

МИРОВАЯ ЭКОНОМИКА И МЕЖДУНАРОДНЫЕ ФИНАНСЫ

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International trade disputes related to fish products and Agreement on Fisheries Subsidies: Key regulatory issues and litigation outlook

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Fish-related trade disputes dealt with by the World Trade Organization (WTO) arise from the complexity of the fisheries industry, and the transboundary nature of fish, combined with differing national policies and interests. The Agreement on Fisheries Subsidies (AFS) aims to strengthen the role of the WTO in regulating the fish trade and curbing unsustainable fishing practices such as illegal fishing, overcapacity, and overfishing by limiting excessive fisheries subsidies. This article reveals the legal framework of the WTO to regulate the fish trade and resolve trade disputes and outlines the prospects for fish trade in light of the Agreement on Fisheries Subsidies (AFS). It has been established that general principles, quantitative restrictions, and anti-dumping measures, rather than subsidies, are the most common legal issues in trade disputes on fish products. Technical trade barriers, sanitary and phytosanitary measures, and general national exemptions are also frequent sources of disputes in the fish trade. These measures, designed for safety, health, and environmental reasons, are increasingly used for protectionist purposes by creating trade barriers. The AFS expands the legal framework for resolving trade disputes in the field of fish trade after its ratification. However, this recent international regulation combined with climate change and tightening food standards, is expected to lead to more disputes with developing countries over the fish trade.

Keywords: World Trade Organization, international trade, fisheries and aquaculture products, trade disputes, Agreement on Fisheries Subsidies, trade barriers.

Introduction

Fish are both a food and a natural resource and, more importantly, preserve the marine ecosystem. According to FAO (Food and Agriculture Organization of the United Nations) statistics, total global fish production in 2018 was 179 million tons, of which 84.4 million tons came from marine catches, about half of the total. Freshwater catches and aquaculture production of 12 million tons and 82.1 million tons, respectively, reached record highs. In 2018, more than 156 million tons or about 88 % of all fish products were used for direct human consumption.

International trade is important to the marine fisheries and aquaculture sector and has grown rapidly in recent decades. From 1976 to 2018, the value of global exports of fish and fishery products grew by an average of 4 % per year in real terms. In 2018, 67 million tons of fish were traded on the international market, representing almost 38 % of all fish caught or farmed worldwide. Between 1976 and 2018, developing countries increased their share of the international fish trade from 38 to 54 % in the value of world exports and from 39 to 60 % in total trade (FAO, 2021).

Given the transboundary nature of fish, it is more effective to regulate fishing and trade in fish products at the international level, which is being done by a number of international organizations. In particular, FAO is developing guidelines for sustainable and responsible fisheries such as the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas and the Agreement to Promote Compliance with International Conservation and Management Measures by Fishing Vessels on the High Seas. The UNCTAD provides technical assistance and advice to member countries on trade policy issues related to fish and fishery products. The OECD conducts research and analysis on the economic, social and environmental impacts of the fish trade and provides policy advice and a platform for dialogue and cooperation among member countries on fisheries issues. Finally, Regional Fisheries Management Organizations (RFMOs) are responsible for managing fisheries in certain regions, overseeing fishing activities and enforcing requirements.

The WTO plays a unique role in regulating the fish trade as the only international organization with the function to make and enforce trade rules and resolve disputes between member countries. In addition to the GATT (General Agreement on Tariffs and Trade), two documents signed within the organization, the Agreement on Technical Barriers to Trade (TBT Agreement) and the Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement), specifically provide for a framework for trade in fish and fishery products in the WTO regarding the differences between these product categories and other commodities. The WTO Dispute Settlement Mechanism serves as a forum for resolving disputes related to fish trade between member countries and has been in demand since the organization's inception. In practice, subsidies are rarely contested in fish disputes, which are resolved through the WTO's dispute settlement mechanism. While it has long been known that increased subsidies to the fishing industry distort trade and threaten fish stocks, the WTO has been unable to address this problem. In essence, the WTO agreements focus on competitiveness, that is, WTO law is aimed at promoting free and fair trade, but does not regulate issues of environment and sustainable development. The WTO legal framework was further strengthened with the signing of the Agreement on Fisheries Subsidies in June 2022 to reduce

harmful subsidies that contribute to overfishing, overcapacity and illegal, unreported and unregulated (IUU) fishing in the fishing industry. The entry into force of Agreement on Fisheries Subsidies (AFS) is expected to encourage countries to make greater use of the dispute settlement mechanism to resolve disputes, including those related to catch quotas, import restrictions and subsidies.

This article reveals the legal framework of the WTO to regulate the fish trade and resolve trade disputes, and outlines the prospects for fish trade in the light of the Agreement on Fisheries Subsidies (AFS). It has been established that general principles, quantitative restrictions and anti-dumping measures, rather than subsidies, are the most common legal issues in trade disputes on fish products. Conflicts in the fish trade often arise from technical trade restrictions, sanitary, phytosanitary regulations, and general national exemptions. These policies, created for environmental, health and safety reasons, are increasingly being used to discourage trade for protectionist purposes. The AFS is expanding the legal framework for resolving trade disputes in the area of the fish trade after its ratification. However, the Agreement, along with climate change and tightening food standards, is expected to set the stage for an escalation of fish trade disputes with developing countries increasing their participation in the global fish trade.

Theory and literature

The institutionalist thesis states that order and stability can be established through international organizations and institutions. The function that, according to Robert Keohane, international institutions perform is, in simple terms, to reduce the cost of legitimate transactions while increasing the cost of illegitimate ones and to reduce uncertainty (Keohane, 2005). In other words, set rules ex-ante, promote compliance in the interim, and solve problems ex-post. On trade, the WTO has developed multilateral rules to support trade liberalization, including lowering tariffs and removing non-tariff barriers that guide members' actions. The functioning of the Dispute Settlement Body can reduce transaction costs between countries and contribute to the efficient resolution of trade disputes. Pursuing national economic interests through trade, the WTO is forcing countries to gradually create a common international system, on which their further growth and development increasingly depends (WTO, 2015, p. 9). One of the motives for countries to join the WTO is the existence of a mechanism for resolving trade disputes that arise between members on the basis of uniform rules for all parties, regardless of political influence or economic level. One of the pillars of the WTO's dispute resolution mechanism has been undermined by the inaction of the Appellate Body since December 2019. Whether there is a successful reform of the dispute settlement system or whether the Multilateral Interim Arbitration Appeal Agreement (MPIA) is used instead of appealing to the defunct Appellate Body, it is generally accepted that the mechanism that resolves trade disputes makes the WTO outstanding.

Most of the previous scholarly articles on trade disputes have looked at cases as a context, focusing on the interpretation and logic of Panel reports and Appellate Body reports to clarify dispute resolution and the application of certain WTO laws. Wiers (Wiers, 2001) took the US-Tuna and the US-Shrimp as case studies to explore the relationship between WTO rules and trade restrictive measures based on environmental production and processing measures. Petrenko (Petrenko, 2017) analyzed the US-Tuna I & II and US-Shrimp disputes and suggested that the WTO provided additional legal instruments to respond to

other forms of international trade restrictions, although their effectiveness has yet to be tested in practice. Salles (Salles, 2014) introduced Chile-Swordfish and discussed forum shopping in international laws. Alferieva (Alferieva, 2013) examined the decisions on natural resource disputes under the WTO dispute settlement mechanism. Chinese scholars have researched the legal aspects of countervailing duties on warm water shrimp and analyzed the reasons for applying countervailing measures to Chinese agricultural products (Dai, 2014). China should learn to use WTO rules to effectively avoid trade barriers to fish exports (Zhang and Fang, 2013).

