

CURRENT DEVELOPMENT OF FISHERIES SUBSIDIES REGULATIONS AFTER THE FAILURE OF WTO DOHA ROUND NEGOTIATIONS WITH A FOCUS ON THE ASIA-PACIFIC REGION

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ABSTRACT

Given the negative impacts of fisheries subsidies on trade, the environment and sustainable development, there have been concerns for eliminating fisheries subsidies via international instruments following the development of international fisheries law, and international trade law, in particular, the World Trade Organization (hereinafter “WTO”) law. As there is no single international instrument at the global level to effectively control fisheries subsidies, via a group of WTO Members’ advocates this issue was finally drawn to the WTO’s Doha Round Negotiations initiated in 2001 and contained in the mandates of the Doha Ministerial Declaration. In 2007, the WTO’s Negotiating Group on Rules (NGR) proposed the Draft Consolidated Chair Texts of the AD and SCM Agreement (hereinafter “2007 Proposed Draft”) which represents a substantial step of these negotiations. However, with the failure of the Doha Round Negotiations, the 2007 Proposed Draft has been put in mothballs. Fortunately, international concerns were later stimulated at both the regional and global levels, namely the 2015 Trans-Pacific Partnership Agreement (hereinafter “TPP”) which was then replaced by the 2018 Comprehensive and Progressive

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Agreement for Trans-Pacific Partnership (hereinafter “CPTPP”) as well as the 2015 United Nations Sustainable Development Goals (hereinafter “SDGs”). Both concepts developed within the TPP/CPTPP and SDGs to a great extent reflect those of the WTO’s 2007 Proposed Draft.

Finally, as the response to the SDGs and as the decision of the 2017 WTO Buenos Aires Ministerial Conference, the negotiations resumed in 2020 aiming to conclude the negotiations in the next Ministerial Conference. Although the negotiations have been impacted by the COVID-19 Pandemic, based on efforts that have been made, the Chair of fisheries subsidies negotiations released a revised draft (hereinafter “2021 Revised Draft”) in November 2021.

Given that the fisheries resources in the Asia-Pacific region are depleting, as well as that the majority of States involving in marine capture fisheries and fisheries subsidies are located in this region, this paper with a focus on this region examines the potential instruments via a normative and comparative analysis of the WTO’s 2007 Proposed Draft and 2021 Revised Draft, as well as the CPTPP Environment Chapter. Found are that the 2021 Revised Draft seems to have made some compromises and thus there may be fewer obstacles in the negotiations. Yet, the wrestling between the United States and China may still impact the outcome of negotiations. In that case, further attention can be paid to the CPTPP which provides robust fisheries subsidies and fisheries management regulations. Both to accelerate the WTO fisheries subsidies negotiations at the global level as well as to enhance the CPTPP expansion and to improve its enforcement at the regional level would be needed for the robust fisheries management and conservation in the Asia-Pacific region.

KEYWORDS: *fisheries subsidies, SCM Agreement, WTO, CPTPP, IUU fishing, overcapacity, overfishing, overfished, fisheries management system, Doha Round Negotiations, Asia-Pacific region*