

Navigating the WTO's Illegal, Unreported, and Unregulated Prohibition for Countries in the Caribbean Community

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SUMMARY Prohibiting subsidies in support of illegal, unreported, and unregulated (IUU) fishing under Article 3 of the WTO (World Trade Organization) Agreement on Fisheries Subsidies presents opportunities and challenges for countries in the Caribbean Community (CARICOM). An essential part of this agreement is that it prohibits government funding of distant-water fishing vessels and operators that exploit the waters of developing countries, thereby reducing distant-water fishing's profitability and subsequent impact on fish stocks. This issue brief examines three key aspects of the agreement for CARICOM countries: (a) the mechanisms for triggering the IUU prohibition when a coastal state member determines that IUU fishing has occurred, (b) the potential impact of the IUU prohibition on small-scale and artisanal fishers in CARICOM countries, and (c) the potential role of the WTO fisheries fund and international partnerships in helping policymakers comply with the agreement, especially once the special and differential treatment provision expires two years after the agreement enters into effect. This issue brief also offers recommendations to policymakers in CARICOM countries for effectively employing the WTO agreement to prohibit subsidies for vessels found fishing illegally.

The WTO (World Trade Organization) Agreement on Fisheries Subsidies is the first of its kind for the organization. Traditionally, multilateral subsidy rules focus on the trade-distortive impacts of subsidies; however, this agreement is also aimed at countering the harm that subsidies cause to the sustainability of fish stocks. The mandate for the WTO to clarify disciplines on fisheries subsidies came from the Doha Ministerial in response to harmful subsidies that were damaging ocean life.¹ At the Hong Kong Ministerial in 2005, the mandate was further clarified (a) to include fisheries subsidies that contribute to overfishing and overcapacity and (b) to strengthen the commitment to appropriate and effective special and differential treatment for developing countries, which depend on the fisheries sector for livelihood and food security. This mandate was further reaffirmed



under Sustainable Development Goal 14.6 in 2015 and during the 2017 Ministerial in Buenos Aires. At the 2022 Ministerial Conference 12 in Geneva, member states unanimously agreed to pass measures that would discipline subsidies to illegal, unreported, and unregulated (IUU) fishing;² overfished stocks; and fishing in the unregulated high seas, with a mandated commitment to complete the pillar on overfishing and overcapacity within four years from entry into force.

For countries in the Caribbean Community (CARICOM), a critical aspect of this agreement is the prohibition on subsidies to IUU fishing, as it eliminates government funding for one of the most harmful actions taken by distant-water fishing vessels in the waters of developing countries. These vessels are known for overfishing in the waters of countries with little ability to police their exclusive economic zones (EEZs), negatively affecting the viability of fish stocks and the livelihoods of coastal communities.

Nonetheless, the agreement does not distinguish between subsidies for types of fishing (for instance, small-scale or artisanal fishing, domestic versus international). Therefore, IUU fishing committed by domestic small-scale and artisanal vessels and operators, which comprise the majority of the fishing industry in the CARICOM region,³ will also be subject to the prohibition. For policymakers in CARICOM countries with limited data on domestic fishing, it will be essential to amend both fisheries management and fisheries subsidy regimes to ensure subsidies are not provided to local IUU fishing vessels and operators.

Finally, the Agreement on Fisheries Subsidies applies only to subsidies to marine wild-capture fishing and fishing-related activities at sea, that are “specific” as defined by Article 1.1 and Article 2 of the Agreement on Subsidies and Countervailing Measures. Therefore, under the fisheries agreement, subsidies that are provided horizontally to multiple industries—for instance, subsidies for fuel—may not be covered.

