

June 1, 2022

Civil Society Open Letter to Ministers on WTO Fisheries Subsidies Negotiations

In June 2022 when World Trade Organization (WTO) Ministers meet there will be intense pressure and expectation for an outcome on the negotiations on fisheries subsidies. The ministerial (MC12) comes at a volatile time in global geopolitics, climate change, COVID19 pandemic and economic recovery, yet the current draft text of negotiations fails to provide support to either fish stocks, marine conservation or development.

It is widely recognised that global fish stocks are struggling to survive. The United Nations Food and Agriculture Organisation (FAO) reports that almost 60% of assessed stocks are fully exploited and 34% are fished at unsustainable levels. The global levels of subsidies to the fishing sector have been estimated to be as much as \$34 billion. While subsidies contribute to the overfishing of stocks, the problem varies depending on the size and scope of the fishing being subsidised and who is benefiting.

Negotiations on fisheries subsidies in the WTO were renewed from the Sustainable Development Goal 14.6 mandate which aims to “prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, and eliminate subsidies that contribute to IUU fishing, and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment (SDT) for developing and least developed countries should be an integral part of the WTO fisheries subsidies negotiation”.

Despite this the negotiations are on track to fail the mandate.

Those most responsible aren't being held accountable

Many global environmental agreements follow the principle of common-but-differentiated-responsibility meaning that those most responsible for the problem take the greatest actions to remedy it. Under the current Chair's text there is no recognition of historical responsibility for the state of global fish stocks and overfishing. The decades of subsidisation from industrial fishing nations and fleets are not accounted for in the design of prohibitions resulting in a text that fails to target those responsible for sustained overfishing and who have built their fleet capacities, nor the wealth that has been accrued at the expense of fish stocks and developing country resource holders. The distant water fishing fleets are often the same fleets that have overfished their waters and have the greatest fishing capacity, yet they are not specifically targeted in the text.

The negotiations must target those with the historical responsibility of overfishing including distant-water fishing fleets.

Small Scale Fishers caught up in the agreement

Small-scale fishers are some of the most vulnerable communities within the fisheries sector, rely on government subsidy support to survive and are least responsible for the global state of fish stocks. The current proposals relating to small-scale fishers includes a carve-out of the text's prohibitions for those fishers who meet the cumulative criteria of being “low income, resource poor and livelihood fishing” within 12 nautical miles of the coastline. For IUU fishing and overfished stocks even this limited exemption is offered only for two years.

This definition is designed to only be of use to a subset of small-scale fishers. Previous WTO agreements (Agreement on Agriculture) have allowed the carveouts for artisanal workers to be more expansive (low income *or* resource poor) but that has not been extended to fisherfolk.

Furthermore many small-scale fishers go beyond the 12nm area to follow seasonal fish or fish in archipelago waters. The two years' timeframe is also insufficient for many developing countries to put the necessary legislative, regulatory and infrastructure reforms in place. If those reforms are not enacted then the subsidy programs that many small-scale fishers rely on may breach WTO commitments and can be challenged by other Members.

Those fishers who don't fit the restrictive definition of fishing will be caught up in the subsidy prohibitions that are included in any fisheries subsidies agreement. This will also come at a time when there is rising prices for food and fuel, increasing the costs of living and costs of fishing for both fishers and associated workers who are already in precarious conditions. Now is not the time to be cutting the subsidies to small-scale fishers and fishing related activities.

Small-scale fishers must be permanently excluded from any prohibitions in the agreement.

Inadequate flexibilities

The SDG14.6 mandate calls for special and differential treatment to be “appropriate and effective” but this is not reflected in the current Chair's text.

In addition to very stringent flexibilities only for small scale fishing as described above, the flexibilities proposed for developing countries in the 'Overfishing and Overcapacity' component of the prohibitions will undermine development prospects for developing countries. At a special WTO meeting on fisheries in June 2021 at least eighty-one developing countries stated that the special and differential treatment provisions that covered artisanal fishing within territorial waters was insufficient. Instead it was stressed that any developing country flexibilities should not only be for limited to small-scale fishers within 12 nautical miles but be permanent like the other flexibilities for sustainability measures. The current text only offers a temporary carve-out for a member's exclusive economic zone but long-term flexibilities are tied to a threshold test of 0.7% of global marine wild capture or for low income and resource poor and livelihood fishing within 12 nautical miles.