The theory of trade protectionism can be used to explain the motives for subsidizing fisheries. In a report to the US Congress in 1791, A. Hamilton focused on measures to support manufactories, including the introduction of import duties and surcharges, which embodies the idea of trade protection (Hamilton, 2022). According to Spencer, trade protection measures can increase the competitiveness of domestic industry and share in the world market. Krugman argues that governments should take action to protect their industries in certain cases, since free trade does not always lead to optimal results (Krugman, 1987). Certainly, not all subsidies to fisheries are motivated by protectionist considerations. The type of subsidy determines whether it will have a positive or negative impact on fisheries. Subsidies that create the necessary conditions for the sustainability of all types of fisheries are good subsidies, those that do not create such conditions, on the contrary, are bad. If the impact of subsidies on sustainability is context dependent, then it is ugly subsidies (Pauly, 2006). Similarly, Sumaila (2019) classified fisheries subsidies into three groups based on their potential impact, namely “capacity enhancing”, “beneficial” and “ambiguous”. “Capacity enhancing” subsidies include support for certain investments in ships and port infrastructure, as well as fuel subsidies. “Beneficial” subsidies are considered investments aimed at the conservation and management of fish resources. “Ambiguous” subsidies can either be beneficial or increase potential, depending on how they are implemented (Frederick, 2021). The SCM Agreement defines a subsidy as a financial contribution from a government or any public body under certain conditions, or as any form of income or price support that provides a benefit.

Despite establishing discipline on subsidies, the WTO SCM Agreement does not fully address the problems associated with fisheries subsidies, which not only distort trade but also undermine fisheries activities in other countries (Li, 2005). Namely, the development of fish resources has externalities. Whether external economies or external diseconomies, their regulation cannot rely on market mechanisms, but requires institutional intervention. Fish resources are a public good in terms of ownership. “Free ride” in the exploitation of fish resources is a natural choice of a rational economic man. Jiang and Yang (2019) technically defined fish stocks as “public property” as fish stocks are limited and countries compete for access to marine fish. The theory of externalities and public goods does a good job of explaining the reasons for fisheries subsidies and disputes, as well as the need to regulate fisheries subsidies through international rules. On the issue of the relationship between the WTO and fisheries subsidies, Bian (Bian, 2011) noted that while the WTO is neither an environmental nor a fisheries organization, it is the most appropriate place to discuss fisheries subsidies. Besides concerning with the removal of trade barriers and trade facilitation, environmental protection and sustainable development are also important goals of the WTO. Experts from the FAO, OECD and the World Bank supported the idea that it would be easier to negoti-

ate fisheries subsidies and eliminate subsidies for IUU fishing within the framework of the WTO (Ji and Han, 2020). However, given the loss of functionality of the Appellate Body, it remains to be seen how the WTO fisheries subsidy controversy will develop (Lennan and Switzer, 2023).

General profile of fish trade disputes

The dispute settlement mechanism, known as the “jewel in the crown” of the WTO, plays an important role in mitigating and eliminating global trade conflicts. A total of 607 requests for consultations, more than 479 panel reports, Appellate Body reports, and arbitral awards or regulations were circulated and submitted to the Dispute Settlement Body (hereinafter DSB) by WTO member countries between January 1, 1995, the date the WTO was established, and December 31, 2021. A total of 607 Requests for Consultation, more than 479 Panel Reports, Appellate Body Reports and Arbitral Decisions or Orders were circulated and submitted to the Dispute Settlement Body (DSB) by WTO member countries between January 1, 1995, the date the WTO was established, until December 31, 2021. Despite the standstill of the Appellate Body in the DSB since 2020, the active use of the WTO dispute resolution system by a wide range of both developed and developing country members testifies to its success (Bossche, 2013, p. 513).

The booming trade in fish and fish products is associated with a growing number of trade disputes being referred to the WTO. Of the 607 trade disputes filed with the WTO between 1995 and 2021, twenty-four cases involved fish and fish products (see Annex). Despite a small proportion of the total number of cases, disputes related to the fish trade deserve to be studied. The Figure illustrates the Agreement, provisions or trade measures cited by the complainant in a request for consultation that is cited in fish and fish products disputes. The identification of fishery products is based on HS Code Heading chapter 03, headings 05.09, 15.04, 16.03–16.05, and subheading 2301.20.2.

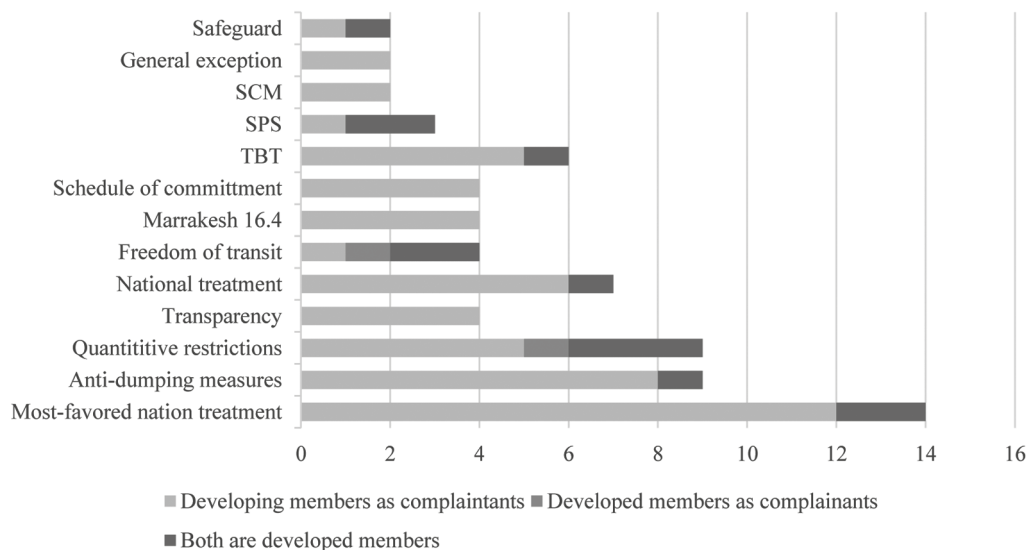


Figure. Agreement and provisions cited in fish and fish products disputes

Source: Author’s calculations based on data from the World Trade Organization.
 URL: <https://www.wto.org/> (accessed: 13.06.2023)

Most of the cases in fishery products have been brought by developing members against developed countries, such as the US-Tuna II (Mexico) (DS381) and the EC-Sardines (Peru) (DS231). Cases where both the complainant and the respondent are developed members are in the minority, such as the EU-Herring (Denmark) (DS469). The agreements cited in the request for consultation are mainly the General Agreement on Trade in Goods (Articles I, III, V, X, XI, XIII, XX, etc. of the GATT), followed by the Anti-Dumping Agreement, the Agreement establishing the WTO, Schedule of Concessions, TBT Agreement and SPS Agreement. These disputes are not related to fisheries subsidies and services. Trade issues most frequently raised in disputes over fish and fishery products include the principles of non-discrimination and, in particular, most favored nation treatment, followed by anti-dumping measures and quantitative restrictions. Articles I and III of the GATT are direct examples of the principle of non-discrimination, along with Article V:2, XIII:1 of the GATT, Article II:1 of the TBT Agreement and Article II:3 of the SPS Agreement.

