

FROM ADDRESSING TRADE DISTORTION TO CORRECTING ENVIRONMENTAL DISTORTION: THE FISHERIES SUBSIDIES NEGOTIATION AS THE TURNING POINT OF THE WTO'S TASK

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ABSTRACT

Traditionally, the World Trade Organization (hereinafter "WTO") has been a forum to address trade distortive practices adopted by government, and has no experience in dealing with a pure environmental protection issue. The fisheries subsidies negotiation is the turning point. It starts addressing the correction of environmental distortion which is harmful to the fisheries conservation and sustainability. The WTO expanding its tasks to environmental issue could be seen as a "good mistake." While the fisheries subsidies negotiations are ongoing, the current draft negotiation text clearly shows that it intends to prohibit the listed subsidies due to their environmental harmfulness. This is the first time that the WTO addresses non-trade-related issues of high importance. The paper argues that there are certain additional features that need to be built in so as to reflect that the fisheries subsidies agreement is to correct the "environmental distortion." For instance, because the purposes and nature of subsidies of the agreement are different from the Agreement on Subsidies and Countervailing Measures (hereinafter "ASCM") and its concept of

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categorizing subsidies, Members should consider the agreement to be a “stand alone” agreement, not an annex to the ASCM. Another example is about the dispute settlement: Since the future fisheries subsidies agreement is designed to address fisheries conservation, not to bring about any trade benefit to Members, a complaining Member in a dispute settlement procedure is not supposed to make its complaint based on the fact that “a trade interest” has been nullified or impaired. The paper further explains the relation between the future fisheries subsidies agreement and the ASCM. Supposing there is an adverse economic effect or supposing the domestic fishing industry is injured because of certain fisheries subsidies granted by a WTO Member, a multilateral or unilateral action can still be triggered based on the procedures and requirements provided in the ASCM, in addition to the remedies that can be applied to address the fisheries conservation aspect arising from the subsidies.

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