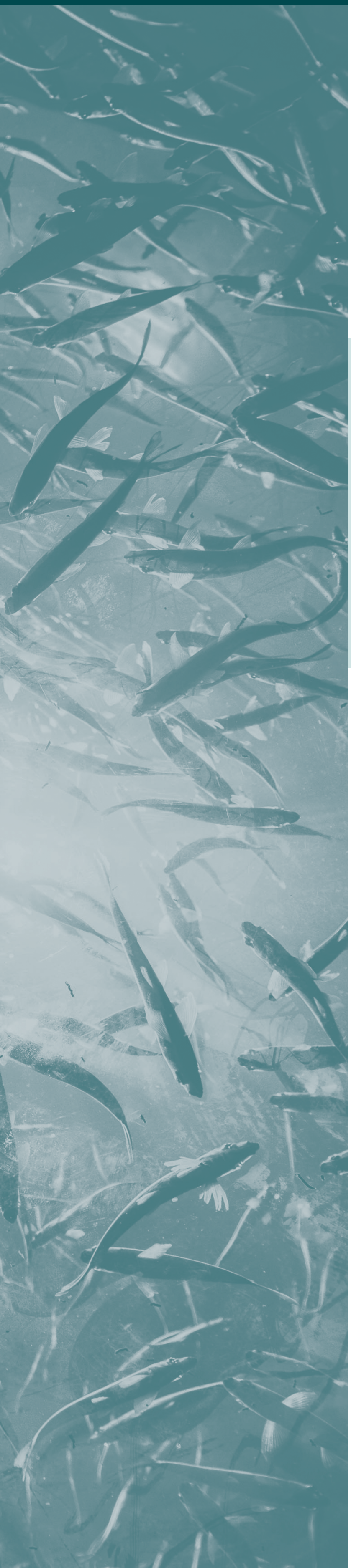
Future Fisheries Management
Issue Brief



A WTO Deal on Fisheries Subsidies Should Require Transparency in Access Agreements

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SUMMARY Fishery access agreements have been exempted from the remit of negotiations at the World Trade Organization on ending the harmful subsidies that have driven depletion of fishery stocks globally. This exclusion is a missed opportunity. Transparency on these access agreements is essential because they cover government-to-government payments that enable overfishing activity. Many operators would otherwise not be economically viable to enter a coastal state's fishing territory without a government-to-government payment, so including these fishery access agreements is an important element of transparency that is needed for effective implementation of the WTO agreement.

The World Trade Organization (WTO) seeks to achieve by February 2024 an agreement to limit subsidies that lead to overfishing and overcapacity in fishing fleets—major contributors to the depletion of the world's fish stock. The potential agreement, which would require members to report the level of subsidies and fishery activities, represents a new driver for transparency as it seeks to advance a 2022 agreement[1] to ban subsidies for illegal, unreported, and unregulated (IUU) fishing that target overfished stocks and fisheries in international waters unregulated by a regional fisheries management body.

As things stand, the current negotiation has one glaring omission: it doesn't cover government-to-government payments under fishery access agreements, which all too often leads to overfishing. Unless this form of subsidy is included in the negotiation, any eventual agreement would remain limited in its ability to deliver more transparency for the benefit of coastal state (country) populations.

FISHERY ACCESS AGREEMENTS CAN BE SUBSIDIES

Fishery access agreements are allowed for under Article 62 of the United Nations Convention on the Law of the Sea (UNCLOS)[2] which states that "where the coastal state does

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not have the capacity to harvest the entire allowable catch it shall, through agreements or other arrangements [...] give other states access to the surplus of the allowable catch." Access agreements have taken the form of private agreements between a state and a fishing company, agreements between two states, and joint ventures between two companies. Typically, deals are based on specific tonnage and time frames, but the level of detail on what is agreed varies by agreement. Some access agreements, such as those negotiated by the European Union (EU), are published publicly but others remain secret for reasons that vary. Sometimes countries and companies buying access have sought secrecy for commercial reasons, but deals have also been kept secret at the request of the host state signing the deal. Secrecy facilitates corruption among coastal state government elites. But secrecy can also obscure the commercial value of the fish being exploited, to the advantage of the parties buying the access.

EU MODEL TRANSPARENCY IS NOT BEING FOLLOWED BY CHINA

Access agreements became a priority for the EU after the depletion of important fish stocks in the North Atlantic and in the Mediterranean. Meanwhile, in the mid- to late 1980s, China began to sign access agreements with coastal states in Africa and Asia to supply the fleet it built, a hybrid of state-owned entities and privately owned firms, as an export-oriented earner of hard currency. Indonesia, Iran, Russia, and Turkey similarly operate large fleets, but China retains the world's largest distant water fleet and has the largest network of access agreements globally.