3. Legal issues of fisheries trade disputes under the current WTO rules

3.1. Violation of the principle of non-discrimination prevails

Most Favored Nation Treatment (MFN) and national treatment are fundamental principles of WTO law aimed at achieving fair and non-discriminatory trade among member states. Not only in the fish trade, but also in many other trade conflicts, discrimination is commonplace. The fact that non-discrimination is a fundamental concept and intersects with many agreements is one factor in this ubiquity. In addition to GATT 1994, Annex 1A multilateral agreements must also comply with MFN and national treatment. Because of the duplication of the scope of the general principles in different agreements, there are differences in the citation and interpretation of the laws by the parties to the dispute, the panels and the Appellate Body.

In the case of the US-Tuna II dispute, Mexican tuna and tuna products were banned from being labeled “dolphin-safe”, while tuna products from most other countries, including the United States, can be labeled as such. As regards the discriminatory nature, Mexico argued that the US violated Articles I:1, III:4 of the 1994 GATT and Article 2.1 of the TBT Agreement. However, the Panel was not convinced to further consider Articles I:1 and III:4 of the 1994 GATT after examining Article 2.1 of the TBT in light of the judicial economy. Mexico then referred to Australia-Salmon (DS18) and EC-Sardine (DS231), arguing that judicial economy could not be applied if the result could only be a partial resolution of the dispute¹. While confirming that the panel observed judicial economy in resolving disputes, the Appellate Body emphasized the assumption that judicial economy is based on the fact that the scope and content of the provisions should be consistent.

3.2. The use of trade remedies sparks disagreement

In response to dumping and subsidies in international trade that cause a sharp increase in imports and bring material damage to domestic industries, member countries can take appropriate anti-dumping, countervailing and protective measures as a means

¹ United States — Measures concerning the importation, marketing and sale of tuna and tuna products. Report of the Panel. WT/DS381/R.

of reducing trade distortions. More than half of disputes about fishery products involved trade remedies. In DS326, the European Communities notified the WTO of a serious injury (salmon imported from Chile) and the decision to apply final safeguard measures². In DS97, the US conducted a subsidy investigation, which, in the opinion of Chile, did not have sufficient evidence regarding the subsidies investigated and the injury they caused, contrary to the provisions of Articles 11.2 and 11.3 of the SCM³. While it was recognized at an early stage that fisheries subsidies are not only a major cause of overfishing, overcapacity and IUU fishing, but also put developed country fisheries at a disadvantage in international competition, nevertheless, according to WTO jurisprudence, developed countries rarely resort to subsidies, but more often initiate anti-dumping investigations.

In fish trade disputes, anti-dumping measures are used more often than safeguard and countervailing measures. In most fisheries cases involving anti-dumping measures, such as the US-Shrimp (Ecuador) (DS335) and US-Shrimp (Thailand) (DS343) cases, the defendant was the United States, which the plaintiffs complained about using a zeroing methodology to calculate dumping margins during anti-dumping investigations. In DS422, the Panel noted that China's litigation claims are nearly identical to those reviewed in the US-Shrimp (Ecuador) and US-Shrimp (Thailand). Upon review by the Panel, USDOC was found to have acted in violation of Article 2.4.2 of the Anti-Dumping Agreement by using a zero margin in its calculation of the dumping margin in its final decision in the shrimp case⁴. There are plenty of such rulings in the WTO. While many decisions have found zeroing illegal, Article 6 of the GATT 1994 and Article 2.4.2 of the Anti-Dumping Agreement do not contain a prohibition, which has led to its enduring use by some countries. In 2018, Vietnam again filed a complaint with the DSB regarding US use of zeroing in initial investigations and inspections of imported fish fillets under the so-called differential pricing methodology⁵. This is the third anti-dumping dispute between the US and Vietnam regarding fisheries. The US use of "zeroing" in anti-dumping investigations has ended in failure, which seems to suggest a notoriously doomed outcome.

3.3. The Agreement on Technical Trade Barriers, the Agreement on Sanitary and Phytosanitary Measures and general national exemptions are often the legal basis for disputes related to the fish trade

The predominance of the concept of sustainable development and the expectation that products and production processes should not harm the environment have led to an increase in the number of health and safety-related barriers in international trade. Direct examples are references to the SPS Agreement and Article XX of the GATT 1994.

² European Communities — Definitive safeguard measure on salmon. Request for Consultations by Chile. WT/DS326/1.

³ United States — Countervailing duty investigation of imports of salmon from Chile. Request for Consultations by Chile. WT/DS97/1.

⁴ United States — Anti-dumping measures on certain shrimp and diamond sawblades from China. WT/DS422/R. Para. 8.1.

⁵ United States — Anti-dumping measures on fish fillets from Vietnam. Request for consultations by Vietnam. WT/DS536/1.

Article XX of the GATT 1994 is one exception to the basic rules of the WTO, which allows members to take certain measures for certain reasons, provided that they do not constitute an arbitrary or unjustified differential treatment or a disguised restriction on international trade. When a Member's trade restrictive measures are brought before to the Dispute Settlement Body, the Member may invoke exception clauses as a defense. When sea shrimp are caught with nets, sea turtles also die. The US-Tuna II dispute (DS381) arose because the enactment of Section 609 by the United States banned certain shrimp and shrimp products from countries or regions that do not use a "turtle exclusion device" or do not comply with US regulations, protecting sea turtles from entering the domestic market. In the face of the claims, the US invoked Article 20 (g) of the GATT 1994 as a defense. The Appellate Body concluded that, in this case, sea turtles are an exhaustible natural resource and Section 609 is a conservation measure combined with domestic restrictions. However, this measure was applied in such a way that it constituted not only a means of "undue discrimination" but also of "arbitrary discrimination" between countries contrary to the requirements of the chapeau of Article XX⁶.

The only exception to Article XX of the GATT is the protection of human, animal or plant life or health, which echoes the SPS Agreement. The SPS Agreement allows for measures to protect human, animal and plant life or health, while ensuring that these measures are not used for protectionist purposes or create unnecessary barriers to trade. In order for participants to apply sanitary and phytosanitary measures, in addition to adhering to basic principles such as non-discrimination and transparency, they must also identify diseases and their potential biological and economic consequences associated with entry, establishment or spread, assess the likelihood of entry of these diseases, and evaluate likelihood of disease entry under applicable SPS measures⁷. In DS18 and DS21, although Australia tried to prevent fish diseases, the latter two assessments were not demonstrated and therefore Australia's approach was not in line with the SPS Agreement.

The TBT Agreement governs measures regarding technical regulations, labeling and packaging, labeling standards and evaluation procedures. Among the disputes related to the reference to the TBT Agreement, the most controversial are the name and trade description of fish products, for instance, the EC-Sardine (DS231) and EC-Scallops (DS12, DS14). A prerequisite for a participant to be able to invoke the TBT Agreement is that the document falls within the definition of a technical regulation in the TBT Agreement. The Appellate Body in EU-Sardine case defined three criteria, namely: the document must relate to an identifiable product or group of products, the document must state one or more characteristics of the product, and compliance with the characteristics of the product must be mandatory⁸. The technical regulation is assessed for its compliance with international standards. Where a technical regulation is required and an international standard is applicable, members should use that international standard as a guiding principle⁹. With regard to provisional validity, the case states that as long as the technical regulations remain in force, members are required to bring them into line with the TBT Agreement, regardless of when they enter into force.

