

INTERNATIONAL JOURNAL OF LAW  
MANAGEMENT & HUMANITIES  
[ISSN 2581-5369]

---

Volume 8 | Issue 3  
2025

---

© 2025 International Journal of Law Management & Humanities

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com/>)

---

This article is brought to you for free and open access by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in the International Journal of Law Management & Humanities after due review.

In case of any suggestions or complaints, kindly contact [support@vidhiaagaz.com](mailto:support@vidhiaagaz.com).

---

To submit your Manuscript for Publication in the International Journal of Law Management & Humanities, kindly email your Manuscript to [submission@ijlmh.com](mailto:submission@ijlmh.com).

---

# Analyzing Agreement on Fisheries Subsidies

---

S VIJAY AMRUTH<sup>1</sup>

## ABSTRACT

*The overfishing and unsustainable use of fishing resulted in the adoption of the World Trade Organisation's Agreement on Fisheries Subsidies at the 12th Ministerial Conference in 2022 in Geneva, Switzerland.<sup>2</sup> This represents a landmark multilateral effort to curtail overfishing and also to promote sustainable fishing, as mentioned in the Sustainable Development Goals. This paper analyses the evolution, key provisions of this Agreement and also the implications of the Agreement, which mainly focuses on the provision of illegal subsidies by the government that contribute to illegal, unreported and unregulated (IUU) fishing<sup>3</sup> and also fishing activities at high seas.*

*The paper examines the negotiations leading to the Agreement, highlighting the influence of United Nations Sustainable Goal No.14, which mentions the sustainable use of Life Below Water.<sup>4</sup> Key Provisions of this fisheries agreement include the prohibition of the subsidies by the government which deal with IUU fishing, overfished stocks and also with high seas fishing. The Agreement implementation is beneficial to improve the quality of the global fishing trade, sustainable fishing and also protects food security by restricting the unfair practice of fishing.*

*The paper aims to examine the World Trade Organisation's Agreement on Fisheries Subsidies and identify the area of improvement in the three main sectors, which include trade, development, and the environment. This will enhance the long-term sustainability in fishing and also benefit the vulnerable affected fishermen of poor countries, where the subsidies are not provided.*

## I. INTRODUCTION

Fish is a major source of protein for a large part of the population across the world. Fish resources around the world are being threatened by overexploitation of fishing, for which this

---

<sup>1</sup> Author is a Student at National Academy of Legal Studies and Research (NALSAR), Hyderabad, India.

<sup>2</sup> (PDF) *World Trade Organization Agreement on Fisheries Subsidies*, RESEARCHGATE, [https://www.researchgate.net/publication/366014459\\_World\\_Trade\\_Organization\\_Agreement\\_on\\_Fisheries\\_Subsidies](https://www.researchgate.net/publication/366014459_World_Trade_Organization_Agreement_on_Fisheries_Subsidies) (last visited May 30, 2025).

<sup>3</sup> Defined by the Food and Agriculture Organization of the United Nations (FAO) in the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing (FAO, Rome, 2001), para 3.1 [IPOAIUU]; further clarification of those definitions is provided in M Tsamenyi, B Kuemlangan and M Camilleri, 'Defining illegal, unreported and unregulated (IUU) fishing' in FAO, Report of the Expert Workshop to Estimate the Magnitude of Illegal, Unreported and Unregulated Fishing Globally (FAO, Rome, 2015) 24–37 available at <http://www.fao.org/3/a-i5028e.pdf>.

<sup>4</sup> Goal 14 | Department of Economic and Social Affairs, <https://sdgs.un.org/goals/goal14> (last visited May 30, 2025).

agreement on fisheries subsidies was adopted by the WTO. The long-awaited fisheries subsidies agreement was adopted by the World Trade Organisation at the 12<sup>th</sup> Ministerial Conference. It marks a major step to prohibit harmful fisheries for ocean sustainability and environmental protection.<sup>5</sup> This agreement led to the first multilateral agreement to meet the Sustainable Development Goals. The life below water has been taken into consideration for the adoption of the Agreement on Fisheries Subsidies. It is mentioned in Goal 14 of the Sustainable Development Goals.

