

ENTANGLING DEVELOPMENT

Fisheries Subsidies Negotiations and Development in the World Trade Organization

Next year, 164 members of the World Trade Organization (WTO) will meet in Astana, Kazakhstan for the 12th Ministerial meeting (MC11). Ministers will be looking to reach an outcome on disciplines to rein in harmful subsidies in the fishing industry that have led to widespread collapse of global fish stocks by the 2020 deadline set at the last WTO Ministerial.

Globally, one third of assessed fisheries are overfished which has major implications for food security of millions of people who rely on fish for their nutrition as well as for the livelihood of hundreds of millions of artisanal fisherfolk around the world. The WTO negotiations have their mandate as part of the Doha Development Agenda (DDA) and the Hong Kong Ministerial Declaration to clarify disciplines on fish subsidies. Despite not having consensus in 16 years of negotiations, members seem closer to a potential agreement on the issue than ever before. Sustainable Development Goal (SDGs) 14.6 agreed to by all members of the United Nations has spurred the WTO negotiations as it includes a mandate to, among other things, “by 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to illegal, unreported and unregulated [IUU] fishing...” as well as provide “appropriate and effective special and differential treatment” for developing and least developed countries (LDCs).

Any outcome will have major implications for Pacific Island Countries (PICs) as fish provides 50–90 per cent of animal protein intake in rural areas, and 40–80 per cent in many urban centres with most of the fish eaten by rural people coming from subsistence fishing. Fisheries is also a key economic driver of Pacific country economies with fish and fish-products generating a higher export value than coffee, bananas, cocoa, tea, sugar and tobacco combined. Fisheries subsidies by developed countries have long been a point of contention for PICs as they see their natural resources exploited by

highly subsidised foreign fleets at the expense of their own potential local industries. As reported by IUU Watch, in the Western and Central Pacific Ocean, Illegal Unregulated and Unreported fishing “claims at least €470 million annually, with actual lost revenue to Pacific Island countries around €140 million.”

While problematic fisheries subsidies need to be addressed, it is unsurprising to see developed countries with extensive industrialized fishing fleets using these negotiations to their benefit by attempting to include other matters such as management measures and access arrangements under the ambit of the WTO. Any outcome on fisheries subsidies negotiations must ensure that small scale and artisanal fisherfolk can be supported, that the development policy space of Pacific developing countries and Least-Developed Countries (LDCs) is protected through the appropriate and effective application for special and differential treatment, and that there is no undermining of fisheries management measures.

A mandate only for Fisheries Subsidies negotiations

The mandate for negotiations relates to the prohibition of fisheries subsidies and must not be used as a backdoor way to open up the discussion of fisheries management measures. Regional Fisheries Management Organizations (RFMOs) are the most suitable bodies to determine the management measures relating to fisheries and must be left to do so. The European Union (EU), unable to get its way in other RFMO fora, is trying to bring the voluntary Food and Agriculture Organization codes into the WTO and utilise the dispute mechanism to enforce them.

The PICs have experienced this before with their negotiations with the European Commission on the Economic Partnership Agreement (EPA). The European push to include management measures in the Pacific EPA talks is one of the main reasons for

the suspension of the negotiations as PICs have stood firm on keeping such issues out of free trade deals. Like management measures, access arrangements are negotiated in other fora and are the sovereign matters of nations and as such should be excluded from subsidies negotiations. For the Pacific, access arrangements are key sources of government revenue and have been a hard-fought area that has only recently started to come to fruition for those states. In 2016, government revenue from fisheries access agreements for Pacific Island Members to the Parties to the Nauru Agreement, was approximately US\$400 million, a huge increase from US\$60m in 2011. Any discussion about access arrangements and subsidies associated with them must be approached with great caution as any undermining of these arrangements through the WTO would be devastating to the economic lifelines of Pacific Islands.

Developing countries have the sovereignty to determine the resource use within their own Exclusive Economic Zones (EEZs). An outcome that applies to fishing in the high seas and in the EEZs of other members, but not to members' own EEZs, provides greater scope to allow developing countries to manage their own development and to allow RFMOs to govern the high seas.

Prohibitions on Subsidies for Illegal Unreported and Unregulated Fishing

Prohibitions on subsidies related to IUU fishing appears the area currently with the highest levels of convergence amongst Members. To have the best impact, the IUU subsidies disciplines would need to be broad in scope, covering the subsidies that "relate to" IUU fishing and apply to the owners and operators. It is important to also ensure that the actions of artisanal/small scale fishers are not deemed "unreported" or "unregulated" as the burden for comprehensive monitoring and reporting for developing countries' artisanal fish sectors would be excessively costly and unsustainable. Prohibitions on subsidies relating to unregulated and Unreported fishing should not apply to subsidies provided by developing countries and LDCs for small-scale fishing in their own EEZs. Appropriate support, including financing, must be provided to developing countries to support their abilities to monitor and address IUU fishing. The IUU fishing determinations should be made from lists provided by RFMOs and sub-regional or national jurisdictions - especially coastal states, as this would offer maximum scope for assessing and disciplining those who fish in such ways.



