



**An Analysis of the WTO's Agreement on
Fisheries Subsidies & its impact on
the Africa Union's 2063 goal of a Blue/
Ocean Economy for Accelerated Economic
Growth in the AfCFTA**



Introduction

Overfishing is a pressing global challenge. According to the Food and Agriculture Organization of the United Nations (FAO), 87% of assessed marine fish stocks are exploited beyond sustainable levels, at a steady upward trajectory since the 1970s². Subsequently, over two decades of negotiations culminated in an agreement that prohibits detrimental fishing subsidies, which are a major factor in the depletion of global fish stocks. This bold leap could potentially be a major development for African fisheries industry as it provides for the livelihoods and food security of over 400 million people. The World Trade Organization's (WTO) Agreement on Fisheries Subsidies appears to be in consensus with the Africa Union's (AU's) goal of achieving a thriving blue economy by 2063. This article seeks to explore the intent of the new fisheries regulation in view of how the African Continent can leverage its provisions toward a viable blue economy.

The Pre-existing Framework

Before the World Trade Organization's (WTO) Agreement on Fisheries Subsidies, there was no comprehensive international framework governing fisheries subsidies; rather, the existing legal and regulatory framework was fragmented at best. One of such essential frameworks was the United Nations Convention on the Law of the Sea (UNCLOS) adopted in 1982. Still at the bedrock of international maritime law, the UNCLOS provides a legal framework for the delimitation of maritime boundaries of coastal and archipelagic states and the conservation and management of living marine resources, including fish stocks. The convention recognizes the need to prevent overfishing and the depletion of fish stocks and the rights of coastal states to manage and conserve their fishery resources within their exclusive economic zones (EEZs)³. Notable supplementary international legal framework in this regard includes the United Nations Fish Stocks Agreement, adopted by the UN General Assembly in 1995⁴. This agreement establishes rules for the conservation and management of fish stocks that migrate between the high seas and areas under national jurisdiction, including forerunning rules on the granting of subsidies.

In addition, some Regional Fisheries Management Organizations (RFMOs) had rules on subsidies. For instance, the Northwest Atlantic Fisheries Organization (NAFO) adopted a measure in 1996 that prohibited subsidies for fishing vessels targeting species subject to overfishing⁵.



² Food and Agriculture Organization of the United Nations. The State of World Fisheries and Aquaculture - 2016, at p. 4

³ UNCLOS 1982 http://www.un.org/depts/los/convention_agreements/texts/unclos/unclos_e.pdf <-accessed on March 12, 2023.

⁴ https://www.un.org/depts/los/convention_agreements/texts/fish_stocks_agreement/CONF164_37.htm <-accessed on March 14, 2023

⁵ <https://www.nafo.int/Fisheries/Conservation-Measures/Closed-Areas-Subsidies> <-accessed on March 14, 2023

However, there was no global agreement specifically focused on fishery subsidies until the adoption of the WTO Agreement on Fisheries Subsidies in 2021.⁶ The new agreement establishes binding rules on fisheries subsidies to help prevent overfishing and to promote sustainable fishing practices.⁷

What is the Blue Economy?

The Blue Economy refers to the sustainable use of ocean resources for economic growth, improved livelihood while preserving the health of the ocean ecosystem. In the African context, the blue economy covers both aquatic and marine spaces including oceans, seas, coasts, lakes, rivers, and underground water. It encompasses a range of productive sectors, including fisheries, aquaculture, tourism, transport, shipbuilding, energy, bioprospecting, and underwater mining among other related activities.⁸ The Blue Economy concept includes the recognition that the productivity of healthy freshwater and ocean ecosystems is a pathway for aquatic and maritime-based economies and can ensure that islands and other coastal countries, as well as land-locked States, benefit from abundant natural resources. It recognizes that the ocean is a valuable economic asset that can generate significant benefits for society, however, its resources must be managed in a sustainable way

to ensure long-term availability. This approach emphasizes the need for collaboration between government, industry, and communities to create a healthy, productive, and resilient ocean economy.⁹ It also requires an integrated, holistic, and participatory approach that includes sustainable use and management of Blue Economy resources for societal progress in a diverse Africa.¹⁰

The Blue Economy is seen as an important tool for achieving the Africa Union's Agenda 2063 Goals, particularly those related to poverty reduction, food security, and climate action. It requires collaboration between governments, businesses, and civil society to ensure that economic growth and ocean protection go hand in hand.

What does the New Framework Seek to Achieve?

The WTO Agreement on Fisheries subsidies was given effect, primarily to address the following issues:

1. To curb illegal, unreported and unregulated (IUU) fishing, by the curtailment of subsidies globally.
2. To prohibit the availability of subsidies to fishing of overfished stocks with priority for areas where management measures are ineffective.
3. To prohibit subsidies to fishing on the unregulated high seas, where management measures do not exist.



