

Mainstreaming environment and development at the WTO? Fisheries subsidies, the politics of rule-making and the elusive ‘triple win’

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Abstract.

The relationship among trade liberalization, the environment and socio-economic development is marked by controversy, though it is well accepted that in practice economic interests often trump environmental concerns and that developing countries incur a range of costs to participate in, and comply with, multilateral and bilateral trade agreements. Politics and power dynamics in the rule-making process in liberalization negotiations are often implicated for generating these outcomes. To improve on this record, and in accordance with the rise in ‘market environmentalism’, WTO members and advocacy groups have turned this rhetoric on its head and pushed for ‘synergy’ in which a single WTO rule to discipline fisheries subsidies at once liberalizes trade, generates an environmental improvement and supports developing country aspirations – a much fêted ‘triple win’. We sketch the anatomy of the fisheries subsidies negotiations and explore how the triple win is used by blocks of states to justify different political-economic positions. This analysis sheds light on the challenges associated with seeking to use trade for the environment and for development and the dynamics that shape negotiations and the actually existing “rules” that emerge from the WTO.

Keywords: WTO, trade, environment, development, triple win, fisheries subsidies

Protection. For free traders, this word represents the consummate evil. For environmentalists, it is the ultimate good (Esty, 2001, page 113).

...the trading regime is restricting the ability of developing countries to put in place the proper policies to raise standards of living in their countries (Gallagher, 2005, page 10).

Reducing fisheries subsidies could significantly reduce overfishing and foster species preservation, which is why WTO Members are presently negotiating stronger international disciplines in this field. A deal at the WTO would mean richer oceans for future generations and would constitute a triple-win for trade, environment and development. (Lamy, 2010)

1 Introduction

The first two quotes represent the ways in which ‘free trade’ and the process of liberalization at the World Trade Organization (and in regional and bilateral trade agreements) have been pitted against the environment and socio-economic development. The third, spoken by Pascal Lamy, Director General of the World Trade Organization, paints a different picture: one of harmony among the global trade regime (embodied in the WTO), the environment and economic opportunity for developing countries. By this latter account, subsidies (a prime target for reform in WTO liberalization efforts) are seen to harm the environment by creating incentives for overfishing and to harm poorer

developing countries by contributing to fish declines and creating an uneven playing field for unsubsidized fishing industries. The logic follows that if the WTO can conclude a negotiation to eliminate subsidies to the fishing industry, it can be responsible for creating a 'triple win' in which trade is liberalized in the interest of the environment and development objectives.

This sort of explicit complementarity among trade, environment and development has historically been rare at the WTO, though recent decades have seen a rise in efforts to incorporate environmental and social considerations in the forms of liberalism that international institutions (including the WTO and the World Bank) introduce into the world economy. Such efforts, often referred to as 'market environmentalism' (Adams 2009) or 'green neoliberalism' (Goldman 2005), emphasize the globalizing institution of the market (rather than state-led development or a strong regulatory role of the state) and the potential for mutually beneficial relationships between liberalization-induced growth and environmental and social outcomes.

At the WTO, generating this kind of 'synergy' pivots on the ability and willingness of WTO members to participate in the rule-making process in a manner that generates commitment to the liberal program of subsidy elimination. This imperative places the 'triple win' effort in the hotly contested trade-environment-development debate which often identifies the politics of rule-making as a key site in which political tensions emerge, not least because negotiations enable powerful actors to prioritize economic interests over the environment and development, or even over adherence to the principles of liberalization. Since the fisheries subsidies negotiations are to create a triple win by adhering to liberalization, do they – echoing the promises of market

environmentalism – represent an opportunity for trade, environment and development objectives to coexist? And what do they teach us about the significance of the rule making process at the WTO?

