

The Concept of “Developing Countries” in the Context of the WTO Fisheries Subsidies Negotiation

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Abstract

This paper explores the concept of developing countries in the context of the WTO DDA fisheries subsidies negotiations. It raises a question whether the concept of developing countries that is widely used in other WTO agreement should be applicable to the new disciplines on fisheries subsidies. In order to address the question, this paper outlines the history of the DDA fisheries subsidies negotiations and discusses the goal of fisheries subsidies negotiations. Then, it presents the concept of developing countries in the GATT, the WTO and other international institutions, and finds that it is almost exclusively based on economic indicators. Then, it reviews global fish production and the amount of global fisheries subsidies. On the basis of its analysis, this paper finds that, in order to achieve the proposed goal of the new disciplines on fisheries subsidies, and to strike a balance between the environmental and the developmental dimensions of fisheries subsidies, the concept of “developing countries” in the context of fisheries subsidies should be different from that in other WTO agreements. It should not include countries that have leading fishing industry for which the governments provide large amount of subsidies, in particular, fishing capacity-enhancing subsidies.

Keywords

World Trade Organization (WTO), Doha Development Agenda (DDA), Fisheries Subsidies, Developing Countries, Special and Differential Treatments

1. Introduction

At the fourth World Trade Organization (WTO) Ministerial Conference held in

Doha, Qatar, in 2001, WTO members agreed to launch the Doha Development Agenda (DDA) negotiations (WTO, 2001), the ninth multilateral trade negotiations in the history of the General Agreements on Tariffs and Trade (GATT) and the WTO. Rules negotiations, as one of the nine areas of the DDA negotiations,¹ encompasses negotiations on anti-dumping, horizontal subsidies, fisheries subsidies and regional agreements. Fisheries subsidies were added to the negotiation agenda largely by the concern for imminent depletion of fishery stocks on a global basis. In particular, the Friends of Fish Group members argued that over-fishing and overcapacity caused by various subsidies programs have led to the overexploitation of fishery resources. Therefore, they claimed, fisheries subsidies should be extensively prohibited. Despite the progress made through the negotiations for more than nine years, there still existed “fundamental and significant disparities between members’ stances” as acknowledged by Pascal Lamy, former Director-General of the WTO, and the DDA negotiations have been practically paralyzed since it deadlocked in 2011. Fisheries subsidies negotiations have also been dormant for several years. However, with early harvests made at WTO Ministerial Conferences in 2013 and 2015, and the successful completion of the Trans-Pacific Partnership (TPP) negotiations in late 2016, including new disciplines on fisheries subsidies, it is anticipated cautiously that members may bridge the gaps in their stances in fisheries subsidies negotiations and make another early harvest at the Buenos Aires WTO Ministerial Conference in December 2017. Therefore, fisheries subsidies have re-emerged as a critical issue.

In July 2017, the chairman of the rules negotiations group circulated a compilation matrix of textual proposals (WTO, 2017h) which would serve as a basis of further discussions. A special and differential treatment of developing country members is included as one of the six topics covered by the matrix. The GATT and the WTO agreements give special consideration to developing countries, allowing them flexibilities in implementing their commitments, and textual proposals in fisheries subsidies negotiations also contained similar provisions.

Against this backdrop, this paper explores the concept of developing countries in the context of fisheries subsidies negotiations. It raises a question whether the concept of developing countries, used in other WTO agreements, is also applicable to the new set of disciplines on fisheries subsidies. This paper argues, as the goal of the new disciplines on fisheries subsidies is different from those of other agreements, it is not appropriate to use the same concept in the former.

Section 2 outlines a brief history and the current status of WTO fisheries subsidies negotiations. Section 3 reviews the concept of “developing countries” at the GATT and the WTO, and presents special and differential treatments of developing countries contained in other WTO agreements. Section 4 examines whether the concept of “developing countries” that is used in other WTO agreements should be applicable to the new disciplines on fisheries subsidies.

¹The other eight areas of negotiations are: non-agricultural market access (NAMA), agriculture, service, trade facilitation, intellectual property rights, environment, development, and disputes settlement.

