

RIS Discussion Paper Series

Fisheries Subsidy Issues before the MC12

Lessons from the May Text for the July Meeting

S. K. Mohanty
Pankhuri Gaur

Discussion Paper # 264



RIS

Research and Information System
for Developing Countries

विकासशील देशों की अनुसंधान एवं सूचना प्रणाली

**Fisheries Subsidy Issues
before the MC12
Lessons from the May Text for the
July Meeting**

S. K. Mohanty

Pankhuri Gaur

RIS-DP # 264

June 2021



RIS

**Research and Information System
for Developing Countries**

विकासशील देशों की अनुसंधान एवं सूचना प्रणाली

Core IV-B, Fourth Floor, India Habitat Centre

Lodhi Road, New Delhi – 110 003 (India)

Tel: +91-11-2468 2177/2180; Fax: +91-11-2468 2173/74

Email: dgoffice@ris.org.in

RIS Discussion Papers intend to disseminate preliminary findings of the research carried out within the framework of institute's work programme or related research. The feedback and comments may be directed to dgoffice@ris.org.in. RIS Discussion Papers are available at www.ris.org.in

Fisheries Subsidy Issues before the MC12

Lessons from the May Text for the July Meeting

S. K. Mohanty*

Pankhuri Gaur**

Abstract: The successful conclusion of the two-decade-long negotiations for the prohibition of fisheries subsidies would be the most outstanding achievement of the MC12 in 2021. In order to table a comprehensive agreement in the forthcoming Ministerial Conference in Switzerland towards the end of the year, the Chair drafted a consolidated draft on May 11, 2021, on the fisheries subsidies agreement (i.e., May Text), which is to be discussed by the trade ministers in July 2021. The Text primarily hovers around three main pillars pertaining to the prohibition of subsidies for a) IUU fishing, b) Overfished Stocks, and c) Overcapacity and Overfishing. The urgency for the conclusion of the fishery subsidies negotiations arose to comply with the commitment made under the global mandate of SDG14.6. In the present form, the May Draft is tilted towards resource-rich fishermen by taking a lenient stance towards reverse SDT and is adopting a hard position on SDT which is against the spirit of the SDG14. The paper discusses the implications of the May Text and unfinished tasks for the July Meeting.

Keywords: Fisheries Subsidies, WTO Negotiations, Special and Differential Treatment, IUU Fishing, Overfished Stocks, Overcapacity and Overfishing, May Text.

1. Introduction

Optimism is running high following swift momentum in fisheries subsidies negotiations in the WTO since March 2021, and a comprehensive Fisheries Subsidies Agreement (FSA) is expected to reach after Mid-July, thereby ending a continued phase of

* Professor, RIS. Email: skmohanty@ris.org.in;

** Assistant Professor, RIS. Email: pankhuri.gaur@gmail.com

The authors are thankful to Prof. Sachin Chaturvedi for his insightful comments and support throughout the research process. Usual disclaimers apply.

the impasse over the past two decades. Despite a great deal of disagreement existing between members, a comprehensive draft agreement is in sight. In the last meeting on the Negotiating Group on Rules with the Head of Departments (HoDs) in May 2021, though the difference in opinion continued to persist among member countries, the Chair was successful in evolving a consensus on numerous issues. Chair was also able to remove a number of square brackets and brought out the Draft Consolidated Chair Text¹ (henceforth May Text) on 11 May 2021, depicting resurgence of consensus among members on numerous issues. However, the Chair stated his concerns by lamenting that “... the entire document is effectively in a square bracket and nothing is agreed until everything is”.

Series of meetings of the Negotiating Group on Rules from 15 to 19 March and subsequent cluster meetings in April, as well as two earlier consolidated drafts² in 2020, paved the way for facilitating greater consensus in May 2021 and raising expectations of the global community to have a convergence of views on subsidy issues. As is well know, the WTO Ministerial (MC10) in Nairobi in 2015 attracted the attention of negotiators to conclude fisheries subsidy negotiation as early as 2020 with the objective of protecting the livelihood security of resource-poor in developing countries and preventing depletion of fishery stocks to respect the global commitments under SDG 14.6. However, the MC11 made it mandatory to conclude fishery subsidy negotiations by 2020. Though the onslaught of COVID-19 pandemic deferred the 2020 deadline, substantial efforts were made to reach consensus in the July meet this year by the Trade Ministers.

In the last May Text, three pillars were encapsulated in 11 Articles, covering most of the issues associated with the fisheries subsidies for early conclusion of the FSA. Apart from the three

pillars, including IUU fishing, overfished stocks and overcapacity and overfishing, the FSA also covered several other issues including dispute settlement mechanism (DSM), waiver to Least Developed Countries (LDCs) and several cross-cutting issues, among others. The May Text retained the policy space for Special and Differential Treatment (SDT) in all the three pillars to grant special privileges to developing countries and LDCs, but sharp differences unfolded between members on SDT and reverse SDT provisions of the Agreement. For narrowing the perception between them, India has played an active role since the Doha Development Agenda in 2001 and also contributed significantly to formulate SDT provisions in the negotiating process. This paper focuses on a number of other negotiating points which are important to improve the quality of negotiations in the 15 July meet and in the MC12 to be held between 30 November and 3 December 2021.