Subsidies Impacting Overfished Stocks

Subsidies that contribute to the over-fishing of fish stocks is a major issue for sustainable fisheries. As such any outcome that prohibits subsidies to operators and owners that engage in over-fishing must be workable and effective. Numerous proposals suggest a mechanism that relies on proving a link between the subsidies and its use exclusively for fishing overfished stocks, a causality that would be very difficult to prove given the nature of the fisheries industry and risks being rendered effectively meaningless. For PICs to retain the policy space for their development, 'Special and Differential Treatment' (SDT) is central and must be affirmed and simple to operationalise.

Developing Countries and LDCs like the Pacific Islands rely on the aquatic resources both for revenue and livelihoods, as such for these countries to be able to determine their own development and sovereignty over resource use they need to ensure that their policy space is protected from any encroachment by the WTO on this issue. Some proposals on this have SDT mechanisms that would be difficult to operationalise and face the possibility of dispute regarding management plans.

Developing countries or LDCs should not be prevented from providing subsidies to small-scale and artisanal fishers, something that requires an effective carve-out. These fisherfolk are some of the most reliant on fishing for their food security, livelihoods and survival, and any inclusion of prohibitions or limitations on subsidies that would apply to them would be devastating. As such the proposal that any prohibitions shouldn't apply to subsidies provided by developing countries for fishing within their own EEZ contains the broadest and simplest application of SDT. Further, Special and Differential Treatment should also apply to the commitments regarding notification and transparency. This will result in greater flexibilities or exemptions proportionate to their capacity and contribution to over-fishing as well as financial support for capacity building, as well as recognizing their proportionately lesser contribution to over-fishing.

Subsidies Contributing to Overcapacity

The overcapacity of fishing vessels has been largely supported by subsidies from industrial fishing nations. According to the ACP Group of States "Fisheries subsidies are estimated to be as high as US\$35 billion worldwide, of which about US\$20 billion directly contribute to overfishing as capacity-enhancing subsidies." The current EU proposal would limit the ability of PICs to be able to support the construction and importation of new vessels as well as any fishing enabling equipment, subsidies that have been phased out by EU themselves. Fuel subsidies are an ongoing issue with both developing and developed countries providing them, for the Pacific Island Countries any prohibitions on fuel subsidies must be accompanied by an effective carve-out for domestic fishing.

One approach being proposed by a number of different members - China as well as the US/Australia/Argentina/Uruguay - is for a cap on the level of subsidies provided by members that is to be determined by a variety of criteria. Cap proposals carry the danger of providing greater space to continue for members that currently provide large amounts of subsidies. It also misses capturing those members that have moved away from direct subsidies for fleet capacity to indirect subsidies. Differing cap proposals place Pacific Islands (including LDCs) on par with industrialised nations whilst others will discourage the expansion of fisheries production in developing countries. Both outcomes undermine the development potential of Pacific Island WTO members and punish them for the over-subsidisation from other members.

The African Caribbean Pacific group proposal argues that developing countries and LDCs should be exempt from the prohibitions on overcapacity if they are fishing outside their EEZs to exclusively meet a quota granted by an RFMO or other similar body. Some proposals have included a standstill provision – meaning that no new subsidies can be introduced by WTO members (despite industrial fishing nations having previously built their industries with such subsidies). A standstill is not in the developmental interests of those countries like the Pacific Islands Countries which are not yet in a position to be able to nurture their domestic industries. It appears that there will be a strong push to ensure that there is some outcome on fisheries subsidies at the next Ministerial in 2020.

Sustainable development must include development

In order for nations to meet their goals as set out under the SDG's there must be a concerted effort to ensure that achieving one doesn't undermine others. Some proposals on the table relating to Over-fishing and over-capacity would result in enshrining the dominance of existing fishing players. This would impact on the ability of some coastal communities to support their livelihoods, undermining other SDGs that relate to food security and decent work.

It is also crucial to remember that 'special and differential treatment' is a central component of the SDG mandate. Currently we are seeing a variety of commentators on the negotiations refer to SDT as a sticking point that is undermining the attempts to achieve an outcome. Such a framing is carving up the SDG and prioritising one element over another, promoting an environmental outcome as opposed to an outcome that promotes both sustainability and development for developing and least developed countries. As the deadlines for the negotiations gets closer and closer, the political pressure will mount and such framing allows the developed nations to push for concessions in the text on SDT, leaving developing countries to shoulder the burden of any outcome.

Special and differential treatment is a core tenet of the goal and a failure to deliver on it in these negotiations is a failure to deliver on the SDG.

Regardless of the scope of such an outcome it is critical that developing countries stand firm on defending the policy space to pursue their developmental aspirations and prioritise getting a good deal over getting any deal - because no deal is better than a bad deal. Disciplines on agriculture subsidies in the WTO provide a cautionary tale; the subsidies used by developed countries are largely permitted, but those used by developing countries, like public stockholding, are not. To achieve the aspirations of the SDGs and support a prosperous future for the Pacific Islands, the outcome must ensure that industrial IUU subsidies are effectively disciplined; that small scale and artisanal fisherfolk in developing countries can be supported; that there is no undermining of fisheries management measures; and the development policy space of developing countries is protected.

**This brief was compiled by the Pacific Network on Globalisation (PANG).
PANG is a Pacific regional network promoting self-determination and
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