To answer these questions, we begin by reviewing the fraught relations among trade, environment and development, highlighting the role of rule-making in generating these conditions. We then contextualize fisheries decline and the fisheries subsidies negotiations within this debate, sketching the origins and trajectory of the ‘triple win’ at the WTO from 1997 to 2010. To assess how the triple win intersects with the usual trade-environment-development narratives, we examine the positions of four negotiating blocks that emerged in the formal fisheries subsidies negotiations in the Doha Round. We identify how each block strategically formulates its negotiating positions to speak to the rhetoric of the triple win (and the formal WTO negotiating mandate to achieve it) *and* the interests of their national fisheries production systems and environmental constituencies. Our analysis punctures the logic of the triple win by identifying it as permeable to many familiar dynamics in the trade-environment-development debate: states functionally adopt and deploy the rhetoric of the triple win in WTO negotiations as a frame for their perceived (and often very complex formulations of) ‘national’ interest.

These formulations may or may not deliver on the promise of the triple win, but investigating them allows us to speak to two areas of interest to the readership of this *Journal*. First, the discussion expands on the trade-environment-development debate in which environment and development outcomes are not byproducts, but explicit objectives of trade negotiations (and broader liberalization and marketization processes), and in which dynamics pivot not on conflict, but complementarities. This has relevance for the

trade-environment-development nexus, and for future efforts to reconcile deep tensions in the stalemated WTO process.

Second, by offering an account of the anatomy of a WTO negotiation, it takes head-on the claim common in the literature that WTO outcomes are a product not of commitment to the principles of ‘free’ markets but of perceived national interest in the negotiating arena. This contribution fills a gap in the literature that often cites power and political dynamics as an explanatory factor in negotiated outcomes, but on account of the non-transparent nature of the WTO, offers few concrete examples of how member countries frame their interests vis-à-vis negotiating mandates. In doing so, it draws attention to the rule-making process as a specific site in which the inconsistencies, contradictions and complexity of liberalization processes emerge. We find that having competing states cooperatively formulate and agree to rules (regulations) that uniformly deregulate their involvement in national economic sectors yields ‘actually existing’ rules that diverge from the tenets of liberalization. We caution against reifying the WTO as ‘the site’ in which the rules of liberalization are formulated since liberalization processes are diffuse (see e.g. Peck and Tickell 2002). However, this case study lends explanatory power to recent scholarship investigating the contradiction that liberalization processes do not ‘free’ markets from state intervention, but are political projects that create and naturalize features of the contemporary economy (Mansfield 2004, McCarthy 2004, Peck 2001). It highlights rule-making processes as one (of many) sites that can help to identifying how varied forms of economic liberalism emerge out of this contradiction.

2 The trade-environment-development nexus and the politics of rule making

Proponents of free trade purport that it will expand the size of the global economy and that, as a rising tide lifts all boats, environmental and development gains become byproducts – positive externalities – of liberalization (Bhagwati, 2004). Critics, on the other hand, draw on high profile examples to illustrate that WTO rules cause environmental harm, undercut progress in using policy to protect the environment and limit possible development trajectories (Chang, 2002; Conca, 2000; Eckersley, 2004; Gallagher, 2005; McCarthy, 2004). For example, in the long-adjudicated tuna-dolphin controversy, in 2011, the WTO ruled that the US must relax its policy on labeling tuna caught with methods that kill dolphins, a move the environmentalists argue prioritizes trade over the protection of marine mammals (ICTSD, 2011). To protest the social consequences of WTO-mandated elimination of subsidies, South Korean farmer Lee Kyang Hae committed suicide under a banner reading ‘The WTO Kills Farmers’ at the barricades outside of the WTO negotiations in Cancún in 2003. The event further mobilized the rural poor around resistance against the WTO (Borras et al., 2008).

In the meantime, several institutional innovations designed to address the relationship among trade, environment and development have emerged in international trade arrangements. Most common among them are ‘side agreements’ or ‘carve outs’, but these are often portrayed as hijacked – often in rule making processes – by powerful states representing perceived national economic interests. For example, the North American Free Trade Agreement (NAFTA) was lauded for creating new institutions to enhance environmental cooperation (e.g. the North American Commission for

Environmental Cooperation), but analyses show these innovations are undemocratic, operate in favor of market actors over civil society and do little to remedy the environmental degradation associated with NAFTA-related economic activities (McCarthy, 2004). Some suggest that NAFTA's environmental provisions can only be judged 'successful' if one assumes that they were created to marginalize environmental concerns (Carlsen and Salazar, 2002).