When two states enter into an access agreement, the payment made by one state to the other should be understood as a subsidy provided by the paying state to the country's fishing vessels, since even if the payment is government-to-government, the state purchasing gains access to a resource its fishing companies would otherwise not have. For example, the EU typically pays 75 percent of the cost of access agreements signed with coastal states for access to EU vessels, which allows otherwise uneconomical fishing activities in fisheries that are in danger of being overfished.[3] EU vessels have been forced to withdraw from waters covered by an access agreement due to overfishing, as in 2021 when several Spanish vessels withdrew from Senegalese waters due to an absence of fish.[4]

It is unclear if this instance would be referred to as a source of overfishing under any WTO deal that would end subsidies contributing to overfishing. Nonetheless, the Senegalese incident makes clear the necessity for greater transparency in the scale of subsidies that may accrue when major fishing fleets sign access agreements that may contribute to overfishing.

TRANSPARENCY IN ACCESS AGREEMENTS IS SORELY NEEDED

One of the most significant proposals being considered in the WTO negotiations is a two-tier reporting regime with stricter requirements for a small group of the world's leading payers of subsidies. While this proposal remains to be agreed upon, it would provide more details on the subsidies and fishing activities of key fishing fleets, like China's.

The EU in its 2014 reform of the Common Fishery Policy[5] set a new standard for transparency in access agreements, termed Sustainable Fishery Partnership Agreements (SFPAs). This standard, however, has yet to be replicated by China.

The EU and the European fishing lobby group Europêche have claimed that its SFPAs have set a high level of transparency by disclosing the number and ownership of vessels as well as activities, transhipment (the loading of catches from smaller boats at sea onto larger reefers or transport ships), and landing locations.[6] The SFPAs also detail where proceeds from the agreements are being invested by recipient nations. Likewise, requirements for the hiring of local crews creates local employment. It's not clear that the host states have required similar levels of transparency from other states, as the EU suggested would become the case.

A lack of publicly available information on non-EU fishery access agreements negates the ability of civil society to scrutinize the activity of fleets in local waters. This risk is especially acute given the inability of many coastal states to accurately assess their own stocks. If no established references for stock levels are agreed upon, any signed agreements will lack capacity for policing and enforcement. Likewise, an absence of local infrastructure means that fish is transhipped at sea rather than offloaded locally, reducing the state's ability to monitor actual catches.

AFRICAN COASTAL NATIONS ARE SEEKING TRANSPARENCY

Relatively recent nongovernmental initiatives like the Fisheries Transparency Initiative (FiTI)[7] have encouraged coastal states to take measures to improve the transparency of fisheries governance and management in access deals with China and other partners. The FiTI has set a standard for the level of disclosure and information to be made publicly available by coastal states, eight of whom are in various stages of FiTI assessment. There have been encouraging signs, particularly in Mauritania, a West African country and applicant to the FiTI, that has multiple access agreements with foreign fleets. A recent applicant to join the FiTI is Guinea, a West African country seeking to improve fishery management.

The FiTI, which is funded by grants from states including Germany and Ireland, is seen as a useful and low-cost learning and governance tool by coastal states seeking to extract the maximum value from their fishery resources over the long term. Coastal states are often far more wary about the ongoing negotiations at the WTO due to the potential negative financial implications for their public coffers and for local livelihoods and food security.

The WTO Fisheries Funding Mechanism,[8] included as part of the 2022 WTO agreement will assist capacity development and training in the least developed coastal states, enabling them to implement the WTO deal through monitoring fishing stocks in their waters.

While this fund is modest, at EUR 5 million, it creates a base of increased funding and a model for badly needed further training. Given that half of global fisheries lack the ability to conduct scientifically rigorous assessment, it is difficult to see how developing states can accurately assess the state of their stocks in order to enforce WTO bans on the subsidies that drive overfishing and overcapacity in fishing fleets. Establishing such expertise and data would, of course, also help states negotiate and police fair access agreements.

Exemptions for developing countries is one of the most contentious issues being debated at the WTO. Various developing coastal states have demanded exemptions from subsidy limitations to protect their artisanal fisheries that supply a key part of their protein needs.

Officials and fishing representative bodies in Ghana, India, and Senegal have argued[9] that they should not be subject to a WTO agreement that addresses the fisheries depletion caused by large industrial fleets[10]—though in some instances the foreign fleets are present in their waters thanks to access agreements signed by local governments.[11]

Representatives of the western fishing industry meanwhile point out that 60 percent of fishing in territorial waters globally is carried out by unmonitored small-scale national fleets[12]—though this figure may be arbitrary given that accurate data on the state of stocks remains lacking in many coastal states.

AN ABSENCE OF DATA

The lack of data and research capacity in many signatory states makes it ever more important that research assistance is provided to coastal states, and that data on actual fish stocks should be published and made publicly available alongside the terms of access agreements to enable, at a fair price, more responsible exploitation of fish stocks. A WTO deal should likewise recognize access payments as subsidies if these payments provide access to stocks in danger of overfishing.

Including access agreements in the reporting requirements of an improved WTO agreement would lead to better economic results for poorer coastal states. A frequent lack of transparency exacerbates an underlying problematic aspect of access agreements: the power imbalance that often exists between the two negotiating parties. Various studies have suggested that the price paid by the EU in its access agreements is as low as 8 percent of its true market value within the EU).

The asymmetrical nature of access agreements comes at a time when global seafood supply has tightened while reliance on imports to supply the seafood needs of key markets like the EU (which imports over 70 percent of its seafood)[13] and the United States have increased. It also comes at a time of increased reliance on sardinella-based fishmeal to supply a surge in aquaculture production, particularly in Asia.