2. A Brief History and the Current Status of WTO Fisheries Subsidies Negotiations²

The DDA was launched in November 2001, with aims to extend market access to agricultural and non-agricultural products and services, and to strengthen WTO rules. The DDA, as is reflected on its nomenclature, concentrates on developmental dimensions of trade with an understanding that it is essential to address needs and interests of developing countries and to contribute to their economic development. The fisheries subsidies were added to the negotiations agenda, as WTO members agreed to “aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of these sectors to developing countries” (WTO, 2001). Unlike other matters of the DDA negotiations, fisheries subsidies is a complicated issue, encompassing three dimensions. Firstly, it is an environmental issue. As aforementioned, fisheries subsidies were initially added to the negotiations agenda largely because of the concern for imminent depletion of fishery stocks on a global basis. And, it is undeniable that diminishment of fishery resource base causes harm to environment. Therefore, if fisheries subsidies contribute to over-fishing and overcapacity which result in depletion of fishery resources, it should be regulated. Secondly, it is a trade issue. Fisheries subsidies may distort market and trade of fish and fishery products, as those who receive subsidies may have an undue advantage in the market place. If fisheries subsidies cause such adverse effect on international trade, it should be regulated. Thirdly, it is a developmental issue. Taking into account that fishing industry is an essential sector in a large number of developing countries and least developed countries,³ fisheries subsidies provided by relatively developed countries would have a negative impact on the socio-economic development of under developed countries, and such subsidies should be regulated.

In fisheries subsidies negotiations, there are, by and large, three groups of countries that had strong stances in the negotiations. First, the Friend of Fish Group members, consisting of Australia, Chile, New Zealand, the United States, to name a few, claimed that, in general, fisheries subsidies should be prohibited extensively with a limited list of exceptions. Second, large developing countries such as Argentina, Brazil, China, India, etc. supported the claims of Friends of Fish Group of extensive prohibition of fisheries subsidies. However, at the same time, they requested a broad exception for developing countries, which, they argued, they are entitled to as part of the development implication of the DDA. Third, Japan, Korea, Chinese Taipei, the European Union, and Norway argued that not all fisheries subsidies cause over-fishing and overcapacity. And thus, they claimed, prohibition should be limited to fisheries subsidies that actually

²The earlier version of section II is included in relevant sections of Revisiting WTO Fisheries Subsidies Negotiations, *Beijing Law Review*, 6(1), January, 2015, and Revisiting the WTO DDA Negotiations: Analysis of its Current Impasse, *International Studies Review*, 14(2), December 2013.

³At the Doha Ministerial Conference, members agreed to “aim to clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries”.

contribute to over-fishing and overcapacity and result in decline of fishery resources. They also claimed that exceptions for developing countries should not be excessive. They were concerned that broad exceptions to large developing countries with strong fishing industries could undermine the goal to protect fishery resources.

Although little progress had been made till the Hong Kong Ministerial Conference in December 2005, and there was no breakthrough, members recalled their commitment to strengthen disciplines on fisheries subsidies (WTO, 2005). They also mandated the chairman of the rules negotiating group to prepare a consolidated text which would be serve as a basis for further negotiations (WTO, 2005). In November 2007, the chairman circulated a consolidated text, summarizing the proposals submitted by members and discussions that had taken place (WTO, 2007). After a year of negotiations based on the consolidated text, the chairman circulated a revised version of it, reflecting members' opinions and comments on the previous text (WTO, 2008). However, with regard to the fisheries subsidies, unlike anti-dumping or horizontal subsidies, the chairman circulated a "roadmap" instead of a revised consolidated text which merely listed the issues that required further discussions. The chairman explained, "as the difference in members' stances was too wide", he was unable to write a revised text. Members intensified negotiations in order to draft a revised text by April 2011, but in vain, as they failed to narrow the gaps in their positions. When the chairs of negotiating groups, including rules group, were only able to circulate an assessment of the state of negotiations instead of a revised set of texts in April 2011, Pascal Lamy, Director-General at the time cast serious doubt on the completion of the DDA by the end of the year, pointing to the fact that a clear political chasm was not bridgeable (WTO, 2011a). The chairman of the rules negotiations group, in particular, wrote in his report that "there is too little convergence on even the technical issues, and indeed virtually none on the core substantive issues" in fisheries subsidies (WTO, 2011b).

The DDA negotiations had not moved forward until it made a modest progress at the Bali Ministerial Conference in December 2013. Members reconciled differences in their positions and agreed on the issues of trade facilitation, duty-free quota-free market access for least developed countries, monitoring mechanism on special and differential treatment, etc. (WTO, 2013). At the Nairobi Ministerial Conference in 2015, members reached agreements on a few more issues, including preferential rules of origin for least developed countries, (WTO, 2015a) preferential treatment in favor of services and services suppliers of least developed countries, (WTO, 2015b) etc. In addition, in October 2015, a final version of TPP Agreement was drafted. After seven years of negotiations, and it was signed in February 2016.⁴ It contains regulations on fisheries subsidies

