

The Fisheries Subsidies Agreement of the World Trade Organization and Developing Countries

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Edited by

Utkarsh K. Mishra and Shaan Jain

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—Utkarsh K Mishra & Shaan Jain

ABOUT THE BOOK

The idea for this edited volume ensued during a pilot research dedicated towards analysing the World Trade Organization's (WTO) jurisdiction over environment related binding agreements especially in the light of recently tabled-Agreement on Fisheries Subsidies at the WTO. The research made us realise that there is lot to explore about the Agreement in terms of its implications it may have on the developing and least developed countries of the world.

With this premise, the task for the development of a comprehensive research report was initiated under the aegis of First National Internship Program 2023 by the Centre for Studies in International Trade and International Investment Laws (CITIL), Dharmashastra National Law University, Jabalpur. The Authors of this volume were selected from almost 500 undergraduate applicants from Universities across India and the selected contributions were extensively reviewed and given a shape through multiple revisions to suit the requirements of an edited volume like this.

The book at the onset establishes the link between Subsidies and World Trade Organization. This is to ensure that even a reader with a little or no understanding of the underlying concepts is able to grasp the arguments presented in a substantial manner. Moreover to ensure this, the book is written in simple yet succinct language. The book primarily concerns itself with the point of view of developing countries with a special attention to India. Despite this, in order to have a holistic perspective, the 5th chapter of the book delves in the analytical analysis of the data related to the fisheries in the world. This widens the horizons of the book and leads to the discussion on inclusion of the perspective of the developed countries as well in the larger debate on fisheries under the WTO regime. In the end, the book succulently provides policy recommendations and suggestions so as to resolve the persisting lacunae and thus improving the overall mechanism which has been endeavoured to be laid down by the Agreement on the Fisheries Subsidies of the WTO. As the Fisheries Subsidies Agreement has

not yet come into force but has still received much attention from policy makers and academics, this book will serve as a primer to those beginning their research and understanding in this domain. We invite the readers to go through contents of the chapters and also provide their valuable comments for further research.

CHAPTER 1

WORLD TRADE ORGANIZATION AND SUBSIDIES: EXAMINING THE LINKAGES

MANJARI TRIPATHI

Introduction

In the grand theatre of global trade, where nations engage in economic choreography, the World Trade Organization (WTO) emerges as a central stage, exercising its authority to regulate, negotiate, and adjudicate commercial relations among states and other entities.¹ At the heart of this complicated dance lies a contentious partner – subsidies. Subsidies, are those financial lifelines extended by governments to domestic producers and exporters, and are in essence, the ballet's unseen hands that eventually shapes the dynamic forces of international commerce.

The WTO, as the guardian of the global trading system, holds the responsibility of not only fostering trade but also taming the sometimes-unruly effect of subsidies.² These financial incentives, like actors on a stage, can play both the hero and the villain, thus either illuminating paths toward economic growth or casting shadows of market misrepresentations. As the WTO governs this complex relationship, its Agreement on Subsidies and Countervailing Measures (SCM) takes centre stage, establishing the ground rules that govern the use of subsidies and the mechanisms that countries can instate to counter their adverse effects.

¹ “WTO | The WTO in Brief,” accessed 11 Sept, 2023,
https://www.wto.org/english/thewto_e/whatis_e/inbrief_e/inbr_e.htm..

² Ibid

We will delve deep into the multifaceted relationship between the WTO and subsidies, drawing insights from various sources. Our research listens to the voices of experts, policymakers, and global leaders, capturing their thoughts on the significance of trade and international cooperation in overcoming contemporary challenges. This chapter explores the implications of subsidies, not only for markets but also for impoverished nations struggling to find their place in the global economic landscape.

This work unravels the tapestry of this complex relationship, deciphering how the WTO and subsidies unite to shape the world of trade and in turn, influence the destinies of nations on the grand global stage.

The WTO: Shaping International Trade Governance through History

The WTO represents a significant milestone in the ever-evolving landscape of international trade governance, with its origins rooted in the historic General Agreement on Tariffs and Trade (GATT) of 1947.³ Shaped by the collaborative efforts of the world's major trading nations, the GATT laid the foundational framework for what would become a thriving multilateral trading system⁴. It provided an interim platform where member nations were convened to deliberate and address the intricacies of international trade.⁵

Over subsequent years, GATT member countries embarked on a series of crucial multilateral negotiations, often referred to as "rounds," with the primary objective of diminishing trade barriers⁶ among nations.⁷ These

³ "WTO | Understanding the WTO - What Is the World Trade Organization?" accessed Sept 11, 2023,

https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact1_e.htm.

⁴ "History of the WTO: Part One," United States Trade Representative, accessed Sept. 11, 2023,

<https://ustr.gov/about-us/policy-offices/press-office/blog/2009/november/history-wto-part-one>.

⁵ Ibid.

⁶ "Trade barriers are the government-induced restrictions on international trade." "Trade Barriers," INOMICS, accessed Sept, 2023, <https://inomics.com/terms/trade-barriers-1428502>.