2. Implication of the May Text 2021

One of the three pillars of the Agreement is the prohibition. With the tentative mandate of concluding the Fisheries Subsidies negotiations in the WTO MC-12³, the Chair of the Rules Negotiation Group released the Draft Consolidated Chair Text (May Text) and the text is to be used for negotiations in July 2021. The May Text of the negotiation contains 11 Articles, based on three pillars of prohibiting subsidies, namely: i) IUU fishing, ii) Overfished stock, and iii) Overcapacity and Overfishing, and several other cross-cutting issues like provisions for LDCs, institutional mechanism, dispute settlement, etc. The present draft text aims at prohibiting or reducing harmful fisheries subsidies affecting the fisheries stock. Additionally, there are general provisions for the Member countries that would allow them to continue fisheries subsidies if the countries can demonstrate that the subsidies are being used

to maintain the biological sustainable level of fisheries stock. However, the chair specifies the fact that the entire May Text is under negotiations and nothing is finalised until the Members reach consensus.

Articles 1 and 2 in the May Text include the scope and definition of the agreement, respectively. It exclusively points out that the Agreement under negotiations is only for “marine wild capture fishing and fishing related activities”, and areas like aquaculture and inland fisheries and government-to-government payments under fisheries agreement between countries are excluded from its scope. Though Article 1 is more or less finalised, the Members need to discuss the inclusion of “fuel subsidies in fishing and fishing related activities” in the text. Article 2 provides definition of five terms – fish, fishing, fishing related activities, vessels, and operator. The provision of “government-to-government payments” is not falling under the discipline fisheries subsidies, but ratification is required from the Trade Ministers. There are not many changes in these two Articles as compared to the previous draft text⁴.

One of the three pillars of the Agreement is the prohibition of subsidies for vessels engaged in IUU fishing⁵, provisions for which elements are listed under Article 3 of the May Text. The May Text tries to achieve a balance between large and small fishermen in Article 3.1. In the absence of consensus among member countries on large fishing, the concept of small and artisanal fishermen is presented in Article 3.8. The Article has not spelt out who all are belonging to this category by using a transparent cutoff point. Specific changes in Article 3.8 are suggested in Annexure I. The activities of industrial fishing are comprehensively focused by suggesting the inclusion of the term “[or operator]” to accommodate the activity of large fishing and defining “IUU fishing as a single

concept” where illegal fishing is taken together with “unreported and unregulated fishing” as a single undertaking.

The Article further defines the role of various agencies – coastal Member, RFMO/A, flag state Member, and port state Member – in triggering prohibition of subsidies for IUU pillar, with “Affirmative Determination” based on positive evidence and follows due process. It has also been discussed and agreed by the Members that the list of triggering agencies is not hierarchical in nature and IUU determination by any, even with disagreement of the other agencies, would lead to affirmative determination. Further, the Article discusses the time period to which a vessel is determined as engaged in IUU fishing. The Article also specifies that Members should establish or strengthen national regulations and laws to enforce elimination of subsidies for IUU fishing and further notify the Committee.⁶ After a vessel is engaged in IUU fishing, coastal state or RFMO/As make ‘affirmative determination’, the triggering entities have to allow the Flag State and subsidising state to submit documents for ‘determination’.

Article 4 of the May Text deals with the prohibition of subsidies concerning overfished stocks (Pillar II). Given the distinction between overfished and overfishing fisheries stock, Members deliberated to have stricter provisions for subsidies relating to overfished stocks. The Article further clarifies that the coastal Member where the fishing is taking place and the admissible RFMO/A have the right to declare the fish stocks as overfished. However, the identification of overfished stocks, by the concerned agencies, should be based on scientific evidence like Maximum Sustainable Yield (MSY) or Alternative Reference Point (ARP). There is some language issue, which needs clarification like the definition of ARP. Additionally, the Article 4.3 provides some flexibility to the member countries to grant subsidies relating

to overfished stock given it is used to promote the biological sustainable level of the stocks, which reverse the entire concept of prohibiting fisheries subsidies.

The exemption of prohibition of subsidy under Article 4.3 is also considered as ‘reverse SDT’ where it is left open-ended. There is no time frame attached to the provision nor conditions for the continuation of availing the exemption. Subsidy in any format is not acceptable to perpetuate. The same logic is also argued while extending SDT provision to resource-poor countries under Articles 3.8, Articles 4.4 or ALT Articles 5.5 subparagraphs (b), (c) and (d). A sub-paragraph to Articles 4.3 should be added to limit the size of the subsidy, transition period and number of programmes to be undertaken by each resource-rich country. Like ALT1 Article 5.5 subparagraphs (c) and (d), the interested country needs to approach the WTO committee each year about the approval of the programme under Articles 4.3 each year. Specific changes in Article 4.3 are suggested in Annexure II. Such new additions in the Agreement may strengthen the negotiating power of developing countries in getting a better deal in SDT provisions.

Pillar III is construed by the Chair as “heart and soul of the agreement”, which contains the most contentious elements of the Agreement. A majority of the text for IUU fishing and overfished stock have reached some consensus but the same is not true for the prohibition of subsidies for overcapacity and overfishing stock of fisheries (Pillar III). Given various concerns raised in the discussion of this Article, the May Text provides an illustrative list of fisheries subsidies that are under the radar of the pillar. Article 5.1 may be kept open-ended. Some countries find new innovative ways of introducing new schemes to provide subsidies to large fishing. When such cases arise, Article 5.1 can absorb them from time to time if open ended.