Crucially, the ability of developing countries to be able to access the provided flexibilities relies on them meeting the notification requirements set out, these go beyond the existing subsidy agreement requirements. This will punish those developing countries who already struggle to meet their notification requirements even if they do not contribute to global overfishing.

Developing countries must maintain a permanent exemption for fishing within their own sovereign waters.

WTO to decide on fisheries management measures

Under the Chair's text the prohibited subsidies to overfished stocks and those that contribute to overfishing and overcapacity are allowed to continue if it is demonstrated that there are sustainability measures in place. This will establish the WTO, despite having no expertise in the area, as a body that can now determine whether or not a country's conservation and management measures for their fish stocks are appropriate. This is also a case of reverse special and differential treatment offering an escape clause mainly for developed countries.

The requirement for members to report on the management measures they have in place will allow other members to challenge them if they feel they are not sufficient or potentially are a commercial threat. There have been many examples of developed countries unilaterally challenging the management measures of other countries, restricting market access if they don't believe they are up to standard. This often benefits fleets from those same developed countries who can already meet those standards.

The agreement is aimed to address subsidies, not management measures of members. There are other more appropriate forums that already have dispute procedures to address issues that arise with management and support countries to improve them. This goes beyond the mandate of the agreement and will most likely harm the conservation measures of members, thereby undermining the management of fish stocks.

The WTO must not be able to interfere with the conservation and management measures of a Member by adverse rulings against them. Regional Fisheries Management Organisations are better placed to address any issues with conservation and management of stocks.

Undermining the United Nations Convention on the Law of the Sea

The United Nations Convention on the Law of the Sea is an international treaty that provides countries with obligations and rights relating to the living natural resources (including fish) within their Exclusive Economic Zone (EEZ), the 200 nautical mile zone from the coastline. This treaty gives these rights to countries to manage and exploit these resources as well as the obligation to make sure that they are managed sustainably.

The current Chair's text impinges on the sovereign rights of countries to manage and exploit their fisheries resources by requiring them to report management measures to the WTO for possible contestation as well as restrict their ability to support the domestic fishing fleets. The WTO will undermine existing international ocean treaties and therefore weaken the capacities of developing countries to manage fish stocks and prevent distant-water fishing fleets from accessing fish stocks.

Existing international treaties must not be undermined by the WTO agreement and instead should ensure that the rights of Members already established under UNCLOS are not overridden by the WTO determining actions within a Member's EEZ.

An Imbalanced Agreement that Rewards Capacity

The text as it currently stands will be of most use to those, mostly developed, countries that already have the existing capacity to subsidise their fleets and manage their fish stocks. The management and measurement of fisheries stocks is prohibitively expensive for many developing countries, making it harder for them to manage all their fish stocks as well as report to the WTO in order to access flexibilities in the text. The ability to subsidise fishing fleets also relies on the fiscal capacities to be able to afford spending that money.

As reported by the South Centre, based on current compliance with the WTO subsidy agreement notifications, only 55 Members (taking the EU as 1 member) would comply. This is coupled with around 80 Developing Countries not making a notification as required by the beginning of 2021, which if extended to the fisheries text would make them ineligible for any flexibilities or special and differential treatment.

Punishing those with the least capacity to manage, subsidise or notify does not address the dire state of global fish stocks but instead punishes those least responsible. Proposing only a voluntary fund for capacity building and technical assistance leaves developing countries with the burden of obligations but no committed support. This is not what leaders would have envisaged when agreeing to SDG14.6.

Making flexibilities for developing countries conditional upon notification obligations doesn't address the aims of the mandate and only punishes those countries and as such should be removed from the text. Developed countries must provide comprehensive capacity building and technical assistance funding.

Finally, the process of such negotiations must be democratic, inclusive and participatory. We have

not seen any attempt to involve small-fisher groups in these talks. In addition, it needs to give developing country and LDC members enough opportunity to participate and voice their opinions till the end, and the green room type of consultations conflict with the desired approach.

We are calling on Ministers to make sure that any outcome on fisheries subsidies negotiations targets those who have the greatest historical responsibility for overfishing and stock depletion, excludes all small-scale fishers from any subsidy prohibitions, prevents the WTO from ruling on the validity of conservation and management measures of members, and upholds the sovereign rights of countries under UNCLOS.