⁷ Supra note 4

rounds marked critical chapters in the ongoing narrative of international trade, fostering cooperation and fostering economic ties among participating countries.⁸

Among these notable negotiations, the Uruguay Round⁹, spanning from 1987 to 1994, stands out as a watershed moment.¹⁰ The conclusion of this round heralded the Marrakesh Agreement, a ground-breaking treaty that not only gave birth to the World Trade Organization but also rejuvenated the landscape of global trade governance.¹¹ While the WTO officially commenced its operations on January 1, 1995, its lineage can be traced back to almost half a century of international trade history.¹²

Throughout its existence, the WTO has played an indispensable role in driving economic growth across its 164 member nations. Its framework, meticulously planned to promote cooperation, equitable trade practices, and effective dispute resolution. It has emerged as the bedrock of global commerce.¹³ The WTO serves as a demonstration to the potential of international collaboration and shared economic objectives, illuminating the path to prosperity for nations worldwide.

⁸ Ibid

⁹ The Uruguay Round Agreement: - “The intent of the Negotiation in Uruguay was to tighten subsidies rules against its misuse by government. Traditionally the concern of negotiations has generally been liberalization of trade but Uruguay Round went beyond that. It addresses the disciplines and rules in the world of the trading system. It also discusses new areas like trade in services, trade-related investment measures (TRIMs) trade-related intellectual property rights (TRIPs) ” “WTO | Understanding the WTO - The Uruguay Round.” Accessed Sep. 11, 2023. https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm.

¹⁰ “Introduction - International Trade Law Research Guide - Guides at Georgetown Law Library,” accessed Sept 11, 2024, <https://guides.ll.georgetown.edu/c.php?g=363556&p=4108235>.

¹¹ Ibid

¹² “WTO | Understanding the WTO - Anti-Dumping, Subsidies, Safeguards.” Accessed 11 September 2023. https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.

¹³ Ibid

Getting Eye-to-Eye with Subsidies: Exploring the Subsidies and its Linkage with WTO

Government subsidies have a long and varied history across nations, evolving into a crucial tool for supporting industries and advancing public interests over time. This exploration of the development of subsidies sheds light on their historical significance and their relevance in the contemporary world, while also highlighting potential drawbacks.

The historical significance can be perceived from Kautilya's Arthashastra which advises the king to initiate public projects such as creating irrigation waterways and building forts around major strategic holdings and towns and exempt taxes on those affected in times and areas devastated by famine, epidemic, and such acts of nature, or by war.¹⁴ The Arthashastra also states that taxes should only be collected from ripened economic activity and should not be collected from early, unripe stages of economic activity.¹⁵

These principles, rooted in historical Indian governance and economic thought, emphasize the significance of maintaining a balanced and equitable approach towards taxation and subsidies. They serve as a reminder that the idea of subsidies has been subjected to debated and refined over centuries, with a primary focus on fostering economic stability, social equity, and responsible governance.

Perhaps no testimonial has been more often quoted to summarise the frustration researchers feel whenever they try to pin down the concept of a subsidy than that of Hendrik S. Houthakker¹⁶:

“My own starting point was also an attempt to define subsidies. But in the course of doing so, I came to the conclusion that the concept of a subsidy is just too elusive”.¹⁷

¹⁴ Joseph J. (Joseph John) Spengler, *Indian Economic Thought* (Durham, N.C., Duke University Press, 1971), <http://archive.org/details/indianeconomict01spen>.

¹⁵ Ibid

¹⁶ OECD workshop on Environmentally Harmful Subsidies. Accessed Sep. 10, 2023. <https://www.oecd.org/site/agrehs/35218605.pdf>

¹⁷ Ibid

The Phases of Evolution of Subsidies

Early subsidies: the earliest subsidies arisen as governments sought to bolster the arts, sciences, humanities, and religion.¹⁸ These subsidies were deemed essential due to the limitations of private economies in supporting these vital functions in line with public policy objectives. This laid the foundation for government-directed support for the collective good.¹⁹

Mercantilist Period²⁰: Post Industrial Revolution, the mercantilist era witnessed extensive government use of subsidies to foster national interests.²¹ These subsidies were strategically exercised to strengthen industries and trade, contributing significantly to economic dominance on the global stage.²²

Industrial Revolution²³: The Industrial Revolution marked a significant turning point in subsidy history.²⁴ Governments began using subsidies to support various sectors, including transportation, housing, agriculture, and mining.²⁵ The justification was often the belief that maintaining or expanding these industries, even at some cost to the general public, served the broader public interest.²⁶ Subsidies have a long history in almost all

¹⁸ Britannica Money. Accessed Sep. 11, 2023.

<https://www.britannica.com/money/topic/subsidy>.

¹⁹ Ibid

²⁰ “Mercantilism (16th to 18th century) was based on the principle that the world's wealth was static, and consequently, governments had to regulate trade to build their wealth and national power.” “What Is Mercantilism?,” accessed Sept. 11, 2023. <https://www.investopedia.com/terms/m/mercantilism.asp>.