⁶ United States — Countervailing duty investigation of imports of salmon from Chile. Request for Consultations by Chile. WT/DS97/1.

⁷ Australia — Measures affecting importation of salmon. WT/DS18/AB/R. Para. 121.

⁸ European Communities — Trade description of sardines. WT/DS231/AB/R. Para. 176.

⁹ Ibid. WT/DS231/R. Para. 7.78.

3.4. Non-use of the Agreement on Agriculture in fish trade disputes

It is generally accepted that the fish sector is part of agriculture, at least fishery statistics are usually contained in agricultural data, and the agricultural department regulates the national fish industry. However, within the framework of the WTO, there is a borderline between fish and fish products and agricultural commodities. The Agreement on Agriculture states in Annex 1 that this Agreement should cover “less fish and fish products”. On this basis, the Agreement on Agriculture has not been applied in WTO disputes on fish products.

The classification of fishery products outside the Agreement on Agriculture has gone through a long process. At the preparatory stage of the International Trade Organization, fish was initially classified as a commodity, which differed from manufactured goods by the inelasticity of supply and demand, often associated with the accumulation of surpluses, which creates serious difficulties, especially for small producers. During the Dillon Round (1959–1962), the distorting effect of protective measures on agricultural products became publicly known. At the ministerial conference before the Kennedy Round (1964–1967), measures were taken to remove tariff and non-tariff barriers, as well as measures to increase market access for agricultural and other commodities. The Secretariat suggested that identifying agricultural products according to chapters 1–24 of the Brussels Tariff Nomenclature is the most appropriate. Some special agricultural products, such as meat, cereals and dairy products, to which Member States may add additives, may be exempted from the general rules. However, due to the lack of a clear definition of agricultural products, it was difficult for members to compile an accurate list of exceptions.

Discussions about agricultural products continued until the Tokyo Round (1973–1979). At the 24th session of the GATT, the members approved the establishment of the Agriculture Committee¹⁰. At this stage, Norway was the only member to insist that fish, marine mammals and products should not be considered agricultural products, as the country is heavily dependent on fish products, which account for 20–25 % of all Norwegian exports.

During the Uruguay Round (1986–1994), in order to promote trade liberalization and market access, some members proposed a comprehensive coverage of agricultural products for negotiations. The United States has specifically stated that it covers all agricultural products, food, beverages, forest products, and fish and fishery products. Recognizing that coverage should be as wide as possible, the Nordic countries insisted that fishery and forestry products should not be included. In July 1990 the “De Zeeuw Paper” (i. e. The “Framework Agreement on Agriculture Reform Programme”) was circulated, which, unsurprisingly, was again not extended to agricultural products and was not accepted by the agriculture negotiating group. Later, in October of that year, the Chairman’s proposal was agreed that the outcome of the negotiations should be “Harmonized System Chapters 1–23 minus fisheries” and “fishing” would be further defined by several headings of the HS. Subsequently, the “De Zeeuw Paper” was included in the revised “Draft Final Act reflecting the results of the Uruguay Round of Multilateral Trade Negotiations”. “Less fish and fish products” has finally been included in Annex 1 of the Agreement on

¹⁰ The mandate of the Agricultural Committee was to examine the problems in the agricultural sector and to explore the opportunities for making progress in the attainment of the objectives of the GATT in the agricultural field.

Agriculture. In parallel with the negotiations on sanitary and phytosanitary measures, fish was included in the definition of animals.

Compared to common agricultural products such as grains, wheat and soybeans, fish is unique in that it is considered a natural resource that requires proper protection to prevent depletion. Recognizing the unsustainable contribution of subsidies to fisheries, the Doha Round negotiations included WTO member discussions on fisheries subsidy rules.

4. Contribution of the Agreement on Fisheries Subsidies to the fisheries trade

4.1. Negotiation process and key issues

Annual global subsidies of 14–54 billion US dollars allow many unprofitable fishing vessels to remain in the ocean, which largely implies global fisheries (Zhou, 2021). The key players in fisheries subsidies are China, the European Union, the US, Republic of Korea and Japan, while developing countries are considered prime suspects in subsidizing harmful fisheries. It is estimated that harmful subsidies account for approximately 90 %, 80 % and 60 % of total fisheries subsidies in Thailand, China and Vietnam, respectively (Harper and Sumaila, 2019; Skerritt and Sumaila, 2021).

The problem of fisheries arose in the 1990s, when environmental problems attracted international attention. In the fisheries sector, there has traditionally been more emphasis on overinvestment and overfishing than on fishery subsidies. It was not until late 1996 that the Committee on Trade and the Environment (CTE) of the WTO decided to include fisheries subsidies as one of the topics of its deliberations. During the Doha Round, the WTO transferred fisheries subsidy negotiations from the CTE to the Rules Negotiating Group. Fisheries subsidies were first mentioned in the 2007 Chair's text, marking the start of discussions on topics directly related to fisheries subsidies.

The Chair's text has eight main components: prohibition of certain subsidies to fisheries (prohibited subsidies), general exceptions (subsidies subject to prosecution), special and differential treatment for developing members, general discipline regarding the use of subsidies, fisheries management, notification and supervision, transitional provisions and dispute settlement (WTO, 2007). Since the text dealt with specific rules for subsidizing fisheries, on which the opinions of the participants were divided, the negotiations did not go well. The United Nations 2030 Sustainable Development Goals (SDGs), adopted in 2015, subsequently served as a platform to revitalize discussions on fisheries subsidies. The WTO was to adopt global multilateral fisheries subsidy rules by the end of 2020 to control the global behavior of marine fisheries and promote sustainable ocean development¹¹. Specifically, SDG14.6 states that some subsidies are detrimental to fish populations. At the 11th WTO Ministerial Conference (MC11) in December 2017, it was decided to develop new global fisheries subsidy rules for the next conference (MC12). However, MC12 was delayed due to the outbreak of the pandemic, so it was not until June 2022, after more than 20 years of discussion, that the Member States reached a consensus on subsidies for fisheries and the AFS finally came to its conclusion.

¹¹ Sustainable Development Solution Network (<https://indicators.report/targets/>).

The AFS agreement covers 12 articles, including scope, subsidy disciplines, special and differential treatment, implementation of the agreement, and exceptions. The AFS will enter into force when two-thirds of WTO members have formally adopted it. As of May 2023, only seven Member States have accepted the Protocol, namely Switzerland, Singapore, Seychelles, USA, Canada, Iceland and the United Arab Emirates. Thus, the signing of the Agreement proves that the WTO remains a forum for discussing sensitive and complex issues, in particular the conflict between commercial interests and environmental sustainability. Importantly, the new multilateral rules, which apply to 164 members, will have a wider impact than previous fisheries agreements.

4.2. The Agreement on Fisheries Subsidies addresses the shortcomings of the Agreement on subsidies and countervailing measures in regulating fisheries subsidies

In the legal framework of the WTO, the Agreement on subsidies and countervailing measures (SCM Agreement) is dedicated to the regulation of subsidies and compensatory measures of the member states. Participants were initially divided on the need for a separate specialized agreement on subsidies to fisheries and how to implement them. Friends of the Fish¹² felt that subsidies were a direct factor in the depletion of fish stocks and that the SCM Agreement was inadequate for regulation. It was clear that the only way to prevent excessive resource depletion was to introduce new and stricter fishery subsidy rules. However, Japan and the Republic of Korea see no need for a special fisheries subsidy mechanism. Ultimately, when discussing specific rules, the “three-color boxes” were approved by members such as Friends of the Fish, China and the European Union.

