



## Off The Hook:

### ***How the big subsidisers are avoiding responsibility in the WTO fisheries subsidies negotiations***

From November 30 – December 3 Trade Ministers will be meeting in Geneva for the World Trade Organization's (WTO) 12<sup>th</sup> Ministerial (MC12). One of the key areas of discussion are the negotiations on fisheries subsidies.

The negotiations on fisheries subsidies have a long history in the WTO but were intensified following the Sustainable Development Goals (SDG) that set a target on eliminating subsidies to Illegal Unreported and Unregulated (IUU) fishing and prohibiting certain subsidies that contribute to overcapacity and overfishing while recognizing appropriate and effective special and differential treatment for developing and least developed countries.

Ahead of the Ministerial the Chair of negotiations, Colombian Ambassador Santiago Wills has released a new draft text that is highly problematic in the advantages it grants those with capacity to manage their stocks, provide subsidies and meet the notification requirements – countries like the EU, US, Japan etc. Currently this is an imbalanced agreement where those without the historical responsibility (but also those who still hold the resources) will bear the disproportionate burden of the commitments.

This Ministerial (MC12) is seen by some as the deadline for the negotiations on fisheries subsidies. The Chair of the negotiations recently stated that it was no exaggeration that the negotiating group and to an extent the WTO as a whole will be judged by their ability to deliver an outcome.

There is intense pressure on the negotiators to come to an agreement in the midst of a global pandemic that has meant some Pacific Island Country Ministers are unable to meaningfully participate in. The pressure must not override the need to ensure that any agreement fulfills its mandate and supports both development and sustainability.

### **IUU Fishing**

IUU stands for Illegal, Unreported and Unregulated fishing and is one of the main aims for banning subsidies in these talks. The most recent text wants to target IUU fishing and now “fishing related activities in support of such fishing”, something that can potentially apply to the entire fishing value chain. It's important that this is limited only to activities “at sea” as otherwise this can imply that any government support for assisting communities that want

to land, package or process fish harvested wouldn't be allowed.

The definitions of IUU fishing are currently being borrowed from the Food and Agriculture Organisation (FAO). Illegal fishing includes fishing without the permission of the country where the fishing is happening, against its laws and regulations or against the management measures of that country. Unreported is fishing that has not been reported or has been misreported to national authorities against the local laws or in areas of a regional management organisations looks after but misreported. Unregulated fishing essentially applies to fishing that goes against any conservation or management measures that a country has put in place.

Currently the proposals say that each country shall have laws, regulations and administrative procedures in place to prevent IUU subsidies being granted when the agreement comes into force. Failure to have such procedures in place could leave the subsidy programs open to challenge by foreign governments in the WTO.

A lot of small-scale fishing in developing countries could be classed as 'unreported', largely due to the current limits of fisheries capacity and associated infrastructure. Even government mechanisms for registration may be limited. This means that many of the subsidy bans would apply to the actions of small-scale fishers. It is estimated that Indonesia's small-scale fisheries are 95% unreported which raises concerns about how the government will be able to ensure that reporting procedures for all small-scale fishing is implemented to prevent subsidy programs for small-scale fishers being banned.

This highlights the inadequate nature of the current exemptions for developing countries in the IUU negotiations. The current proposed 2-year transition period for developing countries to implement such reforms fails to acknowledge the realities of capacities and resources in these countries. While having catch levels reported will assist in management of resources approaching this goal through the threat of preventing subsidies to some of the most vulnerable communities won't support conservation or development. The commitments being made by developing countries should be contingent on the provision of technical assistance and capacity building by the developed countries.

The current proposal for IUU fishing says that for 2 years the subsidy bans shouldn't apply to those fishers in developing or least developed countries who meet the criteria of being low income, resource poor and livelihood fishing within 12 nautical miles from the coastline. Any small-scale fishers who don't meet the criteria or undertake unreported fishing beyond the 12 nautical mile area from the coastline will not be allowed to receive subsidies.