²¹ Supra note 18

²² Ibid

²³ “The Industrial Revolution was a period of major change and innovation that began in Great Britain during the mid-18th century and early 19th century and later spread throughout much of the world. It was a period of global transition of human economy towards more efficient and stable manufacturing processes that succeeded the Agricultural Revolution.” “Industrial Revolution | Definition, History, Dates, Summary, & Facts | Britannica,” Accessed Sep. 11, 2023. <https://www.britannica.com/event/Industrial-Revolution>.

²⁴ Supra note 18

²⁵ Ibid

²⁶ Ibid

nations. They were widely employed by the government preceding the Industrial Revolution.

In the modern landscape, subsidies continue to play a pivotal role in government policies. They come in various forms, including direct cash payments and tax incentives, benefiting both individuals and groups within society.²⁷ Governments employ subsidies for numerous reasons, including stimulating economic growth, achieving political objectives, and the facilitation of socioeconomic development.²⁸ Nevertheless, it is crucial to acknowledge the unintended consequences of subsidies. Even when initiated with the noblest of intentions, subsidies can inadvertently enhance the profits of their beneficiaries, creating incentives for persistent lobbying efforts aimed at retaining these subsidies, even when their original purpose may no longer be relevant or beneficial.

Shaping Subsidy Regulations

The subsidies as a concept did not arise overnight; rather, it evolved through numerous negotiations and conferences over time. Post-World War II²⁹, the significance of subsidies became increasingly apparent. Members of the World Trade Organization (WTO) and the General Agreement on Tariffs and Trade (GATT) engaged in a series of negotiations to establish a unified understanding of subsidies and to express their views on improving subsidy discipline.³⁰ Given that the WTO primarily focuses on trade, subsidies within the WTO context are trade-oriented and competition-oriented, rather than following general economic principles.³¹ (Distinguishing the subsidies in Gatt 1947 and 1994)

²⁷ Ibid

²⁸ Mahantesh G S, “Social and Economic Justice under Constitution of India: A Critical Analysis,” IJLMH. February, 2022, 2581–5369..

²⁹“WTO | Subsidies and Countervailing Measures Overview,” accessed Sept. 11, 2023, https://www.wto.org/english/tratop_e/scm_e/subs_e.htm.

³⁰ “WTO | Pre-WTO Legal Texts,” accessed Sept. 11, 2023.

https://www.wto.org/english/docs_e/legal_e/prewto_legal_e.htm.

³¹ Ibid.

*GATT Article XVI*³²: The foundational rules concerning subsidies were incorporated into Article XVI of the GATT. This article, derived from the Havana Charter, is considered the first multilateral discipline on subsidies. Article XVI of the GATT states:

"If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. In any case in which it is determined that serious prejudice to the interests of any other contracting party is caused or threatened by any such subsidization, the contracting party granting the subsidy shall, upon request, discuss with the other contracting party or parties concerned, or with the CONTRACTING PARTIES, the possibility of limiting the subsidization."

It is argued that these provisions are rather loose. Paragraph 1 of Article XVI requires GATT members providing subsidies, including price support or income support, with both direct and indirect implications on increasing exports or reducing imports, to notify GATT. They should also be prepared to limit the excessive use of subsidies if they significantly harm the interests of other GATT members.³³ However, there is no outright prohibition on subsidies in this framework.³⁴

Furthermore, these rules were considered too general in nature, prompting a modification in the form of Section B to Article XIV titled "Additional Provisions on Export Subsidy" during the 1955 Review Session of GATT. This modification aimed to distinguish between primary and non-primary products.³⁵

³² General Agreement on Tariffs and Trade (GATT). Article XVI: Subsidies, 1947.

³³ "WTO | Negotiating Group on Rules," accessed July 25, 2024, https://www.wto.org/english/tratop_e/rulesneg_e/rulesneg_e.htm.

³⁴ Ibid

³⁵ World Trade Organization, Agreement on Subsidies and Countervailing Measures. Accessed 11 Sept. 2023.

Tokyo Round Agreement: Following the GATT rules and the 1955 modification, the next significant milestone was the Tokyo Round, also known as the "Subsidy Code". This code applied only to members who signed it.³⁶ The Subsidies Agreement established a Committee on Subsidies and Countervailing Measures (WTO Subsidies Committee), which is composed of representatives of each WTO member country.³⁷ The WTO Subsidies Committee meets not less than twice a year and gives members the opportunity to consult on any matters relating to the operation of the Subsidies Agreement and the advancement of its objectives³⁸

The Uruguay Round Agreement: The Uruguay Round negotiations aimed to tighten subsidy rules against potential misuse by governments.³⁹ Traditionally, trade negotiations focused on liberalizing trade, but the Uruguay Round went beyond that. It addressed disciplines and rules within the global trading system, while also delving into new areas such as trade in services, trade-related investment measures (TRIMs)⁴⁰, and trade-related intellectual property rights (TRIPs)^{41, 42}

The main rules regarding individual subsidies in the WTO are contained in the Agreement on Subsidies and Countervailing Measures (the "SCM Agreement" or "ASCM") adopted in 1995, which forms an integral part of the WTO system and binds all its members.⁴³

https://www.wto.org/gatt_docs/English/SULPDF/91860178.pdf

³⁶ "Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade," (Document code LT/TR/A/3).