⁴The TPP consisted of twelve members, until 23 January 2017 when President Trump signed a presidential memorandum to withdraw from it. The twelve countries are: Australia, Brunei Darussalam, Canada, Chile, Japan, Malaysia, Mexico, New Zealand, Peru, Singapore, the United States and Vietnam.

in its environment chapter which solidified members' strong commitment to protect and conserve natural resources. This has inspired somewhat optimistic anticipation that another early harvest could be made at the Buenos Aires Ministerial Conference in December 2017, and fisheries subsidies is be the area where progress would be made, as disciplines on fisheries subsidies in the TPP may help unlock the talks in the DDA negotiations. In fact, 28 WTO members jointly circulated a ministerial statement on December 19, 2015, during the Nairobi Ministerial Conference, in which they committed to securing a ban on fisheries subsidies that negatively affect over-fished fish stocks as well as subsidies to vessels engaged in illegal, unreported and unregulated (IUU) fishing (WTO, 2016). In 2016 and 2017, the European Union (WTO, 2017a), Iceland, New Zealand, and Pakistan (WTO, 2017b), Argentina, Columbia, Costa Rica, Panama, Peru and Uruguay (WTO, 2017c), Indonesia (WTO, 2017d), Norway (WTO, 2017e), African Caribbean Pacific Group (WTO, 2017f), and Least Developed Countries Group (WTO, 2017g) submitted textual proposals. And, in July 29, 2017, the chairman of the rules negotiations group circulated a compilation matrix of textual proposals drafted on the basis these seven proposals (WTO, 2017h). It is clear that fisheries subsidies has re-emerged as a critical issue.

3. “Developing Countries” at the GATT and the WTO

3.1. Concept of “Developing Countries” at the GATT and the WTO

There is no clear definition of developing countries proposed by either the GATT, the WTO or by any other international institution, while there are suggested classifications. Legal scholarship has not proposed any definition, either. Although GATT XVIII:4 suggests developing county as a country “economy of which can only support low standard of living and is in early stage of development”, neither the GATT or the WTO has provided clear and concrete interpretation. In the Ceylon—Article XVIII Application case in 1957, GATT panel examined whether Article XVIII was applicable to Ceylon (currently, Sri Lanka), and found it was, on the basis of Ceylon’s GDP per capita and the proportion of manufacturing, mining and construction industry in its economy.⁵ At the time, Ceylon’s GDP per capita was \$155 and the proportion of manufacturing, mining and construction industry amounted to 10%, which were low to be used as criteria to distinguish between developed counties and developing countries. In 1964, the Committee on Legal and Institutional Framework discussed the problems of defining the term “less-developed countries” and identifying the less-developed countries, but contracting parties could not reach agreement. There were two main views on these issues. “On the one hand, some members considered that it was not at this stage either necessary or feasible to attempt a definition of a less-developed contracting party and that if a problem as to identification arose such a problem could be dealt with at that time. On the other hand, some mem-

⁵GATT BISD, 6th Supp. 112 I:1535, 1957.

bers felt that it was possible by a systematic identification of either less-developed contracting parties or developed contracting parties to resolve the matter at a larger stage”.⁶ When Part IV, titled as “Trade and Development” was added to GATT in 1965, the issue of defining “developing” or “less-developed” countries was raised again,⁷ but, contracting parties were unable to resolve it. Instead, the terms of reference of the Committee on Trade and Development include “to consider any question which may arise as to the eligibility of a contracting party to be considered as a less-developed contracting party in the sense of Part VI”.⁸ However, the eligibility of a country as a developing contracting party had never been discussed at the Committee. In 1979, contracting parties adopted the Decision of 28 November 1979 on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries, as a part of Tokyo Round Negotiations (GATT, 1979). The Decision is commonly called as “Enabling Clause”, as it provides a legal basis for developed countries to grant non-reciprocal trade preference to developing countries under their Generalized System of Preference (GSP) programs, without being in violation of the Most-Favored Nation principle. Article 7⁹ of the Decision suggests implicitly the potential “graduation” from GSP status by referring to the possible improvement of the ability of developing countries to make contributions or negotiated concessions. However, no criteria or guideline of the graduation was made by the GATT.

In fact, in the GATT and the WTO, developing country status has been designated on the basis of self-election, although this is not accepted automatically. If no member formally objects to a member invoking a developing country status, the member would be free to apply the term to itself. In the history of the GATT and the WTO, all countries have self-elected themselves as developing countries at least once with the exception of the United States, the European Communities, Canada, Japan, Australia, New Zealand, and Switzerland.

In the WTO Committee on Trade and Development meetings and the trade negotiations groups meetings at the early stage of DDA negotiations, a few proposals were made on the issues of whether to subdivide the concept of “developing countries” and to require certain relatively advanced developing countries

⁶GATT L/2195/Rev.1, para.7.