The SCM Agreement is not up to the task of controlling fisheries subsidies. The SCM was designed to regulate the general practice of subsidies in international trade that can lead to distortions in trade, in particular the regulation of export subsidies and countervailing measures. Whereas, in the context of fisheries, access to the resource would be more likely to be distorted by subsidies than by impact on price. In addition, since the SCM Agreement itself has no conservation objective, in practice, even though fisheries subsidies threaten fish stocks, such subsidies are not subject to application under the SCM Agreement. Nevertheless, it still lays a good foundation for the Fish Subsidy Agreement in terms of legal framework and content. The five types of public financial contributions referred to in Part I, Article 1 of the SCM also apply to fisheries subsidies. In addition to prohibited subsidies, specific subsidies for fisheries, as provided for in Article 2 of the SCM, are also subsidies subject to prosecution. Notification, transparency and dispute resolution under the AFS shall be based on compliance with Article 25 and Article 4 of the SCM Agreement.

¹² Friends of the Fish is an informal coalition that advocates for the removal of fishery subsidies. Members include Argentina, Australia, Chile, Colombia, Ecuador, Iceland, New Zealand, Norway, Pakistan, Peru and the USA.

4.3. The Agreement on Fisheries Subsidies regulates harmful subsidies that lead to IUU fishing, overfishing and overcapacity

The international community has generally recognized that fisheries subsidies provided by national governments are the main cause of overfishing, overcapacity and IUU fishing, which lead directly to the depletion of fish stocks. The Agreement on Fisheries Subsidies imposes discipline on subsidies and prohibits IUU fishing, overfishing and fishing on unregulated high seas in Articles 3, 4 and 5 respectively for all WTO members.

The AFS prohibits subsidies that encourage IUU fishing. Specifically, Agreement provides that coastal members, flag states and regional fisheries management organizations fall under the definition of IUU fishing if one of them makes an affirmative determination based on their functions. To avoid arbitrariness in the procedure, AFS requires that IUU fishing decisions be based on relevant information and reported in a timely manner.

The discipline of subsidies against overcapacity and overfishing is also one of the basic rules of the AFS. The Chair Draft, released in November 2021, treats fisheries subsidies that have led to overfishing and overcapacity as vessel construction and repair subsidies, fuel/cost subsidies, income support for vessels, operators or workers (WTO, 2021). However, participants had different opinions about the amount of subsidies. For example, New Zealand has proposed outlawing all overfishing incentives. The EU has proposed limiting subsidies to overfishing vessels, with the exception of fishing in territorial waters. Countries such as China, India and Russia argue that fuel subsidies should also be included in the regulation. Exact definitions of subsidies that lead to overcapacity and overfishing are not contained in the final agreement. Obviously, these sensitive issues need to be agreed upon in future negotiations.

4.4. The AFS includes special treatment for developing and less developed members

Special and differential treatment (SDT) for developing countries is another aspect of the argument. During the negotiations, the participants mainly discussed two issues: which countries to recognize as developing members and what regime to apply to them. More specifically, the question is whether SDT is available to any developing WTO member, and if a member is granted access to SDT, whether there will be any restrictions on that member's use of fisheries subsidies. Friends of the Fish once called for the elimination of fisheries subsidies and suggested that fisheries subsidies be used to the extent necessary and in accordance with the specific economic, financial and development needs of the individual country. Naturally, other members, including China and India, opposed this, arguing that developing countries should enjoy preferential policies such as technical assistance and transitional arrangements and use certain prohibited subsidies at will. Some less developed littoral states also need special and differentiated treatment, and these issues should be given special attention.

The WTO uses the self-identification approach to determine the status of developing countries, which is contested by developed countries. Developed WTO members argue that if poor countries are good at fishing, they cannot benefit from SDT. A permanent exemption should not be granted to developing members, but they are allowed to temporarily suspend the same obligations as developed countries for a certain transitional period. Some

participants argued that fisheries subsidies should primarily limit the catch of the twenty-five largest fishing countries in the world (Huang and Chen, 2022). In a draft released in November 2021, only developing countries with a catch below 0.7% of the global share can use SDT. However, the final agreement merely stipulates that developing country participants use SDT for a two-year transitional period after the formal entry into force of the agreement. During this period, activities carried out in their exclusive economic zone are exempt from prohibitions. With regard to least developed countries (LDCs), other WTO members should exercise due restraint and take into account the special situation of the LDC member. The Fisheries Subsidies Agreement does not contain clear rules for the coverage of developing members and no special treatment for reaching a general agreement.

The root cause of the ineffectiveness of the negotiation process over the discipline of fisheries subsidies are differences in resource endowment, degree of development, and economic and political interests. Fish is a source of animal protein for most countries, but for Japan and the Republic of Korea, it is a source of national food security. The complex fisheries interests of Japan and Korea are the biggest obstacle to the development of a more stringent fisheries policy. Since New Zealand has a productive and competitive fishing fleet, commercial interests are the main motivation. For the US, fighting for the environment serves the political goal of getting more votes, not commercial interests. As for the smaller developing member countries, they were initially less interested in discussing subsidies for fisheries, but after the adoption of EU subsidies for bananas (DS27) and EU subsidies for sugar exports (DS265), they objected to being the bearers in legal games of developed member countries.

5. Prospects for international trade in fish products

5.1. *The Agreement on Fisheries Subsidies will play its role*

The conservative wording of the SDT provisions in the Agreement on Fisheries Subsidies to achieve a general consensus could lead to increased trade disputes between developed and developing countries. Developing nations anticipate making some discretionary use of fisheries subsidies. For example, India asked to be allowed to build its own infrastructure for the fishing industry, as developed countries did a few decades ago (Fermin, 2022). Countries have cast their nets into the oceans at various times in history, but the responsibility they are now taking on, which is expected to be of equal value, is debatable. A strong financial and technological base, which develops from a prosperous land based economy, serves as the basis for a maritime economy. Since the beginning of the 20th century, developed nations have been actively exploiting the World Ocean, while developing countries at that time not only did not have such opportunities, but were also involved in conflicts or other unrest. The chances of offshore fishing in developing countries did not improve until the second half of the 20th century. At the start of the twenty-first century, as assessment technologies advance, the international community is warning of the depletion of various fish stocks and the need to ensure sustainable fisheries. Given the new challenges, developing actors with little experience must simultaneously tackle the conflicting challenges of integrating sustainability with development, trying to balance national economic interests with growing pressure from the global community.

In addition to this, although not explicitly stated in its preamble, the AFS deals with the environmental spillovers of a trade policy rather than the pursuit of competitive neutrality, while other trade agreements in the WTO are trade-related and competition-neutral (Hoekman, Mavroidis and Sasmal, 2022). Therefore, issues related to trade and the environment are likely to be discussed within the framework of the AFS.

One of the positive effects of AFS is that fisheries subsidies are promoted from harmful and controversial to beneficial and transparent. Ambiguous subsidies to fisheries can quickly turn into harmful subsidies, especially if they are underfunded, distorting the quality and effectiveness of subsidies. It is expected that the Agreement will encourage fisheries subsidies to be more focused on the conservation of fish resources and the development of a high-tech and environmentally friendly fishing industry. Profitable fisheries subsidies also ensure the safety of fishery products and the lives of fishermen (MOFCOM, 2022). Timely notification and transparency effectively regulate fishing practices, facilitate oversight by other countries, and ensure orderly trade in fish products. Despite its restrained approach, the Agreement takes into account the special position of developing member countries, especially the least developed countries, and allows them to protect domestic fisheries within certain limits.