The threat of overfishing exists for all fish stocks. It is estimated that at least 37.7% of global stocks are overfished compared with 10 percent in 1974, i.e., they have been exploited so rapidly that the fish population cannot renew itself. Government funding, which is estimated to be around USD 35 billion annually worldwide, continues to make the situation worse by allowing many fishing fleets to operate further offshore and for longer periods than they otherwise would, to the detriment of marine.<sup>6</sup>

Most of the developed countries give subsidies to their fishing fleet, which provides an unfair advantage to them and increases overfishing. The fishermen in developed nations are always on the beneficial side to catch more fish and market them at a lower price, as compared to the developing and low-developing countries. Ensuring a vibrant fisheries sector is very important in any country, particularly in developing and less developed countries. And in India, adoption of effective measures and management practices for this sector is capable of generating significant long-term gains in terms of food security, income, employment and also social wellbeing.

The agreement on Fisheries subsidies brought a major step by protecting the ocean sustainability. It is a major step by the WTO to protect the oceans from harmful subsidies. Prohibition of harmful subsidies was already mentioned in the WTO, and this agreement brought the prohibition of fisheries subsidies. The Agreement specifically prohibits giving subsidies that enable (1) illegal, unreported and unregulated (IUU) fishing, (2) fishing of overfished stocks or (3) fishing of unmanaged stocks on the high seas.<sup>7</sup> The agreement prohibits illegal fishing, which in the end benefits the sustainability of the fisheries and long-term environmental protection. The agreement is a major step taken by the WTO and is its long-awaited agreement to be adopted.

---

<sup>5</sup> Piero (NFIFP) Mannini, *WECAFC - Nineteenth Session - Bridgetown, Barbados, 6-8 September 2023 - World Trade Organization (WTO) Agreement on Fisheries Subsidies*.

<sup>6</sup> *WTO | Thirteenth WTO Ministerial Conference - Fisheries Subsidies*, [https://www.wto.org/english/thewtoe/minist\\_e/mc13\\_e/briefing\\_notes\\_e/fisheries\\_subsidies\\_e.htm](https://www.wto.org/english/thewtoe/minist_e/mc13_e/briefing_notes_e/fisheries_subsidies_e.htm) (last visited Oct. 9, 2024).

<sup>7</sup> *Fisheries Subsidies Agreement: What's the Big Deal?*, (May 10, 2023), <https://pew.org/3pr0Eft>.

## II. HISTORY OF FISHERIES AGREEMENT

It took more than 20 years to pass the regulation of fisheries subsidies. In 1995, they planned to pass the regulation along with the Subsidies and Countervailing measures, which came into force along with the WTO agreements. Later, with the Doha round launched in the year 2001, efforts of the WTO members and many international organisations to reform fisheries subsidies have intensified. The ministers of WTO members agreed on the aim to clarify and improve WTO disciplines on fisheries subsidies, considering the importance of this sector to developing countries.<sup>8</sup> This original mandate was then supplemented by a more detailed one agreed upon at the 2005 Hong Kong Ministerial Conference<sup>9</sup> Ministers at the 6th Ministerial Conference, in 2005, clarified that the Negotiating Group on Rules should seek to prohibit subsidies that contribute to overcapacity and overfishing. IN 2007 the chair of the WTO Negotiating Group on Rules, the working group in charge of negotiating the WTO Antidumping Agreement and the SCM, proposed a new negotiation text as annex to the Subsidies and countervailing measures that would prohibit certain types of fisheries subsidies and issued a report in 2011 summarizing the progress made to that point. However, consensus-building attempts met a deadlock in 2011.

Negotiations were not reenergized until 2015, when 190 countries adopted the 2030 Agenda for Sustainable Development. The Sustainable Development Goals pushed the WTO to adopt this Fisheries Subsidies agreement, as it was mentioned in the Sustainable Development Goals about Life Below Water under SDG 14. In December 2016, three separate proposals were presented to the WTO negotiating group. All aimed at reaching a decision on fisheries subsidies, at the 2017 Ministerial Conference in Buenos Aires. Although the 2017 Ministerial Conference did not lead to the adoption of a common declaration, a clear decision has been taken on the need for comprehensive and effective disciplines that prohibit certain forms of fisheries subsidies that contribute to overcapacity and overfishing and eliminate subsidies that contribute to IUU-fishing".<sup>10</sup> It was about to be adopted in 2019. A deadline was set for the ministerial conference of 2019, but it got delayed for the agreement to be adopted because of the COVID-19 Pandemic.