⁷The terms “developing countries” and “less-developed countries” could be interpreted as having the same meaning. For example, the 1965 Decision on Differential and More Favorable Treatment, Reciprocity and Fuller Participation of Developing Countries uses the term “less-developed countries” in its text.

⁸GATT BISD, 13th Supp. 76, 1965.

⁹Article 7 provides as:

The concessions and contributions made and the obligations assumed by developed and less-developed contracting parties under the provisions of the General Agreement should promote the basic objectives of the Agreement, including those embodied in the Preamble and in Article XXXVI. Less-developed contracting parties expect that their capacity to make contributions or negotiated concessions or take other mutually agreed action under the provisions and procedures of the General Agreement would improve with the progressive development of their economies and improvement in their trade situation and they would accordingly expect to participate more fully in the framework of rights and obligations under the General Agreement.

to make further contributions, commensurate to the levels of their economic development, in terms of granting preference to least-developed countries, etc. However, the discussion did not make any progress.

3.2. Developing Country Status at the WTO

As aforementioned, it has been a practice in the GATT and the WTO that members may choose to self-elect itself as a developing country. With regard to least developed countries, however, the WTO incorporates a list of countries that the United Nation designates as such.¹⁰ The various agreements in Annex 1 of the WTO Agreement give special consideration to developing country members. Developing countries were subject to less reduction in tariffs and domestic support on agricultural products than developed countries, as a result of Uruguay Round negotiations. In addition, the Agreement on Agriculture allowed developing countries the flexibility to implement their reduction commitment over a period of up to 10 years,¹¹ while the implementation period for developed countries was 6 years.¹² The Agreement on the Application of Sanitary and Phytosanitary Measures (SPS Agreement) recognizes that developing country members may encounter special difficulties,¹³ grants special and differential treatment to them,¹⁴ and allows delays in application of the Agreement for 2 years.¹⁵ The Agreement on Technical Barriers to Trade (TBT Agreement) also recognizes the special difficulties that developing countries may encounter,¹⁶ and has a provision about technical assistance to them.¹⁷ The Agreement on Trade-Related Investment Measures (TRIMs Agreement) grants flexibilities to developing countries, and allows 2 years, 5 years, and 7 years, respectively, to developed countries, developing countries, and least-developed countries, during which period members should eliminate trade-related investment measures that are not in conformity with the Agreement.¹⁸ The Agreement on Implementation of Article VII of the General Agreement on Tariffs and Trade 1994 (Agreement on Customs Valuation) allows developing country members to delay the application of the Agreement no longer than five years, while developed country members are not granted such flexibility.¹⁹ While the Agreement on Subsidies and Countervailing Measures prohibits export subsidies and domestic substitution subsidies,²⁰ the former did not apply to developing countries for a period of 8 years,

¹⁰Marrakesh Agreement Establishing the WTO, Article XI:2.

¹¹Agreement on Agriculture, Article 15.2.

¹²Id., Article 1.(f).

¹³Agreement on the Application of Sanitary and Phytosanitary Measures, Preamble.

¹⁴Id., Article 10.

¹⁵Id., Article 14.

¹⁶Agreement on Technical Barriers to Trade, Preamble.

¹⁷Id., Article 11.

¹⁸Agreement on Trade-Related Investment Measures, Article 5.2.

¹⁹Agreement on Customs Valuation, Article 20.

²⁰Agreement on Subsidies and Countervailing Measures, Article 3.

²¹Id., Articles 27.2, 27.3.

and the latter, for a period of 5 years.²¹ At the same time, however, the Agreement provides for a graduation clause to the effect that when a developing country reached export competitiveness in a product, export subsidies for the product should phase out in 2 years.²² Likewise, while the Agreement on Safeguards limits the total period of application of a safeguard measure to 8 years,²³ developing countries are entitled to extend a safeguard measures for a period of 2 years beyond 8 years.²⁴ The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) provides one year of transition period to members,²⁵ while developing country members are entitled to delay for a further period of 4 years.²⁶ With respect to developing countries in dispute settlement process, the Understanding on Rules and Procedures Governing the Settlement of Disputes (Dispute Settlement Understanding) contains a number of provisions addressing the special and differential status of developing countries'. A developing country, as a complaining party, may request for an accelerated procedure.²⁷ Also, when a developing country and a developed country are in disputes, the developing country member may request for at least one panelist from a developing country.²⁸ In a dispute involving a developing country, periods for consultation and panel examination may be extended.²⁹ Other Agreements, including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), also contains provisions in consideration of developing country members.