However, the Article also lays down the provision for Member countries to grant subsidies, provided the subsidizing Member demonstrates the use of such subsidies in building the biological sustainable level of the stocks, which is debatable in the negotiations. Article 5.1.1 provides an exemption of prohibition when a subsidising country undertakes programmes to maintain stocks at their biological level. This is an open-ended policy to provide subsidies permanently which cannot be allowed. A limit on the quantum, programme and period of exemption has to be provisioned in the Article. In these programmes, the engagement of large fishermen should be prohibited.

The Article prohibits fisheries subsidies in the areas beyond a Member's jurisdiction, including subsidies anticipated on fishing and related activities, except in case of non-collection of government-to-government payment from the vessel or operator. The prohibition of subsidies for vessels flying the flags of other than subsidizing Member still needs detailed discussion in the negotiating rounds.

The rest of the May Text contains Articles on cross-cutting issues pertaining to the fisheries subsidies. Given the vulnerability of LDCs, Article 6 provides specific provision for LDCs which are graduating from LDC status and on due restraint for raising disputes against LDCs. However, the former issue is being discussed separately in other committees and the latter agreed upon in Article 26 of Dispute Settlement Mechanism. Additionally, Article 7 captures the provision of technical assistance and capacity building in the related areas. The next Article on Notification and Transparency lists out the obligatory notification of subsidies provided, vessels identified in engaged in IUU fishing activity, fisheries access agreement, etc.

Article 9 on Institutional Arrangement provides provision for the establishment of a Committee, its role and sharing of information of domestic law and regulations by each Member country with the committee. Article 10 on Dispute Settlement is followed by Article 11 on Final Provisions dealing with provisions related to unassessed fish stock, exemption of subsidies for disaster relief in case of overcapacity and overfishing stock and exclusion of discussions around legal claims regarding maritime jurisdiction and territorial claims. Given the importance of SDT in the negotiations, it is discussed comprehensively in the section below.

The May Text is too inadequate to capture expectations of resource-poor countries. If subsidy per se is distorting, whether ‘good’ or bad’, it may be exempted temporarily but not on a permanent basis. A subsidy is not the only way to maintain stock at a biologically sustainable level. Therefore, while discussing Article 5.1.1, several riders are to be put to limit the scope of the provision. For maintaining fishery stock, a subsidy is not the only source of financing but it could be a potential source of finance for ‘bad fishery subsidy’ for industrial fishing. Specific changes in the article are suggested in Annexure III.

3. Special and Differential Treatment (SDT) in the May Text 2021

The provisions in May Text have attempted to provide fair treatment to the plight of developing countries including LDCs which remains one of the core issues of the negotiating process in MC12. It has been challenging for the Chair to make a balance between SDT and reverse SDT during the process of negotiation. The efficacy of the SDT provisions, in Pillar III, would depend upon the treatment offered to the provisions of reverse SDT provisions. A similar trade-off is very much evident in Pillar II where treatment to SDT would

shape the size and content of the offer extended to SDT provisions.

Pillar 1: IUU Fishing

In the Chairman's report (or May Text), the definition of IUU fishing has implications for redefining SDT provision in this Pillar which is discussed in Article 3.8. The Article 3.8 stipulates that the fishing rights of the fishermen are within the territorial sea which is extended up to 12 nautical miles. However, often fishermen go beyond territorial sea in search of fish because there is no demarcation of line on the surfaces of the seawater to delineate territorial sea from the rest of EEZ. India argued in its latest submission that it does not endorse SDT for the illegal fishing component of fisheries subsidies negotiations. However, for unreported and unregulated fisheries SDT is important for small scale and artisanal fishers in developing countries including LDCs.⁷

The act of crossing the territorial sea could be “unreported or unregulated fishing” but definitely not “illegal”. If demarcation of line in the territorial sea is coming on the way of livelihood security and properly adhering to the new concept of IUU fishing (as a single concept), it would be appropriate to extend the operating of fishermen up to EEZ or any other demarcating line between 12 and 200 nautical miles to give more space for small and artisanal fisherman, which is consistent with the spirit of SDG 14.

A final view on SDT provision is expected to be taken up in the Trade Minister meet on July 15, 2021. The effective period of the SDT provision under the pillar of IUU fishing is for two years and the transition period is also not agreed upon by the WTO Members. It is a common perception among members that fishery subsidy has to be terminated at the earliest and a symbolic time-bound exemption period is kept at two years for “developing members including LDC members for low income, resource-poor

or livelihood fishing and fishing related activities”. A permanent exemption to fishery subsidy for small fishermen is denied under this Pillar. In the absence of consensus in defining large fishing, small-scale artisanal fishing is framed as discussed above. SDT is kept within the square brackets as some members are of the view of no SDT provision under the IUU pillar, whereas many members feel the need for keeping this provision.