³⁷ 279, "Trade Guide: WTO Subsidies," accessed Sept 12, 2023, <https://www.trade.gov/trade-guide-wto-subsidies>.

³⁸ Ibid

³⁹ "WTO | Understanding the WTO - The Uruguay Round," accessed Sept 12, 2023, https://www.wto.org/english/thewto_e/whatis_e/tif_e/fact5_e.htm.

⁴⁰ Ibid

⁴¹ "WTO | Intellectual Property (TRIPS) - Gateway," accessed Sept 12, 2023, https://www.wto.org/english/tratop_e/trips_e/trips_e.htm.

⁴² El-Naggar, Said. 1992. The General Agreement on Tariffs and Trade, In The Multilateral Trading System and the Uruguay Round of Trade Negotiations: An Arab Perspective.

<https://www.elibrary.imf.org/display/book/9781557753052/C5.xml>

⁴³ Rajesh Aggarwal, "WTO - Agreement on Subsidies and Countervailing Measures (SCM)" (International Trade Center, n.d.),

Subsidies and Global Trade: The WTO's Regulatory Framework

WTO assumes a pivotal role in addressing and regulating the intricate realm of subsidies, characterized by financial or other forms of support that governments extend to their domestic producers and exporters.⁴⁴ This financial lifeline, though intended to bolster domestic industries, can significantly impact international trade dynamics.⁴⁵ To govern and bring transparency to this complex landscape, the WTO has in place the Agreement on Subsidies and Countervailing Measures (SCM)⁴⁶ comprising rules regarding the grant and subsequent use of subsidies and the measures that can be employed by member nations to counteract their adverse consequences.⁴⁷

At the core of the SCM Agreement lies a crucial definition: a subsidy is identified as a financial contribution granted by a government or any public body within a member country's territorial jurisdiction, conferring a specific benefit.⁴⁸ This definition serves as the cornerstone for understanding and categorizing subsidies within the WTO framework, offering a clear delineation of what constitutes a subsidy, thereby enabling effective monitoring and regulation.⁴⁹

Importantly, the SCM Agreement bestows member countries with the authority to leverage the WTO's robust dispute-settlement mechanism in their pursuit of addressing issues surrounding the grant and subsequent use

[https://www.unescap.org/sites/default/files/Third%20Technical%20Workshop%20on%20Afghanistan's%20Accession%20to%20the%20World%20Trade%20Agreement%20-%20WTO%20Agreement%20on%20Subsidies%20and%20Countervailing%20Measures%20\(ASCM\)%20by%20Mr.%20Rajesh%20Aggarwal.pdf](https://www.unescap.org/sites/default/files/Third%20Technical%20Workshop%20on%20Afghanistan's%20Accession%20to%20the%20World%20Trade%20Agreement%20-%20WTO%20Agreement%20on%20Subsidies%20and%20Countervailing%20Measures%20(ASCM)%20by%20Mr.%20Rajesh%20Aggarwal.pdf).

⁴⁴ “WTO | Understanding the WTO - Anti-Dumping, Subsidies, Safeguards: Contingencies, Etc,” accessed Sept 12, 2023,

https://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm8_e.htm.

⁴⁵ Ibid

⁴⁶ Agreement on Subsidies and Countervailing Measures. January 1, 1995. Accessed July 20, 2023. https://www.wto.org/english/docs_e/legal_e/24-scm.pdf.

⁴⁷ “WTO | Subsidies and Countervailing Measures - Gateway,” accessed Sep 13, 2023, https://www.wto.org/english/tratop_e/scm_e/scm_e.htm.

⁴⁸ Ibid

⁴⁹ Ibid

of subsidies.⁵⁰ This recourse empowers nations to either seek the withdrawal of the subsidy in question or advocate for the elimination of its detrimental effects on the global trade landscape.⁵¹ This mechanism underscores the WTO's commitment to ensuring a level playing field in international trade by holding countries accountable for adhering to subsidy-related regulations.⁵²

Articles 3 to 9 of the SCM (Subsidies and Countervailing Measures) Agreement further classify subsidies into different categories based on their potential to distort trade.

1. **Prohibited (Red Light) Subsidy:** These subsidies are strictly prohibited under all circumstances. They are considered harmful to fair trade practices and are not allowed.⁵³
2. **Actionable (Yellow and Dark Amber) Subsidy:** These subsidies are permitted but may be subject to action through multilateral dispute settlement or countervailing measures. They are closely monitored due to their potential to distort trade.⁵⁴
3. **Non-actionable (Green Light) Subsidy:** These subsidies are permitted and shielded from action. They are considered non-distortive and cause minimal trade distortion, so they are allowed under the SCM Agreement.⁵⁵ Non-specific subsidies fall into the category of green-light subsidies. -Green-light subsidies are not subject to countervailing measures.⁵⁶

In addition to these classifications, the Subsidies Agreement has established the Committee on Subsidies and Countervailing Measures, often referred to

⁵⁰ Ibid

⁵¹ Supra note 44

⁵² Ibid

⁵³ “Trade Guide: WTO Subsidies,” accessed Sept, 2023,
<https://www.trade.gov/trade-guide-wto-subsidies>.