3.3. Concept of “Developing Countries” at Other International Institutions

The Advisory Center on WTO Law (ACWL) was established in 1999 “with a mission to provide developing countries and least developed countries with the legal capacity necessary to enable them to take full advantage of the opportunities offered by the WTO”. Among its members, the ACWL lists 11 countries as developed countries; they are Canada, Italy, United Kingdom, Denmark, Netherlands, Switzerland, Finland, Norway, Australia, Ireland, and Sweden. However, it does not provide a criterion to distinguish developed countries and developing countries. With regard to developing countries, it divides them into three categories on the basis of their world trade share or gross national product (GNP) per capita. Among developing countries, category A consists of countries with either world trade share larger than 1.5%, or with relatively high income; category B, of countries with either world trade share larger than 0.15% and

²¹Id., Article 27.5.

²²Agreement on Safeguards, Article 7.3.

²³Id., Article 9.2.

²⁴TRIPS Agreement, Article 65.1

²⁵Id., Article 65.2.

²⁶Dispute Settlement Understanding, Article 3.12.

²⁷Id., Article 8.10.

²⁸Id., Article 12.10.

²⁹Agreement Establishing ACWL, Annexes II and III.

smaller than 1.5%, or with upper middle income; and category C, of countries with world trade share smaller than 0.15%.³⁰ It incorporates a list of countries that the United Nation designates as least developed countries.

The World Bank classified countries into four categories based on gross national income (GNI) per capita. For the current 2018 fiscal year, high-income economies are defined as those with a GNI per capita of \$12,236 or more in 2016; upper middle-income economies, with a GNI per capita between \$3956 and \$12,235; lower middle-income economies, with a GNI per capita between \$1006 and \$3955; and, low income economies with a GNI per capita of \$1005 or less. **Table 2** shows the World Bank classification of developing countries.

It should be noted, however, that in May 2016, the World Bank announced that, it would no longer distinguish between “developed countries”, previously defined as high-income countries, and “developing countries”, previously defined as low-income and middle-income countries, in presenting its data (*World Bank Group, 2016*). It means that the World Bank would no longer use the terms across its whole range of statistic and programs. One of the reasons is that, on the measures such as infant mortality, life expectancy, educational standard, public health, etc. or the measures of absolute poverty such as sufficient food, clean water, basic sanitation, affordable energy, reasonable healthcare, there no longer exists a meaningful distinction between “developed” and “developing” countries. Instead, the real differences are more likely to be within countries. Also, as low-income, lower middle-income, upper middle-income countries are all classified as “developing countries”, the term is too broad and not useful. For example, Mexico whose GNI per capita now amounts to \$9,860, and Malawi, with a GNI per capita of \$250 are classified in a same group of “developing countries”, and such classification is neither helpful nor meaningful. In addition, the World Bank’s move reflects the changing stakes of the development shifting from the Millennium Development Goals (MDGs), set in 1990, to Sustainable Development Goals (SDGs), created in 2015. Uma Serajuddin, a senior economist in the World Bank’s statistics office explained “MDGs were meant to be for the developing countries (...) that needed help The SDG views every country as needing development.” Development became everyone’s problem.

The IMF classifies countries into three groups; advanced economies, developing countries, and countries in transition. And, each of these three groups is further divided into a number of groups, based on countries’ share in aggregate purchasing power parity (PPP) valued GDP, total exports of goods and services, and population. Rather than being based on strict criteria, it is said, “the classification has evolved over time with objects of facilitating analysis by providing a reasonably meaningful organization of data” maintained jointly by the IMF’s Research Department and area departments.

Although international institutions have not proposed a definition of a “developing country”, they classified countries into a few group. And the classifications are based, almost exclusively, on economic indicators, such as GNI, GNP,

world trade share, total exports of goods and services, etc.

4. Revisiting the Concept of “Developing Countries” in the Context of the WTO Fisheries Subsidies Negotiations

All the textual proposals submitted in the rules negotiations group contain provisions of special and differential treatment to developing countries, although they may differ in scope and degree. At the Doha Ministerial Conference, members agreed that the importance of fishery sector to developing countries should be taken into account in the context of negotiations. At the Hong Kong Ministerial Conference, members agreed explicitly that “appropriate and effective special and differential treatment for developing and least developed members should be an integral part of the fisheries subsidies negotiations, taking into account the importance of this sector to development priorities, poverty reduction, and livelihood and food security concerns” (WTO, 2005). Therefore, it is certain that the new disciplines on fisheries subsidies would give special consideration to developing countries. And, now, the question is who should be eligible for the special considerations.