Finally, on 17 June 2022, the Fisheries Subsidies Agreement was adopted by the WTO after many negotiations and a consensus of all the members of the WTO. The current negotiations

---

<sup>8</sup> *Historical Overview of Fisheries Subsidies Reform Negotiations from From Fisheries Subsidies to Energy Reform under International Trade Law on JSTOR*, <https://www.jstor.org/stable/resrep24960.6?seq=1> (last visited Oct. 11, 2024).

<sup>9</sup> *The WTO Agreement on Fisheries Subsidies A Reader's Guide*.

<sup>10</sup> *Historical Overview of Fisheries Subsidies Reform Negotiations from From Fisheries Subsidies to Energy Reform under International Trade Law on JSTOR*, *supra* note 7.

build on the long history of attempts to regulate the fisheries subsidies, which started back in 1995. The history of agreement on fisheries subsidies explains the evolution that transformed the agreement. It inserted many new provisions over the years and modified this agreement to the best version of itself. The Committee on Fisheries Subsidies will meet at least twice a year. Its task is to review the operation of the agreement annually and to examine all notifications at least every 2 years. Every 5 years, it will undertake a more detailed review of the operation of the agreement and recommend any modifications to improve it.

### III. SALIENT FEATURES OF THE AGREEMENT

It took 20 years for the WTO to adopt this agreement, as the WTO runs by consensus and with a lot of negotiations to finalise a text that all 164 members could agree on. With this, WTO members gave the organisation the strength to deliver a meaningful outcome that could be beneficial to all the members of the WTO.<sup>11</sup> The salient features of the agreement are as follows:

#### A. Subsidies for fishing-related activities at sea

This Agreement shall apply to "subsidies" as covered under the Agreement on Subsidies and Countervailing Measures (ASCM) Article 1, which are specific under ASCM Article 2, and are being provided to marine wild capture fishing and activities at sea related to it. Aquaculture and activities on land would not be included, but subsidies for processing done at sea shall be included.<sup>12</sup>

#### B. Subsidies contributing to illegal, unreported and unregulated fishing<sup>13</sup>

The agreement specifically mentions the subsidies that contribute to the illegal, unreported and unregulated fishing in Article 3 of the agreement. The main feature of this article is to stop illegal, unreported and unregulated fishing, which can be mainly achieved by not providing subsidies for this IUU activity. Estimates suggest that the economic losses associated with IUU fishing could be as high as USD 50 billion each year (Sumaila et al., 2020).<sup>14</sup>

#### C. Subsidies regarding overfished stocks

Article 4 of this agreement specifically mentions the subsidies regarding the overfished stocks. According to the FAO, more than a third of assessed marine fish stocks globally are overexploited, and this proportion has been steadily increasing over the last few decades (FAO,

---

<sup>11</sup> Fisheries Subsidies Agreement, *supra* note 6.

<sup>12</sup> The WTO Agreement on Fisheries Subsidies A Reader's Guide, *supra* note 8.

<sup>13</sup> *Illegal, Unreported and Unregulated (IUU) Fishing | Food and Agriculture Organization of the United Nations*, <https://www.fao.org/iuu-fishing/en/> (last visited May 30, 2025).

<sup>14</sup> FAO, *The State of World Fisheries and Aquaculture 2022* (FAO, Rome, 2022) available at <https://www.fao.org/publications/sofia/2022/en/>.

2022).<sup>15</sup> Overfishing should be regulated to protect the interests of the fisheries. This agreement mentions the feature of the subsidies regarding the overfished stocks.

#### **D. Subsidies outside jurisdiction**

Article 5 clearly prohibits subsidies that pertain even to areas outside of the jurisdiction of coastal members (i.e., the high seas).<sup>16</sup> Subsidies cannot be given to areas that fall outside the jurisdiction of the member nations, which will result in overfishing and illegal fishing.