⁵⁴ Ibid

⁵⁵ U.S. Department of Commerce. *Report to the Congress: Review and Operation of the WTO Subsidies Agreement*. June 1999.

<https://enforcement.trade.gov/esel/reports/scm0699/scm-0699.htm>

⁵⁶ “White Paper on International Economy and Trade 2021: Chapter 6” (Ministry of Economy, Trade and Industry, Japan, 2021),
<https://www.meti.go.jp/english/report/downloadfiles/gCT0006e.pdf>.

as the WTO Subsidies Committee.⁵⁷ Comprising representatives from each member country, this committee serves as a forum for deliberation, collaboration, and policy development related to subsidies.⁵⁸ It acts as a vital platform where member countries can engage in constructive dialogue, share insights, and collectively address the multifaceted challenges posed by subsidies in the global trade arena.⁵⁹

The Delicate Art of Economic Policy: Balancing Trade-Offs through Subsidies

Economic policy-making in the sector of governance is not a neat science. It involves a delicate art, which includes balancing trade-offs⁶⁰ in such a manner that social wellbeing is enhanced.⁶¹ Subsidies as a concept is based on the allocative power of governments. They are market interventions, used for by-passing the market system in distribution of resources in order to enhance welfare and economic justice.⁶²

When the government gives a product a subsidy, it merely means that it shares some of the cost. As an illustration, the government might provide farmers with a subsidy of Rs. 10 per kilogram of potatoes. The result is a rightward shift in the supply curve, which lowers the price and increases the amount required.

⁵⁷ “Trade Guide: WTO Subsidies,” accessed July 25, 2024, <https://www.trade.gov/trade-guide-wto-subsidies>.

⁵⁸ Ibid

⁵⁹ Ibid

⁶⁰ Trade-offs: a balancing of factors all of which are not attainable at the same time

⁶¹ “WTO | The History of Multilateral Trading System,” accessed Sept 13, 2023, https://www.wto.org/english/thewto_e/history_e/history_e.htm.

⁶² Ibid

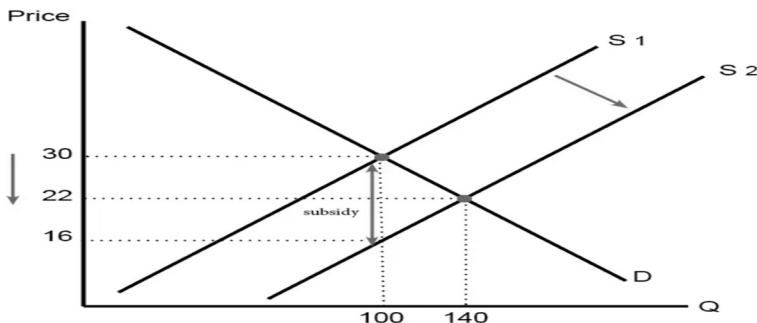


Fig 1.1

In the graph above when the government provides subsidy there is a shift in the supply curve, i.e. from S_1 to S_2 . According to Law of Supply when there is an increase in the supply of the product there is a reduction in the market price. Later when Law of Demand is applied i.e. a decrease in the price leads to an increase in quantity demanded.⁶³

Subsidies can have a significant impact on international trade flows. In fact, according to the WTO 2006 World Trade Report, the total amount of subsidies was estimated to be approximately 4% of the world's GDP in 2006.⁶⁴ This substantial figure underscores the importance of understanding and monitoring subsidies in the context of global trade.

Fig. 1.2, which provides an estimate of the global scale of subsidies, offers a 'best guess' perspective on the subsidy landscape. However, it's crucial to bear in mind that this landscape is rapidly evolving. Developing and transitional economies, in particular, are actively reducing subsidies as they aim to adopt a more open stance in the global competitive arena.⁶⁵ It is important to acknowledge that estimating subsidies can be challenging due

⁶³ Ibid

⁶⁴ World Trade Organisation, World Trade Report 2006: Exploring the links between subsidies, trade and the WTO, p. 45.

⁶⁵ "1. THE NATURE OF SUBSIDIES," accessed Sept. 13, 2023.
<https://www.fao.org/4/Y4647E/y4647e05.htm>.

to inconsistencies in information sources.⁶⁶ Consequently, some sectors that receive subsidies may not receive comprehensive analysis. Nonetheless, Table 1 serves as a valuable tool for gaining insights into the evolving subsidy landscape and the substantial changes taking place in economies worldwide, especially in the context of their impact on international trade.