5.2. Rising sea temperatures are changing the geographic location of fish and creating potential conflicts over access and distribution of fish resources between countries

According to the worst forecast of climatologists, if the sea warms by 3° C, fish will migrate to the poles at an average rate of 16 miles per decade. Even in the best case, the fish will migrate to the poles at a speed of 9 miles. That warming seawater is causing conflicts over access to and distribution of fish stocks has a historical basis. In case DS469, the EU was challenged in connection with a ban on the import of Atlantic-Scandinavian herring and northeast Atlantic mackerel caught under the control of the Faroe Islands. However, the dispute arose because of disagreements over the distribution of mackerel quotas between the EU, Norway, the Faroe Islands and Iceland. Since 1999, the mackerel quota has been largely split between the EU, Norway and the Faroe Islands. As the stock moved north, from virtually no catches prior to the stock's arrival in 2006, Icelandic fishermen caught approximately 20–25 % of the total catch of mackerel (Østhagen, Spijkers and Totland, 2020). The distribution of quotas for mackerel was not reached by an agreement between the four countries, and in parallel the Faroe Islands also set unilateral quotas, which caused outrage from the EU and Norway (Østhagen, Spijkers and Totland, 2020). This is a rare scenario in the WTO today, but such disputes are becoming possible as fish habitats change due to increased warming.

Fishing incidents may seem trivial in all international conflicts, but they can raise issues of sovereignty. While the delimitation, ownership and prey rights associated with fishing are not as important as land rights, they can eventually become political, ethnic and sovereign issues. For example, the fishing incidents in the South China Sea¹³ are evidence of the Chinese government's tough stance on territorial integrity. Domestic Norwegian

¹³ Fishery conflicts are a manifestation of disputes in the South China Sea, often in the context of both overlapping exclusive economic zones and disputed sovereignty. For example, the Philippine government

media also attached great importance to the fact that the Russian vessel “Electron” with two Norwegian fish inspectors on board disappeared due to the disclosure of violations by them. Settling such a fishing dispute is ultimately a diplomatic effort (Østhagen, 2018).

5.3. Trade disputes over fish products are likely to increase due to higher food safety and health standards

Food safety measures include technical regulations, food safety standards, certification and other instruments. A product enters the domestic market only when it meets the food safety requirements of the importing country. Since fish is a perishable commodity, in practice, non-tariff barriers in the form of quarantine measures and licenses can significantly reduce and even block access to the market for fish products, which is especially sensitive for developing countries (Pozdnyakov, 2018). The European Commission, for example, has set the maximum level of mercury in the muscle meat of Atlantic catfish, swordfish and tuna at 1 mg/kg, the maximum level of cadmium in tuna and mackerel at 0.1 mg/kg, and the maximum level of lead in crustaceans 0.5 mg/kg¹⁴. This market access restriction is clearly intended to protect human, animal and plant health. However, under the guise of environmental and quality standards, it can also impose de facto restrictions on exports from developing countries, exploiting textual flaws in the SPS and TBT agreements. European Commission cadmium regulations have had a significant impact on fish products from developing countries, including swordfish, cuttlefish, squid and octopus. In countries such as Australia and Sweden, governments and the private sector are using Cd standards to promote the competitive advantage of their national industries. If these strategies are successful, it will be difficult for developing countries to compete (Figuroa, 2008).

5.4. Fish and fishery products are expected to be produced, processed and sold in more standard and sustainable ways

Recalling that most fisheries disputes in the WTO arise between developed and developing members, the former in particular set unilateral standards and technical regulations that are often overly stringent due to environmental, health and safety concerns, thereby effectively creating barriers to trade. In 1989, the United States banned the entry into the US market of shrimp and shrimp products caught by trawlers not equipped with turtle protection devices (DS58). In the same year, a European Community Regulation established requirements and trade descriptions for canned sardines that prevented market access for Peruvian sardines (*Sardinops Sagax*) (DS231). In 1991, under the Marine Mammal Protection Act, the US government required tuna exporters to certify that their catch met the dolphin-proof standard before they could export to the US (DS381). Whether these rules are environmentally or biologically sound or protectionism in disguise, these cases remind members to pay close attention to international standards and those set by

has protested China's fishing ban. Between 1989 and 1998, there were 92 attacks and seizures of Chinese fishing vessels in the South China Sea.

¹⁴ Commission Regulation (EC). (2006) No. 1881/2006 of 19 December 2006 setting maximum levels for certain contaminants in foodstuffs. Available at: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:02006R1881-20150521> (accessed: 15.06.2023).

developed countries, as the latter often lead the way in developing international standards. Member States also need to review and revise their technical regulations in a timely and appropriate manner to bring them into line with international standards.

In addition, technological advances and public awareness should be used to address negative externalities in fish production and trade. By improving tools and methods, scientific and technological progress provides a material guarantee to reduce the likelihood of by-catch and unintentional harm to innocent sea creatures. However, the subjective component of public knowledge affects the willingness of producers to act within the law, to comply with the law, to introduce and apply new technologies. Science and technology are secondary to consciousness, which is influenced by things like education, supervision, and the severity of punishment.

Conclusion

This article reveals the legal framework of the WTO to regulate fish trade and resolve trade disputes, and outlines the prospects for fish trade in the light of the Fisheries Subsidies Agreement (AFS). An examination of the major contentions in trade disputes relating to fishery products that have been submitted to the WTO Dispute Settlement Body since its inception shows that it has been dominated by complaints from developing members against developed members. The most common causes of disputes on fish products are deviations from the principles of non-discrimination, quantitative restrictions and anti-dumping actions. Since fish is both a resource and a source of food, technical, sanitary and phytosanitary measures, as well as general national exemptions, are commonly used in fish trade disputes, especially when developing member states find that developed member access standards are so stringent that, are essentially trade barriers. Recalling the process of negotiating the Agreement on Agriculture and Fisheries, members emphasized that fish, unlike conventional agricultural products, is a natural resource that needs adequate protection to prevent depletion.

It is generally recognized that the availability of fisheries subsidies has a significant impact on the sustainability of fish stocks. Following the Doha round of negotiations, member states agreed on rules governing fisheries subsidies. The conclusion of the Agreement on Fisheries Subsidies was not an easy undertaking due to the complexity of the fishing industry, various national policies and interests. Member States have been arguing for two decades about how fisheries subsidies, their types and special differential treatment are regulated. The 12th WTO Ministerial Conference adopted the AFS to promote a more efficient and sustainable use of fish resources. The AFS will enter into force when it is approved by two-thirds of the 164 WTO members. By this time, the legal framework for resolving trade disputes in the field of fish trade will be expanded. As an environmentally relevant WTO treaty, AFS complements the SCM Agreement on the Management of Fisheries Subsidies and prevents harmful subsidies that encourage overfishing, overcapacity and IUU fishing. AFS provides developing members with a two-year transitional period after the formal entry into force of the agreement to benefit from special and differential treatment. When it comes to LDC members, their unique circumstances need to be taken into account. The AFS is considered to have stronger legal impact than any previous fisheries agreements against IUU fishing, overcapacity and overfishing. Fisheries subsidies are moving from harmful and ambiguous to profitable and transparent that preserve fish stocks.

