The Trade Toolbox and Environmental Sustainability: The Case for Fisheries

By Peter Allgeier
1. Introduction

The increasing severity of global environmental challenges has prompted increased attention to the relationship between international trade and resource issues, especially how trade agreements and rules affect the global commons. Examples include climate change, fisheries depletion, and loss of biodiversity. A principal topic in the development of “21st century trade agreements” is the relevance, feasibility, and effectiveness of addressing environmental issues in international trade agreements. To date, efforts to incorporate environmental and sustainability considerations into trade agreements have largely been confined to fostering environmental cooperation among the parties, facilitating civil society views into government policy making, and promoting compliance with existing domestic laws and regulations. The impact of such agreements has been minimal in producing tangible effects on the environments of land, sea, and air.

However, the existing tool box of trade negotiators from other sectors could be applied effectively to environmental and sustainability issues. The WTO fisheries subsidies negotiations and discussions of a marine package in the Trans-Pacific Partnership (TPP) negotiations are examples of potential new approaches to trade and the environment.

2. Problem/Opportunity

The world depends on the oceans for food and jobs. Hundreds of millions of people depend on fishing for all or part of their income. According to the UN Food and Agricultural Organization (FAO), the primary and secondary fisheries sectors support the livelihoods of approximately 540 million people (eight percent of the world’s population).\(^1\) The sustainability of the fisheries also is critical to meeting the food needs of the three billion people who depend on fish for at least fifteen percent of their average animal protein intake.\(^2\)

A critical factor in the economic welfare of countries’ fishing industries is the role of international trade—exports, imports, terms of competition, and international rules of trade as applicable to fishing activities and trade in seafood. Nearly forty percent of the total production of fish and fish products enters international trade, and had an estimated value of $102 billion in 2008.\(^3\) The fishing industry is particularly important for developing countries, as they account for 80 percent of world fishery production and 50 percent of world exports of fish and fishery products in value terms.

The world faces a major challenge to ensure the sustainability of the fishery resources that are necessary for the continued economic welfare and food security of the billions of people dependent upon the ocean’s health. According to the FAO, 85 percent of the world’s fisheries are now overexploited, fully exploited, significantly depleted, or recovering from overexploitation.\(^4\) The situation is so severe that, according to leading fisheries scientists, if current trends continue, the world’s fisheries could be beyond recovery within decades. Fisheries management alone will not be sufficient. In order to relieve the pressure on the ocean’s fish stocks, it is necessary to limit subsidies and eliminate illegal fishing. Subsidies permit fleets to fish more intensively, longer, and further afield than would be the case without subsidies, especially the operational subsidies such as fuel and construction subsidies. Thus, economic development, livelihood, environment, and food security all are endangered by the fishing subsidies that have helped to produce a global fishing fleet that is 2.5 times larger than necessary to fish at sustainable levels.\(^5\) The global economic losses due to this overfishing are estimated at US$50 billion annually.\(^6\)

Even before the launch of the Doha Round, Leaders and Ministers recognized the importance of fish resources for trade and development, as well as the clear link between subsidies and depletion of those resources. This recognition led the WTO Trade Ministers at their Ministerial Meeting in Doha in November 2001 to include negotiations to discipline such subsidies in the Doha Round. This was the first time that the WTO included a specific environmental issue in its negotiation mandate. But the greater significance of the decision was that the environmental issue was not a mere “add on” to a commercial negotiation. Rather, the need to ensure a healthy fisheries resource was seen as fundamental for trade and development. At the Hong Kong Ministerial in 2005, the Ministers were more explicit about their objectives for a fisheries discipline. Their instruction to their negotiators was to strengthen disciplines, including through the prohibition of certain subsidies that contribute to overcapacity and over-fishing. Beyond its status as the WTO’s first “trade and environment” negotiation, the fisheries subsidy negotiation has several unique characteristics that warrant discussion.

- It is more than a commercial negotiation. While one objective of the negotiations is a typical WTO “level the playing field” commercial objective, there also is--at least as important, if not the primary objective--the objective to promote the sustainability of the world’s ocean fisheries. This is quite different than the negotiations to reduce or discipline agricultural or industrial subsidies. This sustainability objective creates a significant mental challenge to trade negotiators, whose DNA dictates that they negotiate for their own country’s commercial interest. But if they are to achieve the sustainability objective, they have to adopt the mentality (at least on one side of their brain) of what’s best for the global commons.

- Similarly, the solutions don’t fit the normal WTO mold of adjusting the border measures, or internal policies, of each Member. The fisheries subsidy issue involves both activities within Members’ marine “borders” (i.e., their Exclusive Environmental Zones or EEZs) and activities on the high seas beyond everyone’s EEZ. And to make matters more complicated, migratory fish species move back and forth between EEZs and the high seas.