The salient features of the agreement explain to us the articles that have been inserted in the agreement, which will prohibit the harmful fisheries subsidies. The Fisheries agreement is an essential step to curb the unsustainable fishing practices and also simultaneously support the long-term sustainability of marine resources.

### **IV. IMPORTANCE OF THE AGREEMENT**

According to the U.N. Food and Agriculture Organization's 2022 State of World Fisheries and Aquaculture report (also known as the SOFIA report), 35% of fish stocks worldwide are exploited beyond sustainable levels. Experts note that governments are paying \$22 billion a year in subsidies that drive overfishing. These subsidies primarily go to industrial fishing fleets to artificially lower fuel and vessel construction costs while enabling them to catch more fish by fishing farther out to sea and for longer periods of time.<sup>17</sup> The top five countries subsidizing fishing collectively account for 58% of total global fishing subsidies. The top 5 countries are China, the European Union, the US, South Korea, and Japan. The developed countries are providing subsidies and are overexploiting the fisheries, for which the developing and LDCs will be affected and with this agreement, the exploitation will decrease.

The agreement is important because most of the developed nations give unfair subsidies to the fisheries, which distort the competition by lowering production costs for their fishery sector, giving these developing countries an artificial competitive advantage. This will also result in the charging relatively lower price, which may gain market share at the expense of unsubsidized competitors, which will impact the producers of the developing and LDC countries. With the adoption of this agreement, the developing and LDC countries will benefit.<sup>18</sup> The developing

---

<sup>15</sup> International Institute for Sustainable Development (IISD), 'WTO Negotiations on Fisheries Subsidies: What's the state of play?' GSI Policy Brief (2020), at p. 9, available at <https://www.iisd.org/sites/default/files/2020-07/wtonegotiations-fisheries-state-play.pdf?q=sites/default/files/publications/wto-negotiations-fisheries-state-play.pdf>.

<sup>16</sup> *Laudable Agreement to End Fisheries Subsidies Has Big Loopholes* | Mercatus Center, (Oct. 25, 2023), <https://www.mercatus.org/research/policy-briefs/laudable-agreement-end-fisheries-subsidies-has-big-loopholes>.

<sup>17</sup> Fisheries Subsidies Agreement, *supra* note 6.

<sup>18</sup> Debashis Chakraborty & Animesh Kumar, *Implications of Fishery Sector Subsidies*:

and LDC countries can now compete in the competition with fair and equitable treatment, unlike being exploited by the developed nations.

The WTO agreement aims to tackle the government subsidies that contribute to illegal, unreported, and unregulated (IUU) fishing and overexploitation of fish stocks, along with other goals. Nearly 90 percent of the world's marine fish stocks are now fully exploited, overexploited, or depleted. Agreeing to stop using taxpayer dollars to drive down global fish stocks to unsustainable levels is an obvious positive step.<sup>19</sup> When subsidies are restricted, then we can expect overexploitation, and illegal fishing will be reduced, thereby protecting the fisheries.

Implementation of this Agreement by all WTO members will help to secure the livelihoods of the 260 million people who depend directly or indirectly on marine fisheries. Many people from the coastal areas depend on the fisheries, and with the proper implementation of this agreement, it will help to secure a proper livelihood for these people. The Trade will improve as every country will be able to participate in Trade, as overexploitation by developed countries is removed by this agreement. Development of the developing and LDC countries can be achieved as every country now has an equal chance of fishing without overexploitation. The environment is also protected, as every country is restricted in the fisheries, which directly impacts the ocean sustainability, and thus it constitutes a triple win for Trade, Development, and the Environment.<sup>20</sup>

## **V. DRAWBACKS OF THE AGREEMENT**

### **A. Termination of agreement**

Article 12 of this agreement mentions the termination of the agreement if comprehensive disciplines are not adopted. If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated.<sup>21</sup> The main objective of this clause is to ensure that negotiations on enhanced disciplines, particularly in respect of subsidies contributing to overcapacity and overfishing, are completed within a reasonable time frame after the Agreement enters into force.<sup>22</sup> This article makes the agreement dependent on the ratification by other countries for implementation of this agreement, which may be done, or if any country feels they are being discriminated against or don't want to, they may also not ratify.