Endorsed by:

Global:

1. Campaign of Campaigns
2. Communaute de Nourriture Slow Food Tanganyika
3. DAWN (Development Alternatives with Women for a New Era)
4. Indigenous Peoples Global Forum for Sustainable Development
5. Schola Campesina APS
6. Sisters of Charity Federation
7. Society for International Development
8. Third World Network
9. Transnational Institute
10. World Forum of Fish Harvesters and Fish Workers (WFF)
11. World Public Health Nutrition Association

Regional:

1. African Centre for Biodiversity
2. Asia Pacific Network of Environment Defenders
3. Asociación Mujeres Emprendedoras de Alta Verapaz
4. Association For Promotion Sustainable Development
5. Alliance for Food Sovereignty in Africa (AFSA)
6. Confederation of Traditional Herders Organizations in Africa (CORET)
7. EASTAFISH (EAST AFRICA OF FISHERIES)
8. FishNet Alliance
9. Focus on the Global South
10. Health of the Mother Earth Foundation
11. ICENECDEV-International Centre for Environmental Education and Community Development
12. Mer Conseils
13. Nadi Ghati Morcha
14. Pacific Conference of Churches
15. Pacific Islands Association of Non Governmental Organisations
16. Pacific Network on Globalisation
17. Southeast Asia Regional Initiatives for Community Empowerment
18. Spire
19. Wahana Lingkungan Hidup Indonesia (WALHI)

National:

1. AbibiNsroma Foundation
2. All Bangla Fishermen's Association (ABFMA)
3. Anne's Christian Community Health School and Nursing Services
4. APAC

5. Association of Proper Internet Governance (Switzerland)
6. Association pour l'Intégration et le Développement Durable au Burundi, AIDB
7. Association pour la Conservation et la Protection des Écosystèmes des Lacs et l'Agriculture Durable
8. Attac Norway
9. Australian Food Sovereignty Alliance
10. Bangladesh Environmental Lawyers Association (BELA)
11. Bangladesh Nari Progati Sangha (BNPS)
12. Bolipara Nari Kalyan Somity (BNKS)
13. Centro de Documentación en Derechos Humanos "Segundo Montes Mozo S.J." (CSMM)
14. COAST Foundation
15. Collectif des Associations pour le Développement
16. Collectif Pêche & développement
17. Consumers' Association of Penang (Malaysia)
18. FIAN Sweden
19. FIAN Uganda
20. Food Sovereignty Alliance
21. FORUM SOCIAL SENEGALAIS
22. Freshwota Indigenous Council of Chiefs
23. Gambia Fisher Folk Association
24. Gaza Urban & Peri-urban Agriculture Platform (GUPAP)
25. Gestos
26. Global Justice Now
27. Gramya Resource Centre for Women (India)
28. Handelskampanjen
29. Hope and Destiny Employment Agency
30. Indonesia for Global Justice
31. Initiative for Health and Equity in Society
32. Kesatuan Nelayan Tradisional Indonesia (KNTI)
33. KIARA (Koalisi Rakyat untuk Keadilan Perikanan)
34. Kikandwa Environmental Association (Uganda)
35. Kilusan para sa Repormang Agraryo at Katarungang Panlipunan (KATARUNGAN)
36. Malaysian Inshore Fishermen Association for Education and Welfare (JARING)
37. Masifundise
38. Mazingira Institute (Kenya)
39. MEPA
40. Nadi Ghati Morcha (India)
41. National Fisheries Solidarity Movement (Sri Lanka)
42. O Le Siosiomage Society Inc (Samoa)
43. Pakistan Fisherfolk Forum
44. RAPA
45. Rural Area Development Programme (RADP)
46. Sahabat Alam Malaysia (Friends of the Earth Malaysia)
47. Serikat Petani Indonesia
48. Sierra Leone Amalgamated Artisanal Fishermen's Union
49. SRHIN-RWANDA
50. Vanuatu Environment Advocacy Network
51. Vanuatu Human Rights Coalition
52. Vanuatu Indigenous Land Defense Desk
53. Vanuatu Young Women for Change
54. Vatu Mauri Consortium