In addition, once the proposed timeframe passes all subsidies for fishing that may be determined to be IUU fishing will be prohibited regardless of where the fishing takes place.

### **Overfished Stocks**

The current proposals say that a country can't provide a subsidy for fishing regarding a fish stock that is deemed to be overfished. There is still an ongoing negotiation about what and who gets to determine whether or not a stock is classified as overfished. It is also unclear what it means to provide a subsidy for fishing 'regarding' a stock and how this applies to different types of fishing that capture multiple species.

This also raises a number of concerns for those countries, largely developing countries, which don't have the capacity to monitor and manage their stocks. For those well-resourced developed countries this may mean that they are able to clearly determine stock levels and then proceed to continue subsidising. The developing countries who don't have the domestic capacity to monitor and rely on regional fisheries management organisations will be placed at a disadvantage. It also raises the concern that the WTO, a body with no fisheries management experience may be making rulings about the management measures of a country.

Again there is a proposal that developing and least developed countries subsidies relating to overfished stocks are allowed provided it takes place within their territorial sea, i.e. the 12 nautical miles from the coastline, for a period of 2 years. For small-scale fishers who regularly fish or want to regularly fish beyond that area, this could be a problem especially if they don't have access to up-to-date fishing data on the status of stocks and regularly catch multiple species.

### **Overcapacity and Overfishing**

The proposals in regards to overcapacity and overfishing don't target those most responsible for overfishing and fails to uphold the sustainability goals of the agreement.

Currently there is a list of subsidies that related to overfishing and overcapacity that are prohibited that includes subsidies for the construction, buying, modernising or upgrading of vessels; buying machines or equipment for vessels like fishing gear and engines, fish processing machinery, refrigerators or fish finding technology; for fuel, ice or bait; personnel costs, income support for operators; price support of fish caught; and for support at sea or operating losses.

This prohibition however is accompanied by an exemption that allows such subsidies provided a Member can demonstrate the measures are in place to maintain the fish stocks at a biologically sustainable level. This exemption favours the big subsidisers who have the fisheries management capacity to measure fish stocks and subsidising capacity are able to keep on subsidising. Those countries that have already subsidised the building of their fleets can still receive subsidies if they are fishing in someone else's waters provided those stocks are sustainably managed. This also means that those who have the greatest historical responsibility for the depletion of global fish stocks – the big subsidisers with their large capacity – aren't shouldering the burden of the bans.

For those developing countries who don't have the capacity to manage (or measure) their fish, or rely on external agencies to support them with data and modelling, they are now at a disadvantage. Big fishing nations like the EU will be able to provide accurate information about the status of all their stocks to the WTO allowing them to be able to continue subsidising as well as challenge any country that is subsidising fleets that they believe aren't managing their stocks properly (or are seen as a commercial threat). For developing countries who rely on others to support them, this may only happen periodically and only on a number of targeted species hampering their ability to provide support to fishers who want to expand.

Further all of the flexibilities in the proposed agreement are reliant upon a country having

fulfilled all of the notification requirements discussed below. This represents a permanent asymmetry in the negotiations and doesn't help solve the issue about stock levels by supporting the capacities of developing countries, instead it gives those most responsible a pass.

### **The WTO isn't a fisheries management organisation**

There is a major concern that the requirement to “demonstrate” the biological sustainability of the stocks will open the WTO up to becoming a body that decides on fisheries management measures despite having no expertise. Many developing countries have experienced challenges by developed countries to their management measures that have resulted in unilateral restrictions of fish exports, the WTO fisheries subsidies agreement will allow this to be multilateralised. Under the agreement a country can challenge the management measures of another member if they believe that they aren't accurate or are using differing metrics. The WTO is not the relevant forum for such determinations, there are other existing bodies with the technical expertise to support countries to manage their fish stocks.