---

<sup>19</sup> Laudable Agreement to End Fisheries Subsidies Has Big Loopholes | Mercatus Center, *supra* note 16.

<sup>20</sup> Mannini, *supra* note 4.

<sup>21</sup> The WTO Agreement on Fisheries Subsidies A Reader's Guide, *supra* note 8.

<sup>22</sup> Mannini, *supra* note 4.

It has been almost two years since the agreement was adopted, but the required number of members have not signed for ratification to make it a binding mechanism. Unlike other agreements and treaties, it is not strictly imposing, and if member nations do not ratify it within four years, it will result in the termination of this agreement.

### **B. No proper investigation for subsidies**

Article 3.2 of this agreement says that, “Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.” This means that no government is obligated to actively investigate its citizens who might be fishing illegally or to make any determinations that would result in a removal of subsidies. As a result, governments will not necessarily initiate investigations into the conduct of their own fishers.<sup>23</sup> Proper investigation should have been kept as an important provision in the agreement to make this a strong agreement. If anything is left to the discretion of the state, then it may not follow the norms properly because of many factors, which may also include economic gains. Proper investigation of subsidies used to create a drastic improvement in the implementation of this agreement. Proper investigation should have been kept as a binding factor, which would have made this agreement stronger for the protection of the fisheries.

### **C. Confidentiality may weaken the proper implementation**

Article 8.1 of the agreement requires that all the fisheries science, data, processes, and determinations mentioned above be reported, including whether any fish stocks are shared with other countries. These reports, if made public, would create an opportunity and path for transparency and accountability. However, the agreement mentions that these goals require that all submissions be public and complete. This kind of technical information flowing from countries to international bodies is frequently buried as confidential, withheld, or simply not submitted. This noncompliance slows the entire process to the point where it may go unnoticed. The public may remain unaware, and governments may fail to push for additional information because they may lack capacity, or they may not see it as their purpose to question others, or they may have other foreign policy goals that discourage conflict or confrontation with other countries.

## **VI. CRITICISMS OF THE AGREEMENT**

### **A. No Special and Differential Treatment provisions**

Article 5 of the agreement has no SDT provisions related to obligations. One important factor

---

<sup>23</sup> Laudable Agreement to End Fisheries Subsidies Has Big Loopholes | Mercatus Center, *supra* note 16.



that should be considered is that most of the developing countries are some of the largest fishing nations. Among the top 20 subsidisers, 13 are developed country members, and they provide about 55% of global subsidies.<sup>24</sup> Many developing countries also provide very few subsidies, which may be affected by the agreement. This SDT provision should have been mentioned in the agreement for Equal and fair treatment, which is now lacking in the present agreement. This is a main criticism of the agreement, because the provision of Special and Differential Treatment is used to create an impact on the Equal and fair treatment of the developing and LDC countries.

### **B. Transparency plays a critical role**

Transparency will be critical to the successful implementation of the agreement. The country should be able to perform transparently to ensure proper implementation of the agreement. If any member nation is not transparent, then this agreement is of no use. Some member states may not be transparent, which might also impact other nations to escape or also would create an impact on the other nations. It indirectly does not give proper restrictions to the state, which engages in overfishing and does not properly restrict IUU fishing. Transparency and accountability should have been inserted into the agreement for its proper implementation. Transparency and accountability can only make the use of the agreement and also protection of the fisheries.

## **VII. INDIAN SCENARIO**

International Institute for Sustainable Development (IISD) suggests that India provided Rs. 15.5 billion in subsidies to the fisheries sector in 2016, which increased to Rs. 22.25 billion in 2019, reflecting a 43% increase.<sup>25</sup> India argues that being a largely populated and disciplined nation, it is sustainably harnessing the fisheries resources, providing one of the lowest fisheries subsidies. India does not exploit the resources indiscriminately like other advanced fishing nations, and India's fisheries sector primarily depends on several million small-scale and traditional fishers. Therefore, those WTO Members who have provided huge subsidies in the past and engaged in large-scale industrial fishing, which is responsible for the depletion of fish stocks, should take more obligations to prohibit subsidies based on the 'polluter pays principle' and 'common but differentiated responsibilities'.<sup>26</sup>

---

<sup>24</sup> *Fisheries Subsidies: Will World Trade Organization Members Finish the Job at MC13?*, INTERNATIONAL INSTITUTE FOR SUSTAINABLE DEVELOPMENT, <https://www.iisd.org/articles/policy-analysis/fisheries-subsidies-wto-mc13> (last visited Oct. 8, 2024).