<i>Sector</i>	<i>OECD</i>	<i>Non-OECD</i>	<i>World</i>
<i>Water</i>			
Irrigation	2	20	22
Supply	—	28	28
Sanitation	—	5	5
Total Water	(2)	(53)	(55)
<i>Energy</i>			
Coal			
Oil/products	10	62	72
Gas			
Electricity*			
Nuclear	9–14	—	9–14
Total energy	(19–24)	(62)	(81–86)
<i>Agriculture</i>			
Transfers	362	36	398
Fertiliser	—	>0	>0
Pesticides	—	—	—
Total agriculture	(362)	(36)	(398)
<i>Fisheries</i>	—	—	14–21
<i>Forestry</i>	—	—	—
<i>Transport</i>	55–174 (USA) 52 (Japan, Germany, UK)	—	107–226
<i>Total</i>	490–614 +	151+	655–786

Fig 1.2 Estimates of World Subsidies

Sources: Water: Xie (1996); Energy: World Bank (1997a); OECD (1996, 1998); Fisheries: Milazzo (1998); UNEP (1997); Transport: OECD (1998); Agriculture: World Bank (1997a); OECD (1999).

(U.N. Dep't of Econ. and Soc. Affairs, The WTO and Sustainable Development: An Overview,

https://www.un.org/esa/dsd/resources/res_pdfs/publications/sdt_fin/nairobi_meeting_part3.pdf

⁶⁶ David Pearce and Donata Finckenstein, “ADVANCING SUBSIDY REFORM: TOWARDS A VIABLE POLICY PACKAGE” (U.N. Dep't of Econ. and Soc. Affairs, n.d.), https://www.un.org/esa/dsd/resources/res_pdfs/publications/sdt_fin/nairobi_meeting_part3.pdf.

The Hidden Costs of Good Intentions: Unintended Outcomes of Subsidies

It's crucial to acknowledge the unintended consequences of subsidies. Even when established with good intentions, subsidies can inadvertently boost the profits of beneficiaries, creating incentives for persistent lobbying to maintain them, even when their necessity or usefulness diminishes.⁶⁷ Subsidies, often implemented with good intentions, can lead to unintended consequences that have far-reaching impacts on both economic and social fronts. Here are some examples of these unintended consequences:

1. **Environmental Degradation:** One of the frequently observed unintended consequences of subsidies is environmental degradation. In some cases, subsidies designed to support certain industries or practices can inadvertently lead to environmental harm.⁶⁸ This occurs when subsidies incentivize activities that are unsustainable or environmentally harmful, failing to align with broader goals of ecological preservation. Consequently, these subsidies not only fail to achieve social and economic objectives but also contribute to environmental damage.⁶⁹ For example, the Solwatt⁷⁰ success had two unintended consequences, the financial cost of the supporting scheme quickly rose to represent a huge burden for the environment.⁷¹
2. **Distortion of Markets:** Subsidies can distort markets by artificially altering the cost structures of goods or services. Such distortions can prevent markets from reaching efficient outcomes and divert resources away from more productive uses to less productive ones.⁷²

⁶⁷ HALL, RICHARD L., and ALAN V. DEARDORFF. (2006). "Lobbying as Legislative Subsidy." *American Political Science Review* 100, no. 1, 69–84.
<https://doi.org/10.1017/S0003055406062010>.

⁶⁸ Roger Cowe, "Why Farm Subsidies Don't Always Achieve the Results Intended," *The Guardian*, Sept 13, 2012. Sec. Guardian Sustainable Business, <https://www.theguardian.com/sustainable-business/farm-subsidies-unintended-consequences>.

⁶⁹ Ibid

⁷⁰ Solwatt, <https://www.solwatt.in/> (last visited Sep. 11, 2023).

⁷¹ Supra note 67

⁷² "Subsidies: Definition, How They Work, Pros and Cons," Investopedia, accessed Sept 13, 2023, <https://www.investopedia.com/terms/s/subsidy.asp>.

Economists who advocate for free markets often express concerns about subsidies due to their potential to disrupt the natural supply and demand dynamics.⁷³

3. **Lobbying for Continuance:** Even when subsidies are initially established with good intentions, they can inadvertently boost the profits of the recipients.⁷⁴ This financial benefit creates an incentive for these beneficiaries to lobby for the continuation of the subsidy, even after its original purpose is no longer relevant or necessary.⁷⁵ This ongoing lobbying can entrench subsidies and allow political and business interests to develop a mutual dependence, potentially undermining the broader public interest.⁷⁶
4. **Financial Burden:** Subsidies can place a significant financial burden on government budgets.⁷⁷ For instance, fuel price subsidies in Nigeria and certain countries have proven to be particularly costly for government finances.⁷⁸ Over time, these subsidies can strain public resources, limiting the government's ability to allocate funds to other essential services and programs.⁷⁹
5. **Undesirable Distributive Effects:** Government subsidies can lead to undesirable distributive effects within society.⁸⁰ These effects mean that the benefits of subsidy programs often disproportionately

⁷³ Ibid

⁷⁴ Richard L. Hall and Alan V. Deardorff, 2006) "Lobbying as Legislative Subsidy," *American Political Science Review* 100, no. 1: 69–84, <https://doi.org/10.1017/S0003055406062010>.