Pillar 2: Overfished Stocks

Concerns relating to overfished stocks under Pillar II are similar to that of Pillar I and, therefore, the same language is retained in Pillar II as in Article 4.4. Several members felt that subsidy provisions under overfished stock must go same as fisheries subsidies in IUU fishing and prohibition after the transitional period is binding on all members of WTO without any discrimination. Subsidy granted under Article 4.4 should be made for a targeted group of an economy and for a stipulated period of two years within the territorial sea. For example, the current provision for SDT in Overfished stock does not distinguish between large-scale and small-scale fishing, and hence allows developing countries, including LDCs to provide subsidies to all fishermen within 12 nautical miles from the coast.

The issue of overfished stocks is so acute that even extending SDT to developing and LDC members is also opposed by some member countries. At this critical phase of negotiation where extension of SDT to LDCs is under question, some countries have not restrained themselves from asking for reverse SDT under Article 4.3. Under this Article, subsidy used for the rebuilding of fishery stocks to a biological sustainable level may be kept outside the preview of granting subsidy. Any exemption under Article 4.3 may derail the purpose of Article 4.1, denying provisions of

fisheries subsidies for fishing or fishing related activities. SDT exemption for two years under the time-bound provision is meant for meeting challenges of developing countries, arising from implementation issues. Despite granting of subsidy under SDT by limiting beneficiary, geographical limit of 12 nautical miles, time-bound for two years, there was no consensus among WTO members on Article 4.4 and the language is still under the square bracket before the July negotiations.

Pillar 3: Overcapacity and Overfishing

Article 5 refers to subsidies concerning overcapacity and overfishing which discusses the third Pillar where more pronounced discussions are made on SDT (Article 5.5) and reverse SDT (Article 5.1.1). Under Article 5.1, fisheries subsidies are not totally prohibited, but flexibility in prohibition is admissible for maintaining substantiality level of fishery stock under Article 5.1.1. This Article is reverse SDT which is undermining the flexibility provided to developing countries and is likely to invalidate the sole purpose of Article 5.1. Article 5.1.1 is meant for all WTO members, but practically, it would side with resource-rich Members. In case fishermen in resource-rich member countries are subsidised permanently under Article 5.1.1 and resource-poor receive support under SDT for a stipulated period, discipline over fisheries subsidies may not be achieved under Article 5.1. Resource-rich countries have the track record of opening up new channels to provide subsidies as we have seen while implementing the Green Box provisions under the Agreement on Agriculture (AoA). If Article 5.1 is not kept open to accommodate future new channels to come, resource-rich countries will continue to support farmers permanently under the cover of sustainability-based “flexibility” clauses.

The SDT provision for selected fishermen in developing countries is presented in ALT1 Article 5.5 sub-paragraph (c). There has been a significant difference between member countries in regard to the provision of subsidies under SDT to developing countries. Considering the nature of discussion among WTO members, alternative proposal for SDT is presented in the May Text where long-term exemption in subsidy reduction for resource-poor fishermen is discussed (ALT1 Article 5.5 sub-paragraph (c) and a corollary to the ALT1 is discussed in the ALT2 Article 5.5 where a short-duration approach for complete termination of subsidy is discussed in the fishery sector. Since subsidies are construed as the greatest evil of depletion of fishery stocks, permanent prohibition on fishery subsidy under SDT provision should be considered in resource-rich countries.

In the ALT1 Article 5.5 sub-paragraph (c), certain members (developing countries and LDCs) of WTO, below the threshold point are allowed to continue with the subsidy for overcapacity and overfishing, and entitlement for such provisions which may lapse when members graduate from a threshold level. According to the alternative formulation, developing countries including LDCs are eligible for fishing related activities within their EEZ when the countries satisfy four criteria such as: (1) per capita GNI less than \$5000 in constant terms, (2) global share in the production of wild catch fish less than 2 per cent, (3) not engaged in distant fishing and (4) contribution of agriculture exceeding 10 per cent of their GDP. This provision allows developing countries to continue with the fisheries subsidies until they reach a threshold level. This Indian proposal could not muster much support from the WTO members because of GNI per capita criterion. The Chair also evolved an alternative formulation (ALT2 Article 5.5.c & d) with much-limited flexibility for developing countries.

It may be noted that Articles 5.1 Article 5.1.1 are not prohibiting fishery subsidy fully rather allow continuation of subsidy to support biologically sustainable level of yield permanently. Unless Articles 5.1 and 5.1.1 are not strictly adhered to, developing countries would be in a disadvantageous position in signing the agreement. Article 5.1.1 requires sustainability-based flexibility which would determine the extent of flexibility in SDT under ALT2 Article 5.5. Article 5.5 sub-paragraph (a) proposes long term subsidy provisions for LDCs as suggested by India⁸ and the group of Africa, Caribbean and Pacific countries (ACP)⁹. Low income, resource-poor, livelihood fishing or fish related activities from developing member countries are exempted from the prohibition of fishery subsidy under the Article 5.1 for a period of seven years within the territorial sea. This would adversely affect the interest of small and artisanal fishermen beyond the limit set by the subparagraph, excluding large fishing. The restrictions are imposed under subparagraph (b) such as small and artisanal fishermen and fishing boundaries within 12 nautical miles are exempted from subsidies.