<sup>25</sup> Aditi Tandon, *India's Stance at WTO Balances Fisheries Subsidies for Artisanal Fishers and Sectoral Growth*, MONGABAY-INDIA (Feb. 9, 2024), <https://india.mongabay.com/2024/02/indias-stance-at-wto-balances-fisheries-subsidies-for-artisanal-fishers-and-sectoral-growth/>.

<sup>26</sup> *The Agreement on Fisheries Subsidies (Agreement) at the WTO Ministerial Meeting to Prohibit Subsidies from Being Provided for Illegal, Unreported and Unregulated (IUU) Fishing and Overfished Stocks*,

## VIII. ADVANTAGES

### A. Equitable access to fishing resources

This agreement will benefit India by balancing the rights between large industrial nations and developing countries like India. It ensures India's small-scale fishers are not marginalised by preventing large fishing nations from exploiting the seas. India benefits by protecting the small fishers from being marginalised, as most Industrial nations are overexploiting the illegal fishing activities.

### B. Sustainable fishing practice

This agreement will promote sustainable fishing practices by removing overfishing. This will help the Indian population, because fish is a significant source of livelihood for millions of people, especially those who live in the coastal areas. And also in India, most of the population will follow sustainable fishing practices, unlike the overexploitation of illegal fishing, which is not done here. Removing subsidies for illegal fishing to all member nations will greatly improve India's sustainable fishing practice.

## IX. DISADVANTAGES

### A. No S&DT principle

The agreement has no special and differential treatment principle to protect the livelihood and growth needs of fishing communities in developing countries, i.e., India. It should be incorporated to protect the interests of countries like India. Also, countries that have already provided huge subsidies in the past and are responsible for the depletion of fish stocks should be given more obligations based on the polluter pays principle. India, not being overexploited like other nations, is at a disadvantage.

### B. Uncertainty about effective enforcement

India may face uncertainty about the other country, particularly the large industrial fishing fleets that would comply with this agreement. If India's enforcement is too strong, and if other nations continue to overfish, then it will place India towards a disadvantage, which is a disadvantage towards India.

## X. CONCLUSION

The agreement is a historic win for the WTO and marine resources.<sup>27</sup> It took almost 20 years

---

<https://pib.gov.in/pib.gov.in/Pressreleaseshare.aspx?PRID=1843952> (last visited Oct. 8, 2024).

<sup>27</sup> *WTO Members Not Off the Hook on Limiting Fishing Subsidies*, (Apr. 10, 2024), <https://pew.org/3Ua0S7q>.

for the consensus and for the adoption of this agreement. This year, the conference was held in Abu Dhabi, UAE, which overall added 71 members ratifying this agreement out of 110 members for the agreement, i.e., if 110 nations ratify this agreement, it comes into force. It needs 39 more nations to be ratified in the next 2 years to make this agreement binding on all the member nations of the WTO. Otherwise results in the termination of the agreement on fisheries subsidies.

The success of this agreement depends on the implementation in the member state; the more effective the implementation and enforcement, the more successful it will be. This agreement on the fisheries is one of the major international agreements that followed the UN Convention of the Sea in the 1980s, along with the Intergovernmental Conference on Marine Biodiversity of Areas Beyond National Jurisdiction, often called the high seas treaty, in 2023. The agreement has aimed at improving ocean governance and espoused goals to foster the sustainability of fishery resources, yet the resilience and sustainability of fisheries have continued to deteriorate. Transparency and accountability are very important in the proper implementation of this agreement. It is the state's responsibility to prohibit subsidies to IUU fishing to protect the fisheries. The enforcement of the government is very crucial for the proper enforcement. Implementation and enforcement will determine the success of this agreement, i.e., after ratification, cooperation between relevant government agencies and nongovernment organizations should be established to draw up guidelines for strengthening reporting by all members in all countries on all aspects of the agreement, and easy access to the public domain.

\*\*\*\*\*