- Another important characteristic of these negotiations is that they cut across North-South lines. The major fishing subsidizing Members include both developed and developing countries. And those adversely affected by the subsidies—both economically and environmentally—include both developed and developing countries.

- The negotiations also raise new institutional issues for the WTO. What distinguishes the WTO from other international agreements is that the Members’ commitments are legally binding and enforceable through a robust dispute settlement system. A question

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arises, however, is the current Dispute Settlement Understanding (DSU) equally workable for an agreement with a global sustainability objective and the commercial agreements in the current WTO?

Beyond the complications and challenges of these various characteristics, there is the overriding challenge of finding the proper balance between development and trade on the one hand and sustainability and the environment on the other hand. How can we do that? Actually, development and trade ultimately will not be realized if the sustainability objective is not met. Can the potential "tragedy of the commons" be a sufficiently powerful incentive for negotiators, and their political leaders, to adjust their mentalities and negotiating approaches to give proper weighting to the sustainability objective?

Even in purely commercial terms, fishing subsidies have a particularly pernicious effect. In areas such as agriculture or manufacturing, one country’s subsidizing production does not reduce another country’s production resources, even though it gives the subsidizing country’s producers a competitive advantage. In the fishing sector, on the other hand, such practices rob the other countries of production resources by depleting the fisheries that are everyone’s resource base.

3. Responses

We have well within our grasp the ability to achieve these multiple objectives---commercial, environmental, and developmental---by applying familiar trade rules and measures to the fishing sector, as we do in other sectors. In addition to filling the fisheries gap in the international subsidies disciplines, we could address issues of illegal fishing and seafood fraud in similar manners to our treatment of such practices in trade in manufactures and agriculture. The point is that these are mainstream issues for trade negotiations, not a radical effort to insert extraneous non-trade issues into trade negotiations. A brief review of the trade disciplines and measures in the tool boxes of trade negotiators provides numerous examples of how to do this.

3.1 Subsidies

Subsidies in manufacturing and agriculture are addressed in the WTO, but as a practical matter disciplining fisheries subsidies is the missing piece. Those subsidies are huge---estimated to be between $25 billion and $29 billion annually.7 The subsidy prohibitions under Article Three of the WTO Agreement on Subsidies and Countervailing Measures (SCM Agreement) apply only to situations in which the subsidies are contingent upon export performance or use of domestic goods over imported goods.8 Neither of these conditions would appear to apply to most of the subsidies granted to fishing enterprises.

The SCM Agreement also defines a category of “actionable subsidies” that have “adverse effects” on the interests of another Member.9 However, the definition of adverse effects is cast in terms that are much more oriented to head-to-head competition in a given manufactured product in the same market(s) than to adverse effects upon a common resource on which all producers depend. This traditional view of the trade-distorting effects of subsidies misses the point that such subsidies, in addition to having the direct competition-distorting effects described above, also have a significant “adverse effect” on the sustainability of the underlying resource being produced (fish), which threatens the viability of all other Members’ fishing industries.

It would not be a huge leap in logic to supplement the current understanding of “adverse effects” in the SCM Agreement with a recognition that, by definition, subsidies that contribute to over fishing seriously damage the common interests of other Members with fishing enterprises. Given this global impact from fishing subsidies, the most appropriate treatment of such subsidies would be prohibition.

3.2 Illegal fishing

Illegal fishing takes a variety of forms: illegal, unreported, or unregulated (IUU) fishing. The basic characteristic of illegal fishing is that the vessels are operating in violation of the laws of a fishery, for example, fishing by vessels without nationality or flying the flag of a country not a party to the regional organization governing that fishing area or species. Vessels engaged in IUU fishing typically do not comply with safety measures, use illegal fishing gear, do not follow fisheries management regulations, and do not comply with regulations on quotas, fishing areas, closed seasons, or prohibited species. Obviously, these practices, and the fact that IUU catch is not recorded in catch registers, lead to over fishing and unfair competition with those vessels that comply with all of the conservation and operating rules and regulations. It is estimated that illegal, unregulated, and unreported (IUU) fishing is between $10 billion and $23.5 billion per year.9

Existing trade agreements already cover various forms of illegally traded goods. For example, the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) includes provisions for border measures to prevent importation of goods suspected of violating intellectual property rights.11 The Agreement also authorizes authorities to seize and destroy infringing goods or otherwise dispose of them outside the channels of commerce.12 A related example of an international trade agreement to prevent trade in illegal goods is the pending Anti-Counterfeiting Trade Agreement (ACTA) among thirty seven countries accounting for more than 50% of world trade.13 The ACTA requires Members to have procedures for seizing imported goods suspected of violating intellectual property rights and, after an appropriate determination of infringement, to destroy the goods or otherwise dispose of them outside the channels of commerce.14