⁶ <https://www.iisd.org/articles/wto-agreement-fisheries-subsidies-what-you-need-know> <> accessed on March 14, 2023

⁷ Implementing The WTO Agreement on Fisheries Subsidies

⁸ Africa's Blue Economy: A policy handbook, at p.1

⁹ Open Knowledge Depository Beta <https://openknowledge.worldbank.org/bitstream/handle/10986/28527/9781464810969.pdf> accessed on March 14, 2023

¹⁰ Africa's Blue Economy: A policy handbook, at p.6



The Agreement demands a degree of transparency among its members to the effect that among the provisions contained in the agreement, obligations lie on members to provide information relevant to the implementation of the Agreement which includes specific details such as the type or kind of fishing activity for which the subsidy is provided; as much as possible the status of the targeted fish stocks, catch data, fisheries management measures, information on benefactor vessels and a list of all vessels and operators to the extent of notifying the member is subscribed to IUU fishing.

It is not in doubt that the Agreement is robust in its scope and is admitted to having challenges in its implementation, most especially among developing countries. Some of such instances are highlighted below:

1.The Agreement intends to curb illegal, unreported, and unregulated (IUU) fishing, by the curtailment of subsidies globally. In fact, the practicality of how the Agreement intends to achieve this, is by complying with a procedural course of actions that include determining the vessel or operator engaged in IUU fishing related activities. By notifying the WTO and in turn the coastal state responsible for issuing subsidies, the coastal state will be required to withdraw those subsidies. In allusion to the sovereignty of the coastal state, it could be said to have been encroached upon by the WTO in this procedure. The trade-off of a member state under any international agreement should be toward a cause that affects the collective of member states subject to it. In this instance, the trade-off for African member states would be the achievement of Blue Economy goal of Agenda 2063 of the AU as a parallel to the WTO's fisheries agreement mandate.

2.The Fisheries Subsidies Agreement seeks to limit IUU fishing on the high seas. According to the UNCLOS, the high seas are the maritime delimitations that are not included in the exclusive economic zones, or the territorial seas of sovereign coastal or archipelagic states; therefore, every claim of a sovereign state over the high seas is invalid. This in turn makes the high seas a tricky area to regulate, which is what this Fisheries Subsidies Agreement offers under article 5.1 to some degree. The aforementioned provision is an outright prohibition on all fishing and fishing related activities in areas outside the jurisdiction of coastal members and non-members and any RFMO to protect against the overfishing of the same fish stock. In many ways the fisheries subsidies agreement supplements the provisions of the UNCLOS.

Criticisms of the New Regulatory WTO's Agreement on Fisheries Subsidies

The WTO's Agreement on Fisheries Subsidies is a global agreement that applies to all WTO member countries, including those that are also members of the African Continental Free Trade Area (AfCFTA). However, there are some specific criticisms of the agreement that may be relevant to African countries and the AfCFTA:



1. Differential treatment: One of the criticisms of the WTO's Agreement on Fisheries Subsidies is that it allows for differential treatment of developing countries. Some African countries have argued that this differential treatment could result in a situation where developed countries bear the burden of reducing subsidies while developing countries continue to receive them. This could be seen as unfair to African countries that may have fewer resources to invest in sustainable fishing practices.¹¹

2. Enforcement: As with the global agreement, the effectiveness of the WTO's Agreement on Fisheries Subsidies within the AfCFTA will depend on the willingness of countries to comply with its provisions. Some African countries may have weaker enforcement mechanisms or less capacity to monitor compliance, which could make it difficult to ensure that the agreement is adequately complied with.¹²

3. Lack of consultation: Some African countries have criticized the lack of consultation during the negotiation of the agreement. They argue that they were inadequately consulted or their concerns being taken into account during the negotiation process. This in turn could make it difficult for African countries to fully support and implement the agreement.¹³

Projections and Possible Recommendations Toward Improvement

1. Sustainable fishing practices: If the agreement is ratified, African nations will be free to use sustainable fishing methods that support the preservation of fish populations and marine biodiversity.

To ensure that fishing is done sustainably, they can enact fishing quotas, size restrictions, and gear limitations. For instance, the artisanal fishing industry in **Senegal**, a nation in West Africa, has benefited from the implementation of a community-based co-management program that has helped to curb overfishing and advance sustainable fishing methods.