The aim here is for countries like the EU, US etc to shape the management measures of the resource holders to their standards, making it easier for their fleets to meet the existing standards they comply with. It isn't about sustainability but rather market access.

Such a punitive approach does little to actually support sustainable fishing, instead technical assistance and capacity building support should be given to those developing countries who want help to manage and measure their stocks.

### **Special and Differential Treatment**

For countries that want to develop greater domestic fishing capacity and small-scale fishers who are wanting to grow their industry, the provision of subsidies that enhance capacity are critical. There are some proposals on the table that attempt to address this. The first option proposes a transition period yet to be determined and with a geographical limit that is also not agreed (but currently there is a proposal for it to apply to the entire exclusive economic zone (EEZ) of developing countries)

The second proposal would apply after the transition period above ends and sets out two criteria to be met. The first criteria would allow developing countries to apply subsidies as long as their share of global marine capture was less than 0.7%. The second criteria is for those fishers who meet the cumulative criteria of being low income, resource-poor and livelihood fishing up to 12nm from shore.

However, any proposal to ensure future growth and capacity for developing countries is facing major challenges in the negotiations from several developed countries. While expanding the exception to the EEZ for all developing and least-developed countries would best provide protection for small-scale fishers and domestic fleets, this is being strongly resisted. This means that those most responsible for overfishing, and whom have already received their capacity building subsidies, are not being constrained but small-scale fishers who fish beyond 12 nautical miles are.

The current proposed flexibilities fail developing countries. Firstly it undermines the existing sovereign rights that countries have for their EEZ under the United Nations Convention on the Law of the Sea, rights that are enshrined and grant them the ability to conserve and harvest their marine resources.

The Special and Differential Treatment approach also fails to meaningfully acknowledge the asymmetries in the capacities of developed and developing countries. The commitments and flexibilities contained for the three pillars of the negotiations require extensive capacity, something that most developing countries don't have. There is only tokenistic promises of voluntary contributions for improving this capacity. The commitments being taken by developing countries must be contingent upon the provision and delivery of technical assistance and capacity building.

### **Notification Burdens**

Under the agreement, all members have to make notifications to the WTO regarding their subsidies however what is being asked goes beyond the other WTO agreements and includes fisheries management measures as well as fisheries access agreements. That information doesn't belong in the WTO.

The push to have management measures and access agreement information in the WTO not only creates an additional burden but includes information that is sensitive to developing countries. These currently include a wide range of data and information about the fishery stocks, conservation and management measures, fleets stocks, and vessels. Management measures may be used against members, especially those who have management systems that the big fishing nations don't like even though they are sustainable. The world renowned "Vessel Day Scheme" management approach by some Pacific Island Countries has been challenged numerous times by developed countries wanting cheaper, easier access.

Access agreements are often negotiated in private, this advantages the resource holders (usually developing countries), demanding such information in the WTO will allow those with fishing capacity (mostly developed countries) to undermine the access negotiations, reducing the revenue countries receive. This is unnecessary for the WTO to have this information, especially on account of access agreements being outside of the scope of the agreement.

Finally the proposal to link the use of flexibilities to a Members notifications will again advantage those with existing technical capacity against those who don't. This is another example of how the agreement is being designed to support the big fishing nations despite their responsibility for the state of global fish stocks. Many developing countries already struggle to meet all the obligations for providing information to the WTO and making such things a requirement to utilise any flexibilities will result in the agreement being unworkable for many countries.

### **Development and Sustainability being caught in the net**

The WTO is looking to make an agreement at this year's ministerial but it's currently on course to make an agreement that fail sustainability and development. By not targeting those

who are most historically responsible the WTO is asking those least responsible to shoulder the burden of the agreement. This is bad for development and bad for sustainability. The WTO wants an outcome to help its image but this is an outcome that will only make it look worse.

**This brief was prepared by the Pacific Network on Globalisation (PANG).**

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