ILLEGAL DISTANT-WATER FISHING

According to the Food and Agriculture Organization of the United Nations (FAO), “the Western Central Atlantic Region, which includes the Caribbean, is in the world’s top five most overexploited fisheries.”⁴ The FAO also states that IUU fishing in this region is estimated to account for between 20 percent and 30 percent of the total reported harvest, at \$450 million to \$750 million per year. This situation has dire implications for millions of people, especially those in the Caribbean, who rely on fish as an essential source of protein. The WTO fisheries subsidies agreement plays a vital role in the fight against IUU fishing, as IUU vessels can fish longer, farther, and with more capacity because of the subsidies;⁵ consequently, the removal of subsidies can make IUU fishing less profitable. Although the WTO agreement cannot eliminate IUU fishing, it provides a mechanism for countries to discipline these harmful subsidies.

Under Article 3.2(a) of the agreement, once a coastal state determines that a vessel or operator has engaged in IUU fishing in waters within the state’s jurisdiction, the prohibition under Article 3.1 can be applied. However, a coastal state must take certain conditional actions to ensure that its determination can trigger the disciplinary action as outlined in Article 3.3(b).⁶ The steps in Article 3.3(b)(i), (ii), and (iii)

were designed to follow the procedures already taken by a coastal state in its domestic law as well as international law and to allow for transparency in the IUU determination process for the benefit of the subsidizing member. In cases where the subsidizing member and the flag state are the same, a notification is made to the flag state. However, in cases where they are not the same, if the subsidizing member is known at the time of detention or subsequently thereafter, communication must be sent to the subsidizing member for the prohibition to apply.

Under Article 3.4, the subsidizing member can take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the maximum duration for which a subsidy will be removed, but the prohibition shall apply for as long as the sanction is in place according to the coastal state's laws. Effectively, the coastal state can set according to its own laws the minimum duration for which vessels or operators are prohibited from receiving a subsidy if they are found to have committed IUU fishing in the coastal state's waters.

Finally, in Article 8.2 of the agreement, each member, which includes coastal state members, must give to the Committee on Fisheries Subsidies annually a list of vessels and operators that it has determined to have engaged in IUU fishing. A nil notification must be submitted if there is no list to present. The creation of the list is an essential step for transparency because it allows members to know which vessels have been determined to have engaged in IUU fishing, and because it allows members to prevent any further subsidies from being provided while the vessel is sanctioned.

Although there is a paragraph under Article 3 that would require a coastal member to notify the committee of an affirmative IUU determination, that requirement is redundant given the notification requirement under Article 8.2. The provision without any enumeration in Article 3 could cause coastal members to overreport and to include determinations where the coastal member found that the infraction was minor and only a fine was applied. Such overreporting can place an undue burden on the limited capacity of government agencies in the CARICOM.

DOMESTIC SMALL-SCALE AND ARTISANAL FISHERIES

According to the Organisation for Economic Co-operation and Development, approximately \$35 billion is spent each year to support the fisheries sector.⁷ Further estimates show that 19 percent of this amount goes to small-scale fishing, including artisanal and subsistence fishing.⁸ It is estimated that these numbers are significantly lower for the Caribbean region, although extensive data on the amounts do not exist.

In 2018, the Caribbean Regional Fisheries Mechanism (CRFM) estimated that approximately 95 percent of fishing in the CARICOM is from small-scale fishing.⁹ Furthermore, for many countries in the CARICOM, subsidies for fishing, if provided, are designed for small-scale fishers, especially in times of crisis.¹⁰ For instance, the government of Guyana gave small cash grants to fishers nationwide to offset the rising cost of living in 2022.¹¹ Recently, the government of Jamaica provided subsidies for safety gear and fuel for drought mitigation, which supported small-scale Jamaican fishers, particularly young women.¹²

Despite these small grants, if distributed to IUU fishing vessels and operators, they will be subject to the WTO prohibition once the special and differential treatment provision expires under Article 3.8. Two years after the agreement goes into effect, developing countries would become subject to dispute settlement under Article 3.1 and Article 10 if a determination is made that a vessel or operator has committed IUU fishing and is receiving subsidies. Furthermore, per Article 8.2, a list of the vessels and operators determined to be engaged in IUU fishing, regardless of size or scale of operations, must be submitted to the committee annually.