In sub-paragraph ALT2 Article 5.5 (c), a developing country can provide its fishermen, operating within the EEZ, but the transition period is reduced to five years from the date of implementation of the agreement. A country may seek an extension of the transitional period from the WTO Committee under ALT2 Article 5.5 sub-paragraph (c) provided the said country has the requisite eligibility (d) to seek such an exemption. An eligible developing member country under ALT2 Article 5.5 sub-paragraph (d) can seek extension from the empowered committee on the need-based ground and actual extension of the period depends upon the judgment of the Committee on fisheries subsidies. A member country can seek extension of the transition period under the provisions of ALT2 Article 5.5 sub-paragraph (d), but the

extension is based on the merit of the case and the said country has to approach the Committee with full details to justify its claim.

A close look on Articles 5, Article 5.1.1, and ALT2 Article 5.5 together would give an impression that Pillar III is highly tilted in favor of resource-rich country and implementation of the agreement in the present format would show thousands of fishing vessels flowing in the ocean of the resource-rich countries and artisanal fishermen are pushed further to the state of abject poverty after implantation of the FSA. Though the conclusion of the FSA is to comply with SDG 14.6, the outcome of the Agreement in its present form is not likely to be commensurate with the expectation of developing countries under the said SDG. This paper proposes an alternative to ALT2 Article 5.5 in Annexure IV.

4. India's Fisheries Subsidies Proposals since Doha Round

With a coastline of more than 7500 km, Indian fisheries contribute 4 per cent of agricultural GDP and 1 per cent of the total GDP. The sector employs a majority of the coastal population of around 4 million people with an estimated economic wealth of Rs. 65,000 crore (EAC-PM, 2020).¹⁰ With an export value of USD 7.1¹¹ billion in 2019, India has been a net exporter in the fisheries sector. India's recent focus on its Blue Economy also highlights the importance of the fisheries sector in the livelihood of its nine coastal states. Given the high stake of the sector in its economy, India has been actively participating in the fisheries subsidies negotiations at the WTO.

Though fisheries subsidies, as an area under WTO's Negotiating Group on Rules, was launched in Doha Development Round in 2001, its mandate was agreed in the Hong Kong Ministerial in 2005. Since then, India has been submitting its proposals and expressing its concerns to the WTO forum for fisheries subsidies negotiations. India, from 2005 to 2011, has raised various issues,

both individually and collectively, with other developing countries regarding SDT, small-scale and artisanal fishing, lesser duty rules, zeroing under Anti-Dumping Agreement, and rebate on subsidies if export competitiveness is lost.¹² Since 2012, India has emphasized and raised its concerns in the area of SDT in the fisheries negotiations, with the latest submission in 2020.

The proposals in 2019¹³ on SDT are categorised in three main pillars of the fisheries subsidy negotiations, which India further classifies for developing countries and LDCs and geo-graphical limits – territorial waters and EEZ. A revised version of the proposal was submitted in 2020¹⁴, which has been discussed in section 3. This proposal has been included by the Chair in the latest draft to be discussed before MC-12 as Alternative I in Article 5.5 and partially included in Alternative II in SDT for overcapacity and overfishing stocks and Article 7 for technical assistance and capacity building.¹⁵ India’s concern, from the beginning, has been regarding SDT for small-scale and artisanal fishers in the country which has economic and social implications for the fishermen, leading the negotiators to put forth this proposal in a concrete manner in the negotiations.

5. Emerging Negotiating Points before July Meeting/ MC12

The May Text is an improvement over the earlier draft and an effort of the Chair is commendable in adding several entities to strengthen the position of developing countries. The basic framework of the July Meeting should be to put fisheries subsidies subjected to rigorous scrutiny by the competent authority for any reason whether good or bad. SDT is offered to resource-poor countries because large differences exist in the socio-economic conditions of these targeted fishermen in different countries. When countries reach a threshold level, the need for SDT provision may not be required by them. Until such a threshold level is reached, support of the global

community is required to end the impasse in the fishery subsidy negotiations. Some of the negotiating points are discussed below to indicate inadequacies in the May Text and additional negotiating points are also suggested for the July meeting of Trade Ministers.

Reverse SDT

Since the SDT provisions in the May Text have been put under close scrutiny, reverse SDT provisions cannot be left in the present format. Taking into account the past experiences, Member countries are apprehensive of the possibility of leakages of funds under the provision of Articles 4.3, 5.1.1, and 5.1 to resource-rich fishermen. Flexibility in this provision may not be made permanent and a fixed time frame may be set for complete prohibition as it is the case of SDT. For improving the level of fishery stocks up to a biologically sustainable level, interested countries may formulate certain programmes which are to be approved by the committee.

Each programme of a country could be for a maximum tenure of two years and extension to a programme can be granted on a yearly basis, but it has to be ratified by the WTO committee on fisheries subsidies. A country is permitted to undertake up to [5] such programmes. While entering into a dialogue with the committee, detailed submissions are to be provided regarding the beneficiary of the programme. Programme-countries are to submit a list of beneficiaries from the programme and such beneficiaries are prohibited from participating in commercial fishing activities after receiving benefits in any form from such programmes. In case a beneficiary intends to return to commercial fishing activities after becoming a beneficiary from the programme, mandatory recovery process should be adhered to by the beneficiary according to the rules of the subsidizing member state.