A surge in population levels across West Africa has created food security pressures which in turn have focused greater attention on the equity and transparency of access agreements. Protests over inflation of fish prices in Guinea in the spring of 2023 led the country's fisheries minister to introduce a ban on exports of fish—but a ban that didn't extend to fleets operating under access agreements.[14]

The minister also promised to increase the supply of fish in local markets. Food security concerns and a quest to increase the value of access agreements have also been drivers in Mauritania's efforts in recent years to increase the transparency of its agreements, in part, by joining the FiTI initiative. Shipments of fishmeal from Mauritania increased more than tenfold between 2010 and 2018.[15]

Various campaign groups have called for an increase in the monetary value of fishery access agreements to cover the social and environmental external costs of fishing. These groups likewise want access agreements to extend only to species that are of little interest to local populations, though it's not clear how this would be enforced in practice.

A LOOPHOLE IN THE LAW OF THE SEA

The concept of surplus in a state's exclusive economic zone (EEZ), as defined in Article 62 of UNCLOS, on which access agreements are based, is problematic, given the low capacity of many coastal states to scientifically monitor their stocks. It is not clear to what extent the monitoring capacity of coastal states has been increased due to earnings from access agreements.

While much of the focus of campaigners and the media has been on the absence of transparency in state-to-state access agreements, clarity and transparency around how the funds from access agreements are spent remain an issue. The proceeds of the agreements are often spent on general budgetary items rather than on specific enhancements of fisheries management capacity, which would allow states to determine whether stocks are being fished within sustainable limits.

More hopefully, the emergence of new technology has given coastal states access to satellite and AI solutions enabling better monitoring of vessel activity in their EEZs. Cost-effective tools like Global Fishing Watch have boosted the ability of coastal states to monitor their waters, although enforcement capacity in the form of patrol boats remains an issue in many countries.

A greater emphasis in Western capitals on the combat of illegal fishing has been met with indignation in China, where nationalist campaigns have branded the fight against IUU as a Western attempt to suppress China's rise as an economic power.

There is evidence to suggest that greater transparency makes commercial sense for coastal states dependent on earnings from fishery access agreements. Anecdotal comments during Mauritania's validation to FiTI standards suggest the investment climate in the country's fisheries is seen as more favorable by potential investors because of a decreased risk of uncertainty caused by lack of information. Similarly, there are increasing benefits from government transparency to the seafood value chain, as greater transparency is a better guarantee of costs, time, and quality involved in getting product to market.

Freedom of information legislation—as encouraged by initiatives like the Open Government Partnership,[16] which aligns policy makers and civil society in member states around targets for freedom of information and transparent governance—is also prompting governments to take a more proactive rather than reactive approach to disclosing fisheries information.

There are signs of coastal states pushing back against confidentiality requirements demanded by partners to access agreements which have no basis in law and are more an expression of past habits. For instance, a renegotiated access agreement between Seychelles and the Taiwan Deep-sea Tuna Longline Boat Owners and Exporters Association removed clauses that had prevented Seychelles from publishing content on the agreement without the prior knowledge and written approval of the other party to the agreement.[17]

Seychelles is home to the secretariat of the FiTI. While transparency is increasing and could be buttressed further by a WTO agreement on ending subsidies that lead to overcapacity and overfishing, perhaps there are questions about the suitability of the current state-to-state model of access agreements, if they are contributing to overfishing and overcapacity.

There have been calls for a regional approach to the negotiation of fishery agreements as, for instance, in the Gulf of Guinea where various states have separate agreements with external parties for shared stocks. Bargaining as a collective group of states would lead to better economic and fishery management outcomes, the arguments suggest. A regional approach has already been taken by the signatories to an accord governing access to tuna stocks in Oceania, the Nauru Agreement.[18]

While the economic urgencies of coastal states remain key drivers in negotiating and signing access agreements, other existential challenges, like climate change and consequent migration, may force the revision of individual access agreements, if not their replacement with new models. But ever greater transparency, in the form of a WTO deal that forces comprehensive reporting requirements on the largest subsidizing nations, would be a key guarantor of more equitable access agreements for coastal states.

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Mark Godfrey is an Irish journalist covering the agriculture and fisheries sectors in Asia, with a focus on China. Proficient in Mandarin, he has frequently traveled across China's fisheries and aquaculture regions and learned the inner workings of China's corporate world during a nearly three-year stint at the Financial Times' *China Confidential* publication. He has also reported widely across Southeast Asia and the former Soviet Union. He has degrees in journalism and international relations as well as educational certificates in agriculture and food science.

ABOUT THE SERIES

This issue brief is part of an ongoing conversation that began at an interdisciplinary workshop, "New Frameworks for Troubled Times: A Focus on the Global Fisheries Commons" (June 15–16, 2023), co-hosted by the Mercatus Center at George Mason University and the Center for Governance and Markets at the University of Pittsburgh. The views expressed in it are the author's own and do not represent official positions of the Mercatus Center, the Center for Governance and Markets, or their affiliated universities.

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