Most international institutions have made lists of “developing countries” on the basis of economic indicators. While the GATT and the WTO adopted a self-election approach in designating developing country status, it is widely understood that the concept of “developing countries” stands on an economic perspective. And, it is questionable whether the concept of “developing countries” that is used in other WTO agreements is also applicable to fisheries subsidies. In the GATT and the WTO agreements, special and differential treatment were provided for developing countries, with an understanding that it should “facilitate and promote the trade of developing countries and not to raise barriers to or create undue difficulties for the trade of any other contracting parties” (GATT, 1979). This reflects the growth and development objective of developing countries in the global trading system. It could be understood that, in the GATT and the WTO agreements, special and differential treatment to developing countries encompasses two dimensions: trade and development. However, the issue of fisheries subsidies is centered on environmental concern.

In Uruguay Round negotiations, fisheries issue was discussed at the market access group where tariffs and non-tariff barriers to trade of all products, except for agricultural products, were negotiated. At the time, fisheries issue was recognized more as a trade issue. In fact, trade dimension of fisheries subsidies can be addressed by the current Agreement on Subsidies and Countervailing Measures without introducing a new discipline. Once fisheries subsidies distort trade, it can be disputed at the WTO dispute settlement system. Also, when a country finds its fishing industry was injured by subsidized foreign fishery products, it may impose countervailing measures on such products, after an investigation. Although the fisheries subsidies were added to the DDA negotiations agenda, as members agreed to “aim to clarify and improve WTO disciplines on fisheries

subsidies”, members maintained intransigent positions on whether it was necessary to introduce new rules in order to regulate fisheries subsidies. Japan, Korea, Chinese Taipei, and the EU claimed that the mandate was confined to strengthening the Agreement on Subsidies and Countervailing Measures, with focus on regulation of trade distorting effects of fisheries subsidies. The Friends of Fish Group members claimed that the mandate covered the environmental dimension as well as the trade dimension of fisheries subsidies, and thus, a new set of rules should be introduced in order to regulate negative impacts of fisheries subsidies on environment. It was at the Hong Kong Ministerial Conference that members finally accepted the environmental mandate by recalling their commitment at Doha “to enhancing the mutual supportiveness of trade and environment” and noting “there is broad agreement that the [rules negotiations] group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and over-fishing” (WTO, 2005). It is clear that, unlike other issues of the negotiations, the environmental dimension is an essential part of fisheries subsidies, which should be taken into account in the discussion of the special and differential treatment to developing countries.

Although a consensus has not been reached, yet, it is widely accepted by members that the new disciplines would apply only to wild marine capture fisheries, which means it would not be applicable to inland fisheries or aquaculture. And, **Table 1** shows quite a few of the 25 leading countries in marine capture fisheries are “developing countries” on an economic perspective.

In addition, **Table 2** shows half of the ten leading exporters of fish and fish products are also developing countries based on economic indicators.

A group of scholars conducted a comprehensive research and analyzed global fisheries subsidies in 2013. One chapter of the report presents the magnitude of fisheries subsidies (Sumaila et al., 2013). It estimates that the global fisheries subsidies in 2009 amounts to US\$ 35 billion, of which fishing capacity-enhancing subsidies constituted the highest categories that amounts to over US\$ 20 billion (Sumaila et al., 2013: p. 28). **Figure 1** shows fisheries subsidies estimates for the ten largest subsidizing developing countries. Except for Brazil and Myanmar, the amounts of fishing capacity-enhancing subsidies are greater than those of other subsidies.

Figure 2 shows fisheries subsidies estimates for the ten largest subsidizing developed countries. Interestingly, the report classifies China as a developed country in its analysis, probably because China is unparalleled in fisheries production, including capture fisheries and aquaculture. China accounts for 30% of global fish production and 60% of global aquaculture production.³¹ It also classifies Korea as a developed country. Japan has the largest amounts of subsidies among developed countries, closely followed by China. Except for the United

³¹Leading Countries in Fishing and Aquaculture Harvest, World Atlas, April 25, 2017.

<<http://www.worldatlas.com/articles/leading-countries-in-fishing-and-aquaculture-output.html>>.

Table 1. Marine capture production: major producers.