The United Nations Kimberly Process Certification Scheme (KPCS) is another example of an international trade agreement aimed at eliminating illegal trade, in this case “conflict diamonds”. The 75 Member countries of the KPCS agree to import only those rough diamonds that are
accompanied by a validated certificate that the diamonds are in compliance with the relevant UN Security Council and General Assembly resolutions.\textsuperscript{15} Thus, as in the case of fisheries subsidies, there are precedents for trade agreements to provide enforceable border measures against illegally captured fish. It’s as much a commercial issue as illegal trade in any other product (e.g., watches, handbags, pharmaceuticals). But it also is an issue in achieving the sustainability of common marine resources.

### 3.3 Seafood fraud

Seafood is highly traded on global markets and particularly vulnerable to fraud, since only the European Union requires catch documentation and detailed traceability. In addition, the very nature of the product, especially after it has undergone a degree of processing (e.g., filleting) makes it very easy to substitute an inferior species for a more expensive one. Seafood fraud consists of misrepresenting a traded product to garner a higher price or to market unpopular species, or to elude regulations and laws by various forms of mislabeling. These practices are well-known in other areas of trade.

Trade agreements covering other areas of trade have included provisions to prevent false labeling or circumvention of rules through false claims of origin or product characteristics. The 1974 Multi Fibre Arrangement (MFA) governing trade in textiles and clothing contained extensive provisions on preventing circumvention of the quotas. The Uruguay Round Agreement on Textiles and Clothing, which established the transition measures for integrating textiles and apparel into GATT 1994, also granted Members authority to deny entry, or take other appropriate measures, in instances of attempted circumvention of quotas (e.g. by false declarations concerning country or place of origin, fibre content, quantities, description, or classification).\textsuperscript{16} Once again, one finds that common trade agreement tools are available to address the problems of fisheries.

### 4. Conclusion

One hears much these days about the “Green Economy”. While there is no official definition of the Green Economy, certainly one of its basic concepts is that the economy should operate in a manner that takes proper account of the value of common resources—clean air and water, biodiversity, sustainable marine resources, etc. Obtaining sustainability is not purely a goal for the sake of the environment. Resource sustainability is necessary for developing countries to achieve standards of living on a par with the prosperity enjoyed by developed countries. Much of the criticism directed at the WTO and trade negotiations generally from environmentalists has been that trade negotiations exacerbate environmental problems. It is essential, therefore, that new trade opportunities be structured in a manner that also promotes sustainability of trade activities. Eliminating destructive fisheries subsidies through WTO rules is exactly the kind of environmentally supportive trade negotiation that the WTO should, and can, foster.

To achieve such an outcome, however, trade negotiators need to change their mentality. Traditionally, the mentality of trade negotiators has been to promote their countries’ commercial interest by obtaining “concessions” from their trading partners. The primary objective of the negotiators has not been to solve a common global problem. In the case of the fish subsidy negotiations in the WTO, there certainly is the traditional commercial objective of “leveling the playing field” vis-à-vis the other trading partners fishing fleets. But there also is an explicit environmental mandate for the negotiations, namely, to contribute in a concrete way to ensuring the sustainability of the oceans’ fisheries. That mandate requires trade negotiators, and their governments, to make “concessions” to the common environmental good as well as to their trading partners. This is not an easy mental shift for negotiators or their governments. But to an increasing degree, governments will have to make that shift of perspective in international trade negotiations. The outcome of the fishery subsidy negotiations is a critical test of the WTO membership’s ability to change the paradigm for trade negotiations.

The lessons from this analysis, however, are not confined to trade negotiators and their governments. There’s a powerful lesson for pro-environmental advocates and activists as well. To be truly effective in promoting a sustainable global environment, they need to work at the center of international commercial negotiations. In other words, they need to frame the so-called environmental issues within the rubric of the commercial behavior that they wish to modify and seek enforceable trade rules to prevent practices that are both anti-competitive and resource depleting.

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<td>ACTA</td>
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<td>DSU</td>
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<td>EEZ</td>
<td>Exclusive Economic Zone</td>
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<td>FAO</td>
<td>Food and Agricultural Organization</td>
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<td>GATT</td>
<td>General Agreement on Tariffs and Trade</td>
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<td>IUU</td>
<td>Illegal, Unregulated, and Unreported</td>
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<td>SCM</td>
<td>WTO Agreement on Subsidies and Countervailing Measures</td>
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<td>SOFIA</td>
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Please note that this paper is in draft form. It will be revised and included in an e-book that ICTSD will publish shortly after the WTO ministerial conference.

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