Trade disputes in the WTO and stringent requirements of trading partners are forcing fish-producing countries to introduce advanced and scientific production methods, revise and update domestic technical standards, bringing them into line with international requirements. Based on the experience gained, producing countries are expected to move towards a more standard and sustainable production, processing and marketing of fish and fish products.

Fish trade disputes are projected to escalate due to new AFS regulation, climate change and stricter food standards. First, the AFS does not clearly specify the types of subsidies and provisions for special preferential treatment for developing countries. It can be assumed that trade disputes with developing countries will arise after the entry into force of the agreement, given that these topics have caused serious disagreement during the negotiations. Secondly, access to and distribution of quotas will be affected by seawater warming and changes in the fish habitat. Such disputes over fish can rise to the level of sovereignty when needed. Third, the argument concerns the possibility that, for protectionist purposes, developed members may use safety and health as a pretext for more restrictive market access, such as food safety specifications and standards, thereby creating de facto barriers to fishery exports from developing countries.

References

- Alferieva, K.E. (2013) 'Practice in the settlement of natural resource disputes in the Dispute Settlement Body of the World Trade Organization', *International Justice*, 3 (7), pp. 118–127. (In Russian)
- Bian, Y. (2011) 'Fisheries subsidies and the conservation of fisheries resources, current status and future', *Rule of Law Studies*, 8, pp. 44–52. (In Chinese)
- Bossche, P.V.D. and Zdouc, W. (2013) *The law and policy of the World Trade Organization: text, cases and materials*. 3rd ed. New York: Cambridge University Press.
- Dai, Y. (2014) *A legal study on foreign countervailing measures against China*. Guizhou: Guizhou University for Nationalities. (In Chinese)
- Fermin, K. (2022) 'WTO reaches historic agreement to end harmful fisheries subsidies', *China Dialogue Ocean*. Available at: <https://chinadialogueocean.net/en/governance/wto-reaches-historic-agreement-to-end-harmful-fisheries-subsidies/> (accessed: 31.03.2023).
- Figueroa, E. (2008) 'Are more restrictive food cadmium standards justifiable health safety measures or opportunistic barriers to trade? An answer from economics and public health', *Science of the total environment*, 389 (1), pp. 1–9.
- Food and Agriculture Organization of the United Nations. (2020) *The state of world fisheries and aquaculture 2020: Sustainability in action*. Rome, Italy: Food and Agriculture Organization of the United Nations.
- Frederik, S. (2021) 'WTO negotiations on fishery subsidies', *EPRS: European Parliamentary Research Service*. Belgium. Available at: <https://policycommons.net/artifacts/2210704/wto-negotiations-on-fishery-subsidies/2967041/> (accessed: 31.03.2023).
- Hamilton, A. (2022) *Report on manufactures* [e-book]. DigiCat Publ.
- Harper, S. and Sumaila, U.R. (2019) 'Distributional impacts of fisheries subsidies and their reform', Working Paper, *IIED*. March.
- Hoekman, B., Mavroidis, P.C. and Sasmal, S. (2022) 'Managing Externalities in the WTO: The Agreement on Fisheries Subsidies', *Robert Schuman Centre for Advanced Studies Research Paper*, no. RSC_76.
- Huang, S. and Chen, Y. (2022) 'Evaluation of WTO Fisheries Subsidies Rules: Based on the Comparison of CPTPP', *Agricultural economic issues*. (In Chinese)
- Ji, S. and Han, Y. (2020) *Global consensus and controversy on fisheries subsidies*. Available at: https://www.sohu.com/a/391414683_115495 (accessed: 31.03.2023). (In Chinese)
- Jiang, H. and Yang, W. (2019) 'Game Analysis on the Disputes of Fisheries Rights and Interests in the Arctic Ocean: Based on the perspective of the Arctic countries', *Marine Development and Management*, 1, pp. 75–82. (In Chinese)

- Keohane, R. O. (2005) *After hegemony: Cooperation and discord in the world political economy*. Princeton: Princeton University Press.
- Krugman, P. R. (1987) 'Is free trade passé?', *Journal of Economic Perspectives*, 1 (2), pp. 131–144.
- Lennan, M. and Switzer, S. (2023) 'Agreement on Fisheries Subsidies', *The International Journal of Marine and Coastal Law*, 38 (1), pp. 161–177.
- Li, Z. (2005) *Fisheries subsidies and their regulation by the WTO*. Beijing: University of International Business and Economics. (In Chinese)
- MOFCOM. (2022) *Agreement on fisheries subsidies will boost healthy development of China's fisheries*. Available at: <http://chinawto.mofcom.gov.cn/article/ap/m/202206/20220603323209.shtml> (accessed: 31.03.2023). (In Chinese)
- Østhagen, A. (2018) *Managing conflict at Sea: the case of Norway and Russia in the Svalbard Zone*. Available at: <https://fni.brage.unit.no/fni-xmlui/bitstream/handle/11250/2567713/2018-AO-Arctic-Review-Managing+Conflict+at+Sea.pdf?sequence=2> (accessed: 31.03.2023).
- Østhagen, A. (2020) 'Fish, Not Oil, at the Heart of (Future) Arctic Resource Conflict', *Arctic Yearbook*, pp. 43–59.
- Østhagen, A., Spijkers, J. and Totland, O. A. (2020) 'Collapse of cooperation? The North-Atlantic mackerel dispute and lessons for international cooperation on transboundary fish stocks', *Maritime Studies*, 19, pp. 155–165.
- Pauly, D. (2006) 'Fisheries Subsidies: the Good, the Bad and the Ugly', *El Anzuelo: European Newsletter on Fisheries and the Environment*, 17, p. 7.
- Pene, C. and Zhu, X. (2021) "Agricultural products" and "fishery products" in the GATT and WTO: A history of relevant discussions on product scope during negotiations', *WTO Staff Working Paper*, no. ERSD-2021-12.
- Petrenko, A. (2017) "The decision of the arbitrator in US-Tuna II (Mexico) on the permissible limits of countermeasures in the WTO law: the result of the dispute?", *International Justice*, 4 (24), pp. 3–17. (In Russian)
- Pozdnyakov, I. I. (2018) 'Regulation of the global fish trade', *Foreign trade activity*, 3, pp. 82–91. (In Russian)
- Salles, L. E. (2014) *Forum shopping in international adjudication: the role of preliminary objections*. Vol. 105. Cambridge: Cambridge University Press.
- Skerritt, D. J. and Sumaila, U. R. (2021) *Assessing the spatial burden of harmful fisheries subsidies*. Final report. Oceana, FERY.
- Sumaila, U. R., Ebrahim, N., Schuhbauer, A., Skerritt, D., Li, Y., Kim, H. S. and Pauly, D. (2019) 'Updated estimates and analysis of global fisheries subsidies', *Marine Policy*, 109, <https://doi.org/10.1016/j.marpol.2019.103695>
- Urdina E. S. (2020) 'Mechanisms of dispute resolution within the World Trade Organization', in Zholobov J. B., Dorskaya A. A. (eds) *Law and justice in the modern world: current problems of criminal, criminal procedural, international and environmental law: Collection of scientific articles of young researchers*. Saint Petersburg: Asterion Centre for Scientific Information Technologies, pp. 338–341. (In Russian)
- Wiers, J. (2001) 'WTO rules and environmental production and processing methods (PPMs)', *ERA Forum*, 2 (4), pp. 101–111.
- World Trade Organization. (2007) *Trade Negotiations Committee. Draft Consolidated Chair Texts of the AD and SCM Agreements*. TN/RL/W/213.
- WTO (2015). *The WTO at Twenty: Challenges and achievements*. Available at: https://www.wto.org/english/res_e/booksp_e/wto_at_twenty_e.pdf (accessed: 02.04.2023).
- WTO. (2021) *Negotiating Group on Rules — Fisheries Subsidies*. TN/RL/W/276/Rev.2.
- Zhang Y. and Fang, M. (2013) 'Insights from a successful countervailing case — China's warmwater shrimp exports to the US', *China Aquaculture*, 12, pp. 35–37. (In Chinese)
- Zhou, M. (2021) 'Why the WTO has been pushing for fisheries subsidies for two decades?' *International Business Daily*, 9832 (04). (In Chinese)