⁷⁵ Ibid

⁷⁶ Ibid

⁷⁷ "Unintended Consequences in: IMF Working Papers Volume 2016 Issue 017 (2016)," accessed July 25, 2024, [https://www.elibrary.imf.org/configurable/content/journals\\$002f001\\$002f2016\\$002f017\\$002farticle-A001-en.xml?t:ac=journals%24002f001%24002f2016%24002f017%24002farticle-A001-en.xml](https://www.elibrary.imf.org/configurable/content/journals$002f001$002f2016$002f017$002farticle-A001-en.xml?t:ac=journals%24002f001%24002f2016%24002f017%24002farticle-A001-en.xml).

⁷⁸ Ibid

⁷⁹ Ibid

⁸⁰ "The Unintended Effects of Government-Subsidized Weather Insurance," Cato Institute, September 13, 2023, <https://www.cato.org/regulation/fall-2015/unintended-effects-government-subsidized-weather-insurance>.

favour certain segments of the population or specific industries, potentially exacerbating income inequality and social disparities.⁸¹

A thoughtful and evidence-based approach to subsidy design and evaluation is necessary to mitigate these unintended consequences and ensure that subsidies serve their intended purposes effectively while avoiding adverse outcomes.

The WTO's Role in Mitigating Subsidy Consequences: Crafting a Fairer Trade Landscape

“A basic economic principle is that any policy that is good for society as a whole can be made to be good for everyone in society, even if the policy creates winners and losers. It requires only that the winners be taxed just a bit to compensate the losers—and everyone is better off.”⁸²

The World Trade Organization (WTO) has been actively engaged in addressing the unintended consequences of subsidies. One significant area of focus has been the negotiation of rules aimed at curbing harmful fisheries subsidies that contribute to overfishing and the depletion of fish stocks.⁸³ The overarching goal is to achieve an agreement that prohibits subsidies leading to overfishing.⁸⁴

Furthermore, the WTO has undertaken efforts to reform subsidy regimes that have the potential to hinder the prospects for sustainable development.⁸⁵ Recognizing the complexity of subsidy reform, the organization acknowledges that merely advocating for the removal of subsidies may not yield successful outcomes.⁸⁶ Instead, the organization is diligently working on crafting a comprehensive policy package.⁸⁷ This package encompasses not only

⁸¹ Ibid

⁸² “The Political Economy of Economic Policy - IMF F&D,” accessed Sept 14, 2023, <https://www.imf.org/en/Publications/fandd/issues/2020/06/political-economy-of-economic-policy-jeff-frieden>.

⁸³ “How to Sustainably Manage Wild Fisheries,” accessed Sept 14, 2023, <https://news.stanford.edu/stories/2022/01/sustainably-manage-wild-fisheries>.

⁸⁴ Ibid

⁸⁵ Supra note 66.

⁸⁶ Ibid

⁸⁷ Ibid

subsidy reform but also trade liberalization and capacity-building initiatives designed to support developing countries.⁸⁸

Through these concerted efforts, the WTO is actively addressing the unintended consequences of subsidies. The overarching objective is to ensure that subsidies are utilized in a manner that aligns with the principles of sustainable development and provides equitable benefits to all nations.

Conclusion

In conclusion, the interlink between the World Trade Organization (WTO) and subsidies is a critical aspect of global economic governance. The challenges posed by subsidies; WTO has taken proactive measures to counter their unintended negative consequences. Recognizing the potential adverse impacts of subsidies on global markets, the environment, and government finances, the WTO has embarked on a mission to address these issues comprehensively.

One significant area of concern is the disruptive effect of subsidies, particularly in sectors like fisheries. Harmful fisheries subsidies have been identified as a significant contributor to overfishing and the depletion of vital fish stocks, endangering marine ecosystems and sustainable fishing practices.⁸⁹ To tackle this pressing issue, the WTO has initiated negotiations with the goal of establishing rules that will effectively limit and, ultimately, prohibit subsidies linked to overfishing.⁹⁰ This initiative aims to promote responsible and sustainable practices within the fishing industry, fostering a healthier environment and a more secure food supply.

Furthermore, the WTO has recognized the imperative of reforming subsidy regimes that can impede the prospects for sustainable development. Acknowledging the intricacies of this task, the organization is actively crafting a comprehensive policy package.⁹¹ This package not only encompasses

⁸⁸ Ibid

⁸⁹ Andrés M. Cisneros-Montemayor et al., “Changing the Narrative on Fisheries Subsidies Reform: Enabling Transitions to Achieve SDG 14.6 and Beyond,” *Marine Policy* 117 (July 2020) , <https://doi.org/10.1016/j.marpol.2020.103970>.

⁹⁰ Ibid

⁹¹ Supra note 66.

subsidy reform but also includes measures to promote trade liberalization and capacity-building initiatives, particularly aimed at supporting developing nations. By addressing these issues holistically, the WTO aspires to create a trading environment that is both equitable and sustainable, benefiting nations across the spectrum of development.

At its core, the WTO is dedicated to ensuring that subsidies are deployed in a manner that aligns with the principles of sustainable development, offering fair and equitable advantages to all member countries.⁹² Embracing a wide range of sectors within its purview, the WTO's rules are designed to deter the regressive policies that can undermine progress. In essence, the WTO's endeavours to counteract the unintended consequences of subsidies represent a pivotal role in fostering responsible and sustainable global trade practices that yield benefits for the entire international community.⁹³

In light of these considerations, it is imperative for member countries to continue working collaboratively within the WTO framework to further refine subsidy regulations, monitor their implementation, and ensure that they align with the overarching goals of sustainability and equitable development. Additionally, it is essential for nations to adopt a forward-looking approach, one that recognizes the evolving nature of global trade and the need for adaptive policy responses.

