

INTERNATIONAL ECONOMIC LAW PRACTICUM



NAVIGATING THROUGH THE WTO AGREEMENT ON FISHERIES SUBSIDIES: ANALYSIS FROM THE LENS OF SUSTAINABLE DEVELOPMENT AND IMPLICATIONS FOR DEVELOPING MEMBERS

April 2024
New Delhi/ Jabalpur (India)

Submitted by
Devyani Sahu, Shantanu Singh, Himanshi Srivastava, Kamod Patel
(Dharmashastra National Law University, Jabalpur)

For beneficiary: *Confidential*

TradeLab output is prepared on a pro bono basis by students as a pedagogical exercise. It is not professional legal advice and in no way establishes a client-attorney relationship.

EXECUTIVE SUMMARY

Fishing, a critical component in the global economy, is equally essential in denoting self-reliance, sustainability, and marine health. With the rigorous developments in the fisheries sector, the figures for fisheries production and world catch have undoubtedly soared high. However, with this growth came the whirlwind of challenges like unsustainability, deteriorating marine health, overfished stocks, illegal fishing and overexploitation of fisheries. The World Trade Organisation (WTO) Agreement on Fisheries Subsidies (AFS or “the Agreement”) now stands as the cardinal global initiative to address such issues, especially focusing on the concerns of developing Members like India. At the forefront of the Agreement lie the three pillars of subsidies contributing to illegal, unreported, and unregulated (IUU) fishing, overfished stocks, and fishing in the unregulated High Seas. With the recent negotiations in Abu Dhabi, issues related to Distant Water Fishing and a significant increase in the transition period for developing Members came up at the 13th Ministerial Conference of the WTO.

The report traces the history of the fisheries negotiations to the 12th Ministerial Conference of the WTO in June 2022, where the text of the Agreement finally achieved consensus and was adopted. It critically analyses the three main pillars in Articles 3, 4, and 5 of the Agreement, concerning sustainability and concerns of the Members with limited fleet and fishing capacities. The report delves deeper into the provisions of the Agreement, aiming to pinpoint the lacunas and enforcement obstacles arising from its loosely drafted text and less stringent sanctions. One significant area of concern is the definition of "subsidies" under the Agreement. The ambiguity surrounding this term can lead to varied interpretations, complicating its application and enforcement. Additionally, the criteria for determining overfished stock and overfishing is further elucidated. The lack of clear and universally accepted standards can create discrepancies in monitoring and evaluation, thereby affecting the overall effectiveness of the agreement.

Moreover, the report highlights the unique challenges that developing nations and least developed countries (LDCs) may encounter in enforcing the AFS. These nations often rely heavily on fisheries for food security, livelihoods, and economic development. However, they may lack the necessary resources, infrastructure, and expertise to effectively monitor and regulate their fisheries in line with the Agreement, exacerbating their vulnerabilities and hindering their sustainable development goals. The OFOC pillar, which although forms a large contention in fisheries negotiations, remains unaddressed in the text of the Agreement is also comprehensively analysed in the report. The report lays out the lacunae which need redressal for the effective implementation of the AFS by developing Members. The Agreement underscores the stance of developing Members, challenges including technical and administrative capacity building, securing the livelihood of traditional fisher communities, infrastructural developments, and the inadequacy of the current Special and Differential Treatment (SDT) provisions in the Agreement.

The legal and policy landscape of India outlines the novel measures taken by the government at the Centre and State levels to encourage sustainable fisheries management and foster growth of the traditional fishing communities. These measures include comprehensive centrally sponsored schemes and policies like the Pradhan Mantri Matsya Sampada Yojana (PMMSY), the National Fisheries Policy 2020 (NFP), and the Blue Revolution. PMMSY is an initiative with a primary focus on the needs of low-income fishermen, providing them funds for undertaking fishing activities, assisting start-ups, insuring vessels, etc. The NFP is critical for transforming the domestic fisheries, by creating a responsible eco-chain in fisheries management, catering to capacity building, social inclusion, post-harvest infrastructure development, and boosting the capacities of vessels. Blue Revolution follows a holistic approach to empowering the fishermen and the domestic fisheries alike. It boasts of achievements like fishermen's safety enhancement, transport and production facilities, boosting training programs, securing nutritional needs, etc. The Marine Fisheries Bill, 2021, introduces measures for prohibiting IUU practices, by enforcing strict mechanisms in the territorial waters and the maritime zone of India. Apart from this, State-specific legislations like the Kerala Marine Fisheries Regulation, 1980 regulate fisheries in the jurisdiction of the Coastal States, and checks IUU fishing by regulating the licensing of vessels, ensures sustainability by providing for effective administration, and establishing a threshold for fishing capacity.

However, with the advent of AFS, India is bound to encounter implementation challenges in light of the needs of traditional and artisanal fisheries, unsustainable fishing by distant water fishing Members with huge fleet capacities, and deficiency in fishing sector infrastructure. Additionally, despite a robust legal and policy landscape, non-uniform regulations across different coastal states create challenges in enforcing sustainable practices uniformly. The quintessential aspects of the Agreement and the probable gaps in its practical implementation are chalked out through the course of the report. Apart from implementation challenges, the report also sheds light on the challenges inherent in the Agreement's framework and their implications for combating IUU fishing and promoting sustainable fisheries management.

Towards the end, the report delineates suggestions to address two distinct but interconnected sets of challenges. First, to address the inherent challenges and inequities embedded within the Agreement itself, the report highlights the imbalance within the Agreement, favouring developed Members and posing challenges for developing Members like India in meeting compliance standards. It suggests potential changes for a fairer framework that addresses the unique obstacles faced by developing Members, including targeted support for traditional and small-scale fishermen, stringent actions against distant-water fishing contributing to IUU, and investment in capacity building to ensure the sustainability of overfished stocks. It supports India's push for an extended transition period and the need for sustainability considerations in fisheries subsidies. The report also calls for incorporating principles of Common But Differentiated Responsibilities and Respective Capabilities (CBDR-RC) and Special and Differential Treatment (SDT) highlighting the requirement for a framework that duly respects the environmental objectives while promoting equitable progress for all members.

Second, if the Agreement were to be enforced in its current form, disregarding the concerns of developing Members, the report underlines several suggestions regarding legal and policy framework to mitigate the potential challenges faced by India to comply with the Agreement. The report suggests implementing targeted subsidy programs aimed at supporting traditional and small-scale fishermen communities. It also suggests addressing unsustainable fishing practices by distant-water fishing Members through stricter regulations and improved monitoring. Additionally, attention should be given to the unique challenges faced by developing Members in demonstrating sustainability, with proposals for increased investment in the fisheries sector and a uniform approach for assessing overfished stocks. The report also calls for incorporating flexible assistance for small-scale and local fishing methods to promote sustainable practices effectively, emphasising the need for a nuanced approach that considers the varied needs of developing members like India.