IUU Fishing and Territorial Sea

It is a wrong perception that fishermen operate within the territorial waters, rather they often go beyond 12 nautical miles. In strict terms, such activities may be treated as “unreported and unregulated” but not “illegal”. The sovereign right of a country is up to EEZ and, therefore, crossing territorial sea boundaries cannot be treated as illegal. If “IUU fishing” is treated as a “single concept” as formulated in the May Text, crossing the territorial sea may not be treated as “illegal” as in Article 3.8. Therefore, in Article 3.8 the phrase “activities within 12 nautical miles” may be rephrased with “EEZ”.

Definition of Low Income

Definition of “resource-poor” fishermen must be the same across developing countries. For this purpose, the eligibility per capita definition of “resource-poor” should be defined in terms of US dollar, so that all WTO member countries adopt the same dollar terms, not in local currency terms. Many developing countries were deprived while offering food subsidies to low-income people in developing countries under Agreement on Agriculture (AoA). The arguments for this approach are simple. In any country, fishermen command the same set of tradable goods such as boat, net, bait, etc., where prices of these products are comparable across the globe. Therefore, the level of official fishery subsidy should be the same for these fishermen. In the July Meeting, the definition of ‘resource-poor’ fishermen should be similar among all resource-poor developing countries to sustain their livelihood.

Subsidized Fishing Vessels

Several vessels in resource-rich countries are beneficiary under Articles 4.3 and 5.1.1 with subsidies received from the MSY

enhancing initiatives in the form of modernizing their vessels. At certain other times, these vessels are engaged in commercial fishing and fully equipped with modern amenities with the support of subsidy received in the past. Such vessels are the cause of concern for resource-poor countries. Resources spent on these vessels in the form of subsidies from the biological sustainable programmes for MSY enhancing programme should be recovered from these vessels or may be confiscated under the guidance of the WTO.

Tracking system of vessels used in deep-sea fishing

Discipline on fisheries subsidies under Articles 4.3 and 5.1.1 for undertaking programmes to enhance MSY is likely to be negotiated in the July Meeting. Beneficiaries from such programmes such as vessels or any other fishing equipment are to be prohibited in their future engagement in fishery related activities under the FSA. While taking approval of a programme to enhance MSY by a resource-rich country from the WTO Committee every year (like developing countries under ALT2 Article 5.5, paragraphs (c) and (d)), details of the beneficiaries including vessels or any other fishing equipments, engaged in the programme are to be notified to the WTO Committee. Such information can be in the public domain. In case such beneficiaries are tracked in the jurisdiction of a specific RFAO/As/ coastal state/port state while engaged in commercial fishing directly or indirectly, the case shall be notified to a competent authority and WTO Committee is to confiscate the vessels or any other fishing equipment if found guilty.

Formation of a Fishery Fund

WTO should create a “Fishery Fund” to receive funds after wrongfully used vessels are being confiscated from member countries. Such vessels are the beneficiaries of funds used for MYS enhancing activities and are currently engaged in commercial fishing.

Open or Ended list

The Articles 5.1 and 5.1.1 do not emphasize on a complete prohibition of fishery subsidy or activities in the areas of overcapacity and overfishing. Article 5.1 spells out a list of activities where fishery subsidies are prohibited. Experience of the world economy indicates that some countries find new channels to subsidise fishermen under the Green Box provisions under AoA. Article 5.1 should be made open-ended to accommodate future new channels of providing fisheries subsidies so that those possible channels for subsidy can be effectively put under the list of Article 5.1.

Review Mechanism

A regular review mechanism every [3] years may be made mandatory to review the efficacy of the FSA. Since the asymmetry between resource-rich and resource-poor is expected to move in any direction, a quick review process may be embedded in the Agreement.

Pandemic and Disaster Management

The provision for disaster management is in place in May Text in Article 11.3 and pandemic should also be part of such provision. The provision may be made more comprehensive where affected countries may be given the option of availing “zero year” facility where any of their commitments to the WTO in the affected year may be exempted from compliance.

Cap on “Good Subsidy”

Good subsidies are often global welfare-enhancing and should be promoted. But there should be a limit to such subsidies since all subsidies are distorted in nature, whether they are “good” or “bad”. As capping of subsidy under SDT provision is suggested, similarly

prohibition is also required for the so-called “good subsidy” under Articles 4.3 and 5.1.1. There should be a cap on the size of the subsidy, the number of programmes and the number of years for which subsidies are to be allowed. In Article 5.1.1, it should be stated distinctly that “measures to maintain the stocks are for a minimum period of [5] years and for a limited number of approved programmes with a limited size of fisheries subsidies”.

Eligibility for Articles 5.1.1 and 4.3

Certain criteria have to be adopted to limit the number of countries to be eligible to undertake such sustainable stock-enhancing programmes. Like under ALT2 Article 5.5 sub-paragraph (d), those who are having low MSY, low grants of subsidy for such purposes, may be allowed for subsidy but for a limited period. Continuation of such efforts to improve MSY permanently should be completely prohibited.