This requirement could be challenging for CARICOM countries, particularly for unreported and unregulated fishing, because weak enforcement and tracking systems for small-scale and artisanal fishers make it difficult to prohibit subsidies to individual vessels and operators.

RECOMMENDATIONS FOR POLICYMAKERS

In the future, policymakers in CARICOM countries should exercise caution when designing subsidies for their marine wild-capture fishing to avoid exposure to disciplinary actions by the WTO. Nonetheless, there are actions that policymakers can take now and in the near future to bolster their laws and fisheries management systems in preparation for the agreement's entry into force.

In the period before the agreement goes into force, policymakers should review their laws on IUU fishing, since Article 3.7 requires WTO members to have regulations in place to ensure compliance. That review will also be critical in ensuring that laws are in place that provide a minimum period during which IUU fishing vessels and operators cannot receive subsidies, per Article 3.4. Moreover, there are time-sensitive notifications under Articles 8.3 (steps taken to implement the agreement), 8.4 (description of fisheries laws and regimes), and 8.6 (regional fisheries management organizations and associations that a country is party to) that must be made one year after entry into force. Countries can prepare the information now to fulfill these notifications at entry into force.

Once the agreement goes into force, the WTO Fisheries Funding Mechanism will be essential in supporting CARICOM countries in meeting the notification requirements, especially for small-scale artisanal fishing. The fisheries fund can be used to assist regional and national fisheries management bodies in strengthening systems that collect and report on the data called for under Article 8.1(b). Although that article requests the information "to the extent possible," joint initiatives between international civil society and regional institutions such as the CRFM could support fisheries officials in providing more robust data for the notification. Moreover, sensitization workshops run in collaboration with the Caribbean Network of Fisherfolk Organizations could help support better reporting to fisheries authorities by fishers, and educate fishers on how compliance with the agreement is critical to the conservation of small-scale fisheries. The success of these trainings and workshops will depend on the workshops' design, funding availability, and consistent engagement with the various stakeholders.

With available funding, technology can also be leveraged to design an interagency digital database that monitors information on vessels and the subsidies provided to them. This database would have the

primary focus of conservation management, but it could also be used to generate a list of vessels and operators that have been determined to commit IUU fishing, in accordance with the notification requirement under Article 8.2. That feature could also help ensure that noncomplying vessels and operators do not receive government support. Joint initiatives between international organizations such as the FAO, United Nations Conference on Trade and Development, and CRFM could help assess the feasibility and utility of an interagency database for CARICOM countries.

Footnote 13 in Article 8 specifies that developing countries with an annual share of less than 0.8 percent of global marine capture volume may make the notification of additional information under 8.1(b) every four years.¹³ However, it is recommended that the notification be made in accordance with the regular notification requirements under Article 25 of the Agreement on Subsidies and Countervailing Measures, because reporting would need to be done for the entire four-year extended period, which could be additionally burdensome for already-overstretched fisheries administrations. A nil notification can also be made if no subsidies were provided.

Finally, working with key international partners will be important for CARICOM countries in the fight against illegal fishing by distant-water fishing vessels, especially given the difficulties in monitoring fishing activities in those countries' EEZs. Recognizing this, the United States Southern Command has expanded its support in tackling IUU fishing to the coast guards in Latin America and the Caribbean,¹⁴ strengthening their defense against IUU fishing in the region. As part of this partnership, support can be provided to assist CARICOM countries in leveraging the WTO agreement to prohibit subsidies for distant-water fishing vessels and operators found illegally fishing in Caribbean EEZs.

CONCLUSION

The WTO Fisheries Agreement presents a critical opportunity in the fight against IUU fishing in the region. Nonetheless, the agreement also poses challenges for governments and regional fisheries management agencies, especially for small-scale and artisanal fishing. This policy brief delved into the structure of the IUU prohibition under Article 3 and provides recommendations for policymakers to ensure compliance while protecting the well-being of the region's fisheries resources and the communities dependent on fish for their livelihood.