Rank	Country	Average (2003-2012)	2013	2014
		(tons)		
1	China	12,759,922	13,967,764	14,811,390
2	Indonesia	4,745,727	5,624,594	6,016,525
3	United States	4,734,500	5,115,493	4,954,467
4	Russia	3,376,162	4,086,443	4,000,702
5	Japan	4,146,622	3,621,899	3,630,364
6	Peru	7,063,261	5,827,046	3,548,689
7	India	3,085,311	3,418,821	3,418,821
8	Viet Nam	1,994,927	2,607,000	2,711,100
9	Myanmar	1,643,642	2,483,870	2,702,240
10	Norway	2,417,348	2,079,004	2,301,288
11	Chile	3,617,190	1,770,945	2,175,486
12	Philippines	2,224,720	2,130,747	2,137,350
13	Korea	1,736,680	1,586,059	1,718,626
14	Thailand	2,048,753	1,614,536	1,559,746
15	Malaysia	1,354,965	1,482,899	1,458,126
16	Mexico	1,352,353	1,500,182	1,396,205
17	Morocco	998,584	1,238,277	1,350,147
18	Spain	904,459	981,451	1,103,537
19	Iceland	1,409,270	1,366,486	1,076,558
20	Chinese Taipei	972,400	925,171	1,068,244
21	Canada	969,195	823,640	835,196
22	Argentina	891,916	858,422	815,355
23	United Kingdom	622,146	630,047	754,992
24	Denmark	806,787	668,339	745,019
25	Ecuador	452,003	514,415	663,439
	25 Countries Total	66,328,843	66,923,439	66,953,612
	World Total	80,793,507	80,963,120	66,953,612

a. (Source: [FAO, 2016, p. 11](#)).

States, Canada and Australia, the amounts of fishing capacity-enhancing subsidies are greater than those of other subsidies.

Figure 3 shows fisheries subsidies estimates by major fishing countries. It shows that the European Union has the largest amounts of fisheries subsidies followed by Japan and China. With an exception of the United States, the amounts of fishing capacity-enhancing subsidies are greater than those of other subsidies.

Table 2. Top ten exporters of fish and fishery products.

Rank	Country	2004	2014
(US\$ millions)			
1	China	6637	20,980
2	Norway	4132	10,803
3	Viet Nam	2444	8029
4	Thailand	4060	6565
5	United States	3851	6144
6	Chile	2501	5854
7	India	1409	5604
8	Denmark	3566	4765
9	Netherlands	2452	4555
10	Canada	3487	4503
Top Ten Subtotal		34,539	77,801
Rest of the World Total		37,330	70,346
World Total		71,869	148,147

a. (Source: FAO, 2016, p. 53).

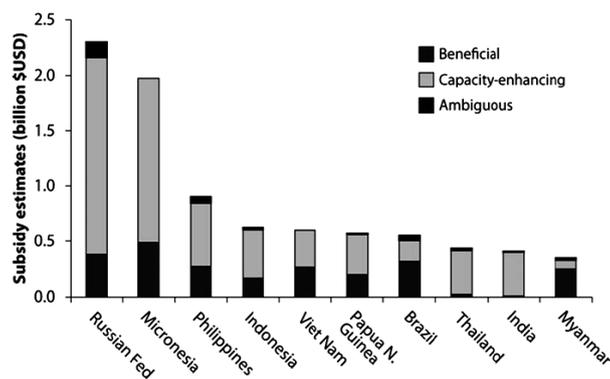


Figure 1. Fisheries subsidies by developing countries (Source: Sumaila et al., 2013, p. 31).

Figure 4 shows global fisheries subsidies estimates by subsidies categories. It shows that the amounts of fishing capacity-enhancing subsidies are higher than other subsidies in both developed and developing countries. While the figure shows that the amount of subsidies provided by developed countries is far greater than provided by developing countries, it has to be noted that China is classified as “developed countries” in this report, as aforementioned.

As a whole, a few countries that are classified as “developing”, in accordance to a traditional concept largely based on economic indicators, have a big fishing industry, and give significant number of fisheries subsidies, large portion of which are provided in order to enhance fishing capacity. This raises a question

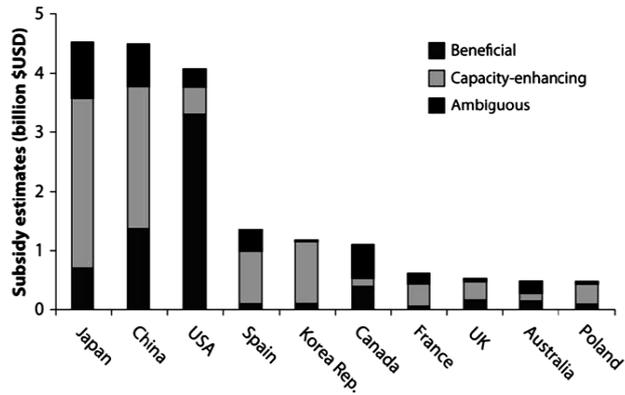


Figure 2. Fisheries subsidies by developed countries (Source: Sumaila et al., *Global Fisheries Subsidies*, p. 32).