6. Way Forward

After two decades of negotiations, there is a great deal of hope for the successful conclusion of fishery subsidy negotiation, perhaps in mid-July, 2021. Despite the unprecedented spread of pandemic across the globe, WTO members are committed to agree on a comprehensive deal in MC12 to respect the global commitment under SDG 14.6. The Chair’s role in May Text has been commendable in accommodating several entities in the draft and most of the elements are considered to be favouring resource-poor countries. But several issues, particularly reverse SDT, are not presented effectively with appropriate checks and balances in the agreement. Therefore, it is a strong conviction of developing countries that after the implementation of the Fisheries Subsidies Agreement in its present form, there may be a great divide between

resource-rich and resource-poor countries and only fleets from resource-rich countries will be seen in seas and oceans. In the existing May Text, several gaps are observed and discussed in the paper, which can be taken off during the July Meeting. Articles 4.3 and 5.1.1 may be examined to limit the so-called “good subsidy” by the philanthropic resource-rich countries, in the name of contributing to the welfare of the world economy. Subsidy in all formats should be subjected to strict prohibition within very limited flexibility provided to it in terms of period, scale and programme. Such subsidy-based initiatives should be under the close scrutiny of a competent authority of WTO.

India has been a champion in taking the plight of developing countries, particularly LDCs, since the Doha Round and has worked consistently in shaping the present form of the Draft Agreement. Besides SDT provisions in the Agreement, India also contributed in other areas in the agreement. Therefore, India has to play a major role in taking many more issues to the July meeting for completing the unfinished agenda of the Fisheries Subsidies Agreement which should be equitable, just, and balanced for the members of the WTO community.

Annexure I

ARTICLE 3: PROHIBITION ON SUBSIDIES TO ILLEGAL, UNREPORTED AND UNREGULATED FISHING

3.8 [The prohibition under Article 3.1 shall not apply to subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, for low income, resource-poor or livelihood fishing or fishing related activities within 12 nautical miles measured from the baselines for a period of [2] years from the date of entry into force of this [Instrument].]

3.8.1 The Members having per capita GNI income lower than US\$[X] may be defined as ‘income, resource-poor or livelihood fishing’.

Annexure II

ARTICLE 4: PROHIBITION ON SUBSIDIES CONCERNING OVERFISHED STOCKS

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies are implemented to promote the rebuilding of the stock to a biologically sustainable level.⁹

(a) For subsidies other than those referred to in Article 4.4, a Member may grant or maintain the subsidies referred to in Article 4.3 for fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of [5] years after the entry into force of this [Instrument]. A Member intending to invoke this provision shall **inform the [Committee]** in writing before the date of entry into force of this [Instrument].

(b) Member country has to submit programmes/schemes to [Committee] for continuing subsidy under Article 4.3 for a maximum

number of programmes/**schemes of [6]** and shall secure approval from the [**Committee**] to implement the programme.

(c) Subsidies for **each programmes/schemes** such activities do not exceed **US\$[X million]** annually

The **programmes/schemes** to be referred to the [Committee], which will determine whether a **programme/scheme** for extension of this period is justified, after examining all the relevant needs of the developing country Member in question. If the [Committee] determines that the **programme/scheme** is justified, the Member concerned shall hold annual consultations with the [Committee] to determine the necessity of maintaining the subsidies. If no such determination is made by the [Committee], the Member shall phase out the remaining subsidies prohibited under Article 4.1 within two years from the end of the last authorized period.]

Annexure III

ARTICLE 5: PROHIBITION ON SUBSIDIES CONCERNING OVERCAPACITY AND OVERFISHING

5.1.1 A subsidy is not inconsistent with Article 5.1 if the subsidizing Member demonstrates that measures are implemented to maintain the stock or stocks in the relevant fishery or fisheries at a biologically sustainable level.¹⁰

(a) For subsidies other than those referred to in Article 5.5, a Member may grant or maintain the subsidies referred to in **Article 5.1.1** for fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of **[5] years** after the entry into force of this [Instrument]. A developing country Member intending to invoke this provision shall **inform the [Committee]** in writing before the date of entry into force of this [Instrument].

(b) Member country has to submit programmes/schemes to [Committee] for continuing subsidy under Article 5.1.1 for a maximum number of **programmes/schemes of [6] years** and shall secure approval from the [**Committee**] to implement the programme.

(c) Subsidies for **each programmes/schemes** such activities do not exceed **US\$[X million]** annually.

The **programmes/schemes** to be referred to the [Committee], which will determine whether a **programme/scheme** for extension of this period is justified, after examining all the relevant needs of the Member in question. If the [Committee] determines that the **programme/scheme** is justified, the Member concerned shall hold annual consultations with the [Committee] to determine the necessity of maintaining the subsidies. If no such determination is made by the [Committee], the Member shall phase out the remaining subsidies prohibited under Article 5.1 within two years from the end of the last authorized period.]

Annexure IV

[ALT 3

5.5 (a) The prohibition under Article 5.1 shall not apply to subsidies granted or maintained by LDC Members for fishing or fishing related activities.

(b) The prohibition under Article 5.1 shall not apply to subsidies granted or maintained by developing country Members for low income, resource-poor or livelihood fishing or fishing related activities within 12 nautical miles measured from the baselines [for a period of **[10]** years from the date of entry into force of this [Instrument]].

(c) For subsidies other than those referred to in subparagraph (b), a developing country Member may grant or maintain the subsidies referred to in Article 5.1 for fishing and fishing related activities within its EEZ and the area of competence of a relevant RFMO/A for a maximum of **[8]** years after the entry into force of this [Instrument]. A developing country

Member intending to invoke this provision shall inform the [Committee] in writing before the date of entry into force of this [Instrument].