¹¹ "African leaders unite for global fishing subsidy ban." The Africa Report, 23 March 2021, <https://www.theafricareport.com/83444/african-leaders-unite-for-global-fishing-subsidy-ban/> <> accessed on March 14, 2023

¹² Ibid

¹³ "African nations call for greater voice in global fishing negotiations." Undercurrent News, March 16 2021, <https://www.undercurrentnews.com/2021/03/16/african-nations-call-for-greater-voice-in-global-fishingnegotiations/>



In this program, the government collaborates with local fishing communities to create and execute fishing regulations that support ethical fishing methods and guarantee the preservation of fish stocks.¹⁴ Furthermore, the declaration of fishing practices such as dredging (involves dragging a steel cage along the sea bed to catch marine life) and dynamite fishing (which involves the use of detonated explosives under water) as illegal will likely motivate the necessary enforcement. The detrimental effect of these practices is the disruption of ecosystems and bio-diversity they cause.

2. Economic benefits: By supplying a more consistent and predictable supply of fish, the agreement can aid African nations in developing their fishing industry. The Blue Economy is estimated to generate nearly US\$300 Billion for the African continent, thus creating 49 million jobs in the process¹⁵. The agreement intends to lessen competition from heavily subsidized foreign fishing fleets and in turn enhance the local fishermen's ability to compete in the market. For instance, **Seychelles**, an island nation, has established a sustainable **tuna fishing business** that has produced jobs and substantial economic advantages for the nation. Seychelles has been successful in securing investment from foreign partners and growing a robust fishing industry by adopting sustainable fishing methods and encouraging the conservation of fish stocks.¹⁶ They are also the first WTO member from Africa to formally accept and ratify the agreement.¹⁷

3. Environmental Conservation: By regulating harmful fishing practices like overfishing and destructive fishing techniques, African countries can leverage the agreement to conserve the maritime environment and biodiversity. They can take action to stop the widespread issue of illegal, unreported, and unregulated fishing, which affects many African nations. For instance, **Tanzania** in East Africa has created a program to prevent unreported, unregulated, and illicit fishing in its waters. With this program, the government has intensified fishing activity surveillance and put into place measures to discourage illicit fishing, such as seizing fishing equipment and fining violators.¹⁸

4. International cooperation: International law is predicated on a bona fide promise of a state to comply, adopt and enforce the provisions of the agreement in the overarching interest and goals of the member states. In the absence of these actions taken by member states to the agreement, the agreement cannot yield the desired result of a thriving blue economy for the African continent. It is of great importance that African member states cooperate with other countries in the management of shared fish stocks. The resultant effect is a reduction in conflicts between fishing nations and promotion of more sustainable practices. Countries can share data and scientific information to ensure that fish stocks are managed in a sustainable way.



¹⁴ "Senegal Takes Steps to Establish a Sustainable and Better-Governed Fisheries Sector" (The World Bank) < <https://www.worldbank.org/en/news/feature/2016/08/08/senegal-takes-steps-to-establish-a-sustainable-and-better-governed-fisheries-sector> > accessed March 15, 2023

¹⁵ Blue Economy for Resilient Africa Program < <https://www.worldbank.org/en/topic/environment/brief/blue-economy-for-resilient-africa-program#:~:text=The%20African%20Union%20estimates%20that,dependent%20on%20the%20ocean's%20health.> > accessed March 17, 2023

¹⁶ "Third South West Indian Ocean Fisheries Governance and Shared Growth Project" (The Ministry of Trade, Finance and Economic Planning Republic of Seychelles) < <https://documents1.worldbank.org/curated/en/802891494842794672/pdf/SFG3361-RP-P155642-Box402909B-PUBLIC-Dislosed-5-12-2017.pdf> > accessed March 15, 2023

¹⁷ "Seychelles Is First WTO Member from Africa To Formally Accept Fishing Subsidies Agreement" (World Trade Organization) < https://www.wto.org/english/news_e/news23_e/fish_10mar23_e.htm > accessed March 15, 2023

¹⁸ "European Union Partnering With Tanzania To Preserve Fishery Resources" (European Union) < https://www.ecas.europa.eu/delegations/tanzania/european-union-partnering-tanzania-preserve-fishery-resources_en > accessed March 15, 2023

For instance, the countries of the **Southwest Indian Ocean Fisheries Commission** have developed a regional plan of action to combat IUU fishing and promote sustainable fisheries management. The new agreement can encourage more such regional cooperation for the sustainable management of shared fish stocks.

Conclusion

In conclusion, while the Agreement on Fisheries Subsidies represents an important step towards addressing the problems caused by overfishing and unsustainable fishing practices, it still faces several criticisms that need to be addressed to ensure its effectiveness. However, by promoting sustainable fisheries practices, the agreement could contribute to long-term economic growth and the preservation of Africa's maritime resources. African countries should carefully consider the potential impacts of the agreement and take steps to ensure that the Blue/Ocean Economy remains a key component of their economic growth strategy.

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