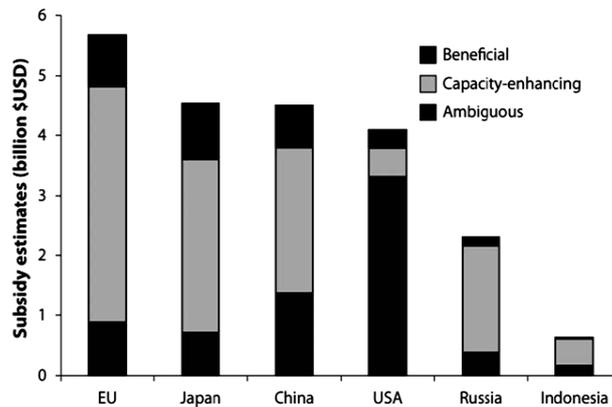


Figure 3. Fisheries subsidies by top fishing countries (Source: Sumaila et al., 2013: p. 32).

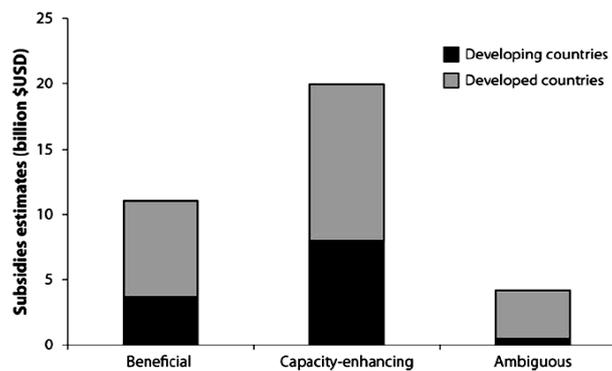


Figure 4. Global fisheries subsidies estimates by subsidies categories (Source: Sumaila et al., 2013: p. 32).

whether such countries should be eligible for vast flexibility granted to developing countries. More specifically, would it be appropriate to grant special and differential treatments to China, Russia or Indonesia in terms of disciplines on fisheries subsidies? The answer is no. Unlike other issues that have been discussed in the GATT and the WTO, the most important goal of fisheries subsidies nego-

tiations is to introduce a new set of disciplines to conserve fishery resources, in other words, to protect environment. If leading countries in fish production that are also big subsidizers are exempted from disciplines as “developing countries”, the goal of the new discipline would be seriously undermined. On the other hand, the developmental dimension of fisheries subsidies, in particular, “the importance of [fishery] sector to development priorities, poverty reduction, and livelihood and food security concerns”³² can be sufficiently addressed by providing special considerations to “developing countries” in the context of fishery industry, and to small scale or artisanal fisheries and subsistence fishers. Therefore, in order to achieve the proposed goal of the new disciplines on fisheries subsidies, and to strike a balance between the environmental and the developmental dimensions of fisheries subsidies, the concept of “developing countries” in the context of fisheries subsidies should be different from that in other WTO agreements. It should not include countries that have leading fishing industry for which the governments provide large amount of subsidies, in particular, fishing capacity-enhancing subsidies.

5. Conclusion

This paper has examined whether the concept of developing countries that is used in other WTO agreements should also be used in the context of fisheries subsidies negotiations. In order to address this question, first, the paper has reviewed the history of the DDA fisheries subsidies negotiations, and discussed the goal of fisheries subsidies negotiations. Then, it has presented the concept of developing countries in the GATT and the WTO, and discussed special and differential treatments provided to them under the multilateral trading system. It has also presented the concept of developing countries used by other international institutions, and found that the concept stands on an economic perspective, and the classifications are based, almost exclusively, on economic indicators, in the GATT, the WTO and other international institutions. Lastly, the paper has reviewed global fish production and the amounts of global fisheries subsidies. On the basis of its analysis, this paper finds that the concept of “developing countries” in the context of fisheries subsidies should be different from that in other WTO agreements. Fisheries subsidies negotiations were added to the DDA by the concern for the overexploitation of global fishery resources, and thus, it could be said that the priority is set on the environmental dimension of fisheries subsidies issue. The most important goal of the new disciplines is to prevent the imminent depletion of fishery stocks by regulating various fisheries subsidies programs that result in over-fishing and overcapacity. If vast flexibility is allowed to a number of countries simply because they are classified as “developing” based on economic indicators, although they have leading fishing industry for which large amounts of subsidies are provided, the proposed goal to conserve fisheries resources would be seriously undermined.

³²Hong Kong Ministerial Declaration, *supra* note 6, p. D-2.

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