(d) If a developing country Member whose subsidies to fishing or fishing related activities at sea do not exceed US\$**[250 million]** annually

deems it necessary to apply subsidies referred to in subparagraphs (b) and (c) beyond the **[10 or 8]** years provided for, respectively, in those subparagraphs, it shall not later than one year before the expiry of the applicable period enter into consultation with the [Committee], which will determine whether an extension of this period is justified, after examining all the relevant needs of the developing country Member in question. If the [Committee] determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the [Committee] to determine the necessity of maintaining the subsidies. If no such determination is made by the [Committee], the developing country Member shall phase out the remaining subsidies prohibited under Article 5.1 within two years from the end of the last authorized period.]

Endnotes

¹ TN/RL/W/276

² RD/TN/RL/126/Rev.1 & RD/TN/RL/126/Rev.2

³ After missing the 2020 deadline due to global pandemic.

⁴ RD/TN/RL/126/Rev.1

⁵ For the purpose of the May Text, the definition of IUU fishing has been kept in consistency of Article 3 of *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, FAO (2001)

⁶ The last section in Articles 3, 4 and 5 deal with Special and Differential Treatment (SDT) is discussed separately in section 5.

⁷ TN/RL/GEN/200/Rev.1

⁸ TN/RL/GEN/100/Rev.1

⁹ RD/TN/RL/96

¹⁰ EAC-PM, (2020), Report of Blue Economy Working Group-3 on Fisheries, Aquaculture and Fish Processing. India's Blue Economy: A Draft Policy Framework.

- ¹¹ Authors estimates based on United National ComTrade Database.
- ¹² TN/RL/GEN/32, TN/RL/W/170, TN/RL/GEN/99, TN/RL/W/203, TN/RL/GEN/136, TN/RL/GEN/153, TN/RL/W/215, TN/RL/W/217, TN/RL/GEN/153/Rev.1, TN/RL/GEN/155, TN/RL/GEN/163, TN/RL/GEN/164, TN/RL/GEN/166, TN/RL/GEN/153/Rev.2, TN/RL/GEN/177, TN/RL/GEN/177/Rev.1
- ¹³ TN/RL/GEN/200
- ¹⁴ TN/RL/GEN/200/Rev.1
- ¹⁵ TN/RL/W/276/Add.1

RIS Discussion Papers

Available at: <http://www.ris.org.in/discussion-paper>

- DP#263-2021 *Post-pandemic Social Security Agenda: Universalising Developmental Interventions Over Universal Basic Income* by Pramod Kumar Anand and Krishna Kumar
- DP#262-2021 *Post-COVID Challenges: Need of UN to Metamorphose-Rediscover Its Priority and Functionalities* by Aruna Sharma
- DP#261-2021 *Pharmaceutical Trade: India's Growth Trajectories* by Dinesh Kumar and T. C. James
- DP#260-2020 *Inflation Targeting: Monetary Policy, Growth and Inflation* by Manmohan Agarwal and Ammu Lavanya
- DP#259-2020 *Bulk Drug Industry in India: Challenges and Prospects* by T. C. James
- DP#258-2020 *Strategising India's Exports* by Dammu Ravi
- DP#257-2020 *Development of 'TrueNat' Innovation System in India for Detection of Tuberculosis and COVID-19: A System Based Perspective* by Nidhi Singh and Kirti Tyagi
- DP#256-2020 *Negotiating Bretton Woods in Hindsight* by Manmohan Agarwal
- DP#255-2020 *What Ails Global Multilateralism: Prognosis and Way Forward* by Augustine Peter
- DP#254-2020 *Need for Setting Up of a New Development Bank* by G. A. Tadas
- DP#253-2020 *The Indian Manufacturing Sector, Finances and Growth* by Manmohan Agarwal, Rumi Azim and Neha Betai
- DP#252-2020 *The Case for a Global Healthcare Partnership* by Rajeev Kher and Arun S. Nair
- DP#251-2020 *The IMF and Its Operation till the Breakdown in the 1970s: Implications for International Liquidity and Adjustment* by Manmohan Agarwal
- DP#250-2020 *India-EU Connectivity Partnership: Potential & Challenges* by Arun S. Nair

RIS A Think-Tank of Developing Countries

Research and Information System for Developing Countries (RIS) is a New Delhi-based autonomous policy research institute that specialises in issues related to international economic development, trade, investment and technology. RIS is envisioned as a forum for fostering effective policy dialogue and capacity-building among developing countries on global and regional economic issues.

The focus of the work programme of RIS is to promote South-South Cooperation and collaborate with developing countries in multilateral negotiations in various forums. RIS is engaged across inter-governmental processes of several regional economic cooperation initiatives. Through its intensive network of think tanks, RIS seeks to strengthen policy coherence on international economic issues and the development partnership canvas.

For more information about RIS and its work programme, please visit its website: www.ris.org.in

Research shaping the development agenda



RIS

Research and Information System
for Developing Countries

विकासशील देशों की अनुसंधान एवं सूचना प्रणाली

Core IV-B, Fourth Floor, India Habitat Centre
Lodhi Road, New Delhi-110 003 India., Tel. 91-11-24682177-80
Fax: 91-11-24682173-74, Email: dgoffice@ris.org.in
Website: <http://www.ris.org.in>