As a parting thought, the development of a 'National Fisheries Policy' is essential for individual countries, including India, to align their domestic strategies with international commitments and promote responsible fisheries practices. Such policies should encompass not only the regulation of subsidies but also the sustainable management of fisheries resources, the prevention of illegal, unreported, and unregulated fishing, and the conservation of overfished stocks. By doing so, nations can contribute to the broader global effort to ensure the long-term health of our oceans and the well-being of future generations.

⁹² “WTO | Encourage Good Governance,” accessed Sept 14, 2023, https://www.wto.org/english/thewto_e/whatis_e/10thi_e/10thi05_e.htm.

⁹³ Ibid

CHAPTER 2

THE FISHERIES SUBSIDIES AGREEMENT: A CRITICAL INQUIRY INTO FISHERIES NEGOTIATIONS; THE FINAL TEXT AND THE SALIENT FEATURES

DISHAA M. DAND

Introduction

“Every river and waterside of our realm, large and small, yields nothing due to the evil of fishers and the devices of their contriving”

—King Philip IV of France in 1289

Fisheries and aquaculture play a pivotal role in providing sustenance and livelihoods to a significant global population, encompassing several hundred million individuals¹. According to estimates, the sector employed approximately 58.5 million people in 2020². Moreover, the dietary contributions from fisheries and aquaculture provide for about 17 percent of animal proteins and 7 percent of overall proteins consumed worldwide³. The reliance on aquatic food sources has seen a consistent upward trend from 1961 to 2019, with an average annual growth rate of 3 percent⁴.

However, today, marine ecosystems have been pushed to the brink of collapse due to prolonged and unsustainable exploitation. According to data provided by the Food and Agriculture Organization (FAO) on the status of

¹ FAO. 2016. *The State of World Fisheries and Aquaculture 2016: Contributing to Food Security and Nutrition for All*. Rome.

² FAO. 2022. *The State of World Fisheries and Aquaculture 2022: Towards Blue Transformation*. Rome: FAO. <https://doi.org/10.4060/cc0461en>.

³ *Id*

⁴ *Id*

fisheries resources, 57.3% of the fished stock has been maximally sustainably fished as of 2019⁵. Additionally, an analysis of trends reveals a gradual decline in under-fished stocks from the 1970s to 2019⁶. As of 2019, more than 25% of the global fisheries stocks are deemed overfished⁷. This designation signifies a critical depletion of fish populations. Most marine systems that have been deemed ‘vulnerable’ have reached the point due to centuries of overfishing⁸.

Overfishing brings with itself a cascade of detrimental consequences in the global food ecosystem⁹, leading to regime shifts¹⁰ and disruption of food chains that sustain both, humans and animals¹¹. Moreover, overfishing affects the adaptability of fish¹², impeding their ability to reproduce at a rate that surpasses their exploitation, ultimately driving them towards extinction. Wiping out of an essential source of food and livelihood on a global scale would have profound consequences on food security.

The phenomenon can be attributed to a range of causal factors but fisheries subsidies have emerged as one of the most prominent contributors to the problem of overfishing. Globally, an extensive number of subsidies to the fisheries sector are in place, many of which have been identified as

⁵ “The Status of Fishery Resources,” accessed July 07, 2023, <https://openknowledge.fao.org/server/api/core/bitstreams/9df19f53-b931-4d04-acd3-58a71c6b1a5b/content/sofia/2022/status-of-fishery-resources.html>.

⁶ *Id*

⁷ *Id*

⁸ Wiebren Boonstra and Henrik Österblom, “A Chain of Fools: Or, Why It Is so Hard to Stop Overfishing,” *Maritime Studies* 13 (December 1, 2014), <https://doi.org/10.1186/s40152-014-0015-4>.)

⁹ U. Rashid Sumaila et al., “Benefits of the Paris Agreement to Ocean Life, Economies, and People,” *Science Advances* 5, no. 2 (February 2019): eaau3855, <https://doi.org/10.1126/sciadv.aau3855>.

¹⁰ Daskalov, Georgi M., Alexander N. Grishin, Sergei Rodionov, and Vesselina Mihneva. “Trophic cascades triggered by overfishing reveal possible mechanisms of ecosystem regime shifts.” *Proceedings of the National Academy of Sciences* 104, no. 25 (2007): 10518-10523.

¹¹ “Agriculture and Fisheries | OECD,” accessed July 3, 2023, <https://www.oecd.org/en/topics/agriculture-and-fisheries.html>.

¹² U. Rashid Sumaila and Travis C. Tai, “End Overfishing and Increase the Resilience of the Ocean to Climate Change,” *Frontiers in Marine Science* 7 (July 15, 2020), <https://doi.org/10.3389/fmars.2020.00523>.