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Международные споры в области торговли рыбой и рыбной продукцией и Соглашение о субсидиях в области рыболовства: вопросы регулирования и перспективы судебных разбирательств

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Торговые споры, связанные с продукцией рыболовства и рассматриваемые во Всемирной торговой организации (ВТО), возникают из-за специфики рыбной отрасли, трансграничного характера рыбы, а также различных интересов и приоритетов торговых политики отдельных стран. Соглашение о субсидиях рыболовству (AFS) направлено на усиление роли ВТО в регулировании торговли рыбой и ограничении таких методов рыболовства, как незаконный промысел, перепроизводство и перелов. В данной статье анализируется правовая база ВТО по регулированию торговли рыбой и разрешению связанных с этим споров, а также излагаются перспективы в свете Соглашения о субсидиях рыболовству (AFS). Установлено, что общие принципы, количественные ограничения и антидемпинговые меры, а не субсидии являются наиболее распространенными правовыми вопросами. Технические торговые барьеры, санитарные и фитосанитарные меры и национальные исключения также часто выступают источником споров. Меры, разработанные по соображениям безопасности здоровья и окружающей среды, все чаще используются в протекционистских целях при создании торговых барьеров. Соглашение о рыбных субсидиях после его ратификации расширит правовую базу для разрешения споров в сфере торговли рыбой. Вместе с тем новые принципы международного регулирования торговли в сочетании с изменением климата и ужесточением стандартов на пищевые продукты создадут предпосылки для большего числа споров в этой сфере с участием развивающихся стран.

Ключевые слова: Всемирная торговая организация, международная торговля, продукция рыболовства и аквакультуры, торговые споры, Соглашение о субсидиях рыболовству, торговые барьеры.

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Annex. Trade disputes in WTO over fish and fish products, 1995–2021

Dispute number	Title	Complainant	Consultations requested	Status (until 19.06.2023)
DS7	European Communities — Trade Description of Scallops	Canada	May 1995	Notified a mutual agreed solution on 5 July 1996. Respondent adopted an <i>Order</i>
DS12	European Communities — Trade Description of Scallops	Peru	July 1995	Notified a mutual agreed solution was reached on 5 July 1996. Respondent adopted an <i>Order</i>
DS14	European Communities — Trade Description of Scallops	Chile	July 1995	Notified a mutual agreed solution was reached on 5 July 1996. Respondent adopted an <i>Order</i>
DS18	Australia — Measures Affecting Importation of Salmon	Canada	Oct. 1995	Settled on 18 May 2000. Respondent amended domestic policies
DS21	Australia — Measures Affecting the Importation of Salmonids	United States	Nov. 1995	A mutual agreed solution was reached on 27 October 2000. Respondent amended domestic policies
DS58	United States — Import Prohibition of Certain Shrimp and Shrimp Products	India; Malaysia; Pakistan; Thailand	Oct. 1996	The respondent implemented the DSB's recommendations and rulings. Compliance proceedings completed without finding of non-compliance on 21 November 2001
DS61	United States — Import Prohibition of Certain Shrimp and Shrimp Products	Philippines	Oct. 1996	In consultations on 25 October 1996. No panel established and no withdrawal
DS97	United States — Countervailing Duty Investigation of Imports of Salmon from Chile	Chile	Aug. 1997	In consultations on 5 August 1997. No panel established and no withdrawal
DS193	Chile — Measures affecting the Transit and Importing of Swordfish	EC	Apr. 2000	Settled on 13 December 2007. Reached a mutual agreement. The complainant withdrew consultation request
DS231	European Communities — Trade Description of Sardines	Peru	March 2001	Notified mutual acceptable solution on 25 July 2003. The respondent implemented rulings and recommendations of the DSB
DS324	United States — Provisional Anti-Dumping Measures on Shrimp from Thailand	Thailand	Dec. 2004	In consultations on 9 December 2004. No panel established and no withdrawal
DS326	European Communities — Definitive Safeguard Measure on Salmon	Chile	Feb. 2005	Settled. Consultation request withdrawn on 12 May 2005 as safeguard measure at issue adopted by the respondent was terminated

Dispute number	Title	Complainant	Consultations requested	Status (until 19.06.2023)
DS328	European Communities — Definitive Safeguard Measure on Salmon	Norway	March 2005	In consultations on 1 March 2005. No dispute panel established and no withdrawal or mutually agreed solution notified
DS335	United States — Anti-Dumping Measure on Shrimp from Ecuador	Ecuador	Nov. 2005	Respondent accepted Panel's recommendations and notified implementation on 31 August 2007
DS337	European Communities — Anti-Dumping Measure on Farmed Salmon from Norway	Norway	March 2006	Respondent accepted Panel's recommendations on 8 January 2008
DS343	United States — Measures Relating to Shrimp from Thailand	Thailand	Apr. 2006	Respondent notified implementation of the DSB recommendations and rulings on 20 April 2009
DS345	United States — Customs Bond Directive for Merchandise Subject to Anti-Dumping/ Countervailing Duties*	India	June 2006	Respondent notified implementation of the DSB recommendations and rulings on 20 April 2009
DS381	United States — Measures Concerning the Importation, Marketing and Sale of Tuna and Tuna Products	Mexico	Oct. 2008	Complainant was authorized to retaliate on 22 May 2017. Respondent's measures were found compliant in the compliance proceedings on 11 January 2019
DS404	United States — Anti-dumping Measures on Certain Shrimp from Vietnam	Vietnam	Feb. 2010	A mutual agreed solution was reached on 18 July 2016
DS422	United States — Anti-Dumping Measures on Shrimp and Diamond Sawblades from China	China	Feb. 2011	Respondent notified implementation of Panel recommendations on 26 March 2013. (Complainant stated it was a only partial implementation)
DS429	United States — Anti-Dumping Measures on Certain Shrimp from Vietnam	Vietnam	Feb. 2012	Settled. A mutual agreed solution was reached on 18 July 2016
DS469	European Union — Measures on Atlanto-Scandian Herring	Denmark	Nov. 2013	Settlement was informed to DSB on 21 August 2014. Fisheries agreement were reached
DS536	United States — Anti-Dumping Measures on Fish Fillets from Vietnam	Vietnam	Jan. 2018	Panel composed on 30 November 2018
DS540	United States — Certain Measures Concerning Pangasius Seafood Products from Vietnam	Vietnam	Feb. 2018	In consultation on 22 February 2018

* This case also concerns the imports of frozen warm water shrimp from India.

Source: Author's calculations based on data from the World Trade Organization.