓ direct foreign investment restrictions,
- ✓ environmental protection programmes,
- ✓ gear regulations,
- ✓ chemicals and drugs regulations,
- ✓ fisheries management, etc.

FAO Different categories of subsidies



4. Lack of intervention

Lack of government intervention (the most difficult one to deal with).

Category 4 comprises inaction on behalf of the government that allows producers to impose - in the short or long-term - certain costs of production on others, including on the environment and natural resources.

By definition, they do not imply a direct expenditure to the government (but may represent foregone revenue) and their value to the industry is often implicit.

Examples:

- ✓ Free access to fishing grounds,
- ✓ lack of pollution control,
- ✓ lack of management measures,
- ✓ non implementation of existing regulations, etc.
- ✓ [FAO]

OECD Different categories of subsidies

L'OECD studied impacts of support on overfishing and IUU fishing.
The six support policy categories in the analysis are

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- **Payments based on fishers' income.** These are transfers made depending on the current income of the recipient. This would include employment insurance, disaster payments, wage subsidies, special income tax concessions and similar.
- **Payments based on fishers' own capital.** These transfers are based on investment in fishing operations or working capital for operations. This category includes, for example, concessional loans, special tax treatment on investment or returns on investment other than for capital in fishing vessels. Support that increases operators' capacity to profit from the fishery, such as upskilling, marketing training and assistance would also fall in this category.

OECD Different categories of subsidies



L'OECD studied impacts of support on overfishing and IUU fishing.
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- **Payments based on vessels.** These transfers are made on the basis of the purchase, alteration, or scrapping of a fishing vessel.
- **Payments based on variable input use.** These transfers are made on the basis of the running costs of the fishing operation, such as payments contingent on the purchase of gear, bait or ice, or the use of port services.
- **Payments based on fuel use.** These transfers are made on the basis of the quantity of fuel used by the fishing operation. This includes for example fuel tax concessions or fuel subsidies.
- **Payments based on output.** These transfers are made on the basis of the price of fish. They include tariffs, market interventions and consumer subsidies.

Since the 70s it began to be seen that fishing activities, if not regulated or managed, could lead to situations of overfishing. The phenomenon can be framed from a strictly economic point of view with what is called "*the tragedy of the commons*" according to which in the presence of shared and not unlimited common resources, individuals - acting only to maximize their own benefit - exhaust and deteriorate the common good.

GATT (General Agreement on Tariffs and Trade) 1991, first working and reflection group on trade problems (trade level) in the fisheries sector -- **no tangible results were achieved**.

Evolution of GATT into the WTO 1995, potential environmental effects of fisheries subsidies brought to the attention of the Committee on Trade and the Environment and its work continued for two years (1997-1999).

This Commission did not reach any agreement at the end of its mandate in 1999, **except that fisheries subsidies were included among the dossiers of the Doha negotiations, with the aim of "clarifying and improving the WTO disciplines on fisheries subsidies, taking into account the importance of this sector for developing countries"**.

Fishery subsidies negotiations in the Doha Round:

The Doha Round



The Doha Round is the last round of WTO trade negotiations. Launched in 2001, it marked the beginning (and for certain parts is still ongoing) of new agricultural negotiations. WTO members have committed themselves to achieving substantial improvements in market access and to progressively reducing all forms of export subsidies in trade-distorting domestic support, taking due account of the need for developing countries (developing countries or LDCs) to treat special and differentially.

2002, at the UN World Summit on Sustainable Development in Rio de Janeiro, explicit call for the elimination of subsidies that "contribute to illegal, unreported and unregulated fishing and overcapacity".

Important contribution to the development of the debate between Member States: **even without reaching a consensus, the majority of States declared themselves in favor of classifying subsidies according to their effects on the environment**

Fishery subsidies negotiations in the Doha Round:

Timeline of Ministerial Conferences



QAMC4 — Doha, 9-13 November 2001 (AVVIO DEL DOHA ROUND)

BR 2002 Rio de Janeiro - UN World Summit on Sustainable development

MXMC5 — Cancún, 10-14 September 2003

HKMC6 — Hong Kong, 13-18 December 2005

CHMC7 — Geneva, 30 November - 2 December 2009

CHMC8 — Geneva, 15-17 December 2011MC9 —

ID Bali, 3-6 December 2013

 2015: Agenda 2030 on sustainable Development →

KE MC10 — Nairobi, 15-19 December 2015

AR MC11 — Buenos Aires, 10-13 December 2017

 2020-2021...Slowdown due to COVID 19 pandemic

CHMC12 — Geneva, 12-16 June 2022 → Agreement on fisheries subsidies

14.6 By 2020, 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, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiation

The Agreement

Ministerial Conference Twelfth Session (MC12) Geneva, 12-15 June 2022

The Agreement applies to subsidies (see WTO definition) to marine wild capture fishing and fishing related activities at sea



SUBSIDIES CONTRIBUTING TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.



SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level



OTHER SUBSIDIES

5.1 No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member and outside the competence of a relevant RFMO/A.

The Agreement

Ministerial Conference Twelfth Session (MC12) Geneva, 12-15 June 2022

ARTICLE 6: SPECIFIC PROVISIONS FOR LDC MEMBERS

A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, and LDC Members, shall be provided for the purpose of implementation of this Agreement. Voluntary WTO funding mechanism established in cooperation with relevant international organizations such as FAO and IFAD. Contributions of WTO Members to the mechanism exclusively on a voluntary basis

ARTICLE 9: COMMITTEE FOR MONITORING THE AGREEMENT

A Fisheries Subsidies Committee is established consisting of representatives of each of the members who monitor and implement the Agreement.

ENTRY INTO FORCE

The agreement will come into force when at least 2/3 of the WTO Members have signed their acceptance to the Agreement.

CONCLUSIONS

- First multilateral agreement focused on sustainability aspects, aiming to protect resources by leveraging the fight against IUU fishing and the elimination of subsidies deemed to have an impact on the fish resource and the environment
- *Great impetus given by Agenda 2030*
- Attention to LDCs, also through the establishment of a dedicated fund, with resources voluntarily provided by the most developed countries, in order to provide technical assistance and **capacity building**. **The EU participates in the financing of this fund**
- **For the EU adoption of agreement, the Commission will prepare a proposal for adoption by the Council, following the procedures laid down in the TFEU**
- From that moment (if it has formally entered into force in the WTO) therefore all EU and national policies on fisheries will have to implement what is envisaged and eliminate distortive subsidies



The Wto Agreement on Fish Subsidies



Thank you for your attention!

Working