ABOUT THE AUTHOR

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ABOUT THE SERIES

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NOTES

1. Pew Charitable Trusts, “Fisheries Subsidies Agreement: What’s the Big Deal?,” May 10, 2023, <https://www.pewtrusts.org/en/research-and-analysis/fact-sheets/2023/05/fisheries-subsidies-agreement-whats-the-big-deal>.
2. “Illegal, unreported, and unregulated fishing” refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing*, adopted by the United Nations Food and Agriculture Organization in 2001.
3. Margarita R. Seminario, Linnea Sandin, and Isaac Parham, “Development Solutions to Address Illegal, Unreported, and Unregulated Fishing in Latin America and the Caribbean,” Center for Strategic and International Studies, July 19, 2021.
4. Food and Agriculture Organization, “Caribbean Countries Tackle IUU Fishing by Marking and Recording Their Vessels,” October 16, 2017, <https://www.fao.org/americas/noticias/ver/en/c/1039097/>.
5. Michael Crispino, “5 Ways Harmful Fisheries Subsidies Impact Coastal Communities,” World Wildlife Fund, November 21, 2019, <https://www.worldwildlife.org/stories/5-ways-harmful-fisheries-subsidies-impact-coastal-communities>.
6. This measure was adapted as such to prevent frivolous cases from being brought to the WTO and to prevent abuse of the dispute settlement system.
7. Roger Martini, “Many Government Subsidies Lead to Overfishing. Here’s a Solution,” Organisation for Economic Co-operation and Development, February 28, 2019, <https://www.oecd.org/agriculture/government-subsidies-overfishing/>.
8. Anna Schuhbauer, Daniel J. Skerritt, Naazia Ebrahim, Frédéric Le Manach, and U. Rashid Sumaila, “The Global Fisheries Subsidies Divide between Small- and Large-Scale Fisheries,” *Frontiers in Marine Science* 7 (Sept. 2020), <https://www.frontiersin.org/articles/10.3389/fmars.2020.539214/full>.
9. Caribbean Regional Fisheries Mechanism. (2018, May 23). *Caribbean Fisheries Ministers Endorse Protocol for Securing Small-scale Fisheries*. Retrieved from Press Releases: https://www.crfm.int/index.php?option=com_k2&view=item&id=607:caribbean-fisheries-ministers-endorse-protocol-for-securing-small-scale-fisheries&Itemid=179.
10. The exemption under Article 11 does not cover Article 3.
11. News Room Guyana, “All Fisherfolk to Get One Off \$150,000 Cash Grant,” YouTube video, 1:59, May 31, 2022, <https://www.youtube.com/watch?v=I2cLrTWyxA>.
12. Alecia Smith, “More Support for Fisheries Sector, Drought Activities,” *Jamaica Observer*, July 20, 2023, <https://www.jamaicaobserver.com/news/more-support-for-fisheries-sector-drought-activities/>.
13. This footnote is mischaracterized as special and differential treatment. This mischaracterization derives from what should have been special and differential treatment for small fishing nations as a standalone *de minimis* exemption of 0.8 percent under Article 5: Subsidies Contributing to Overcapacity and Overfishing in WT/MIN(22)/W/20. This Article was dropped in the final hours of the negotiations at MC12; however, the footnote in Article 8 was maintained.
14. US Southern Command, “Area of Responsibility,” <https://www.southcom.mil/About/Area-of-Responsibility/>. See also US Southern Command, “U.S. Southern Command Signs Partnership Agreement with Global Fishing Watch,” June 5, 2021, <https://www.southcom.mil/News/PressReleases/Article/2646106/us-southern-command-signs-partnership-agreement-with-global-fishing-watch/>.