'Carve-outs' to protect the environment or certain portions of society from harm inflicted by trade rules have also been formalized. For example, special and differential treatment (S&DT) exempts developing countries from certain trade provisions or relaxes implementation times to ease the transition into compliance with WTO regulations. 'Green box' provisions allow otherwise banned subsidies for agriculture when they are deemed 'non-trade distorting', or not linked to commodity production. One such category under negotiation at the WTO are subsidies that support 'multifunctional' agricultural landscapes that may preserve biodiversity, culture, and/or livelihoods as part and parcel of producing agro-commodities. Such landscapes are argued likely to be smaller-scale, more diverse farms and farmers that are most threatened by trade liberalization (Bills and Gross, 2005; Hollander, 2004).

Side agreements and carve-outs are significant in two ways. First, they acknowledge that trade rules can have undesirable effects; to avoid these effects they create *exceptions* to the rules (e.g. Gallagher 2005). Second, rule formation for such agreements and carve-outs is subject to politics and power relations mediating perceived national interest. According to McCarthy's (2004, page 327) writing on NAFTA as environmental governance, the reality of outcomes of the liberalization processes that

emerge from trade agreements ‘are largely the result of political choices, institutional structures and power relations that cannot be separated from the broader political dynamics of globalization.’

For example, tensions exist between large and small developing countries over S&DT, and such tensions are played out in the rule-making process: the former claim their right to S&DT despite their relatively robust economies; the latter argue that they are getting less in S&DT arrangements because *developed* countries do not want to extend broad carve-outs to the large developing countries that have emerged as tough competitors. In the debate over multifunctionality, the EU has proposed a green box that would allow industrialized countries to continue to subsidize their own producers while simultaneously pushing liberalization on other countries’ agricultural sectors. The multifunctionality debate was heated enough to be identified as contributing to the failure of the 2003 WTO Ministerial meeting in Cancún (McCarthy 2005). These examples suggest that the relationship between trade liberalization on the one hand, and environmental protection and development on the other, is enormously complex, contingent, and frequently contradictory – and that these contradictions are often formulated, contested and institutionalized through the rule-making process.

Given this track record, debate ensues over whether environmental issues (particularly those related to ‘sustainable development’) and specific development-related issues (e.g. core labor standards) can – or should – be formally incorporated into WTO and other free trade arrangements (Benton, 1996; Esty, 2001; Haworth et al., 2005). Those in favor of using the WTO for environmental and social ‘improvements’ identify it as the strongest institution of global governance (on account of members’ ability to

enforce rules with the dispute settlement body, sanctions and other countervailing measures), and thus able to have the most impact if it takes up the task (Sumaila et al., 2007). Using the WTO in this way preserves liberalization efforts while correcting the rigidity of 1980s and 1990s neoliberalism by emphasizing environmental and social objectives. Those opposed suggest that prioritizing environmental and/or social progress at the WTO is impossible for an array of reasons, including arguments that: the WTO is fundamentally mercantilist, environmental and social standards prevent exploitation of dynamic comparative advantage, and that such standards would undermine the WTO's remit as an institution of *trade* regulation (Bhagwati, 2004; Sampson, 2001, 2002). Scholarly work broadly assessing the links between liberalization goals and environmental and social objectives at the WTO, other trade agreements and beyond has further elaborated the implications and inconsistencies of such efforts (see Heynen et al. 2007).

But certainly, tensions among trade, the environment and development pose institutional risks for a WTO stalemated around issues of uneven development and under fire for its environmental record. The stalemate, if not collapse, of the Doha *Development* Round at the time of writing this article is particularly resonant given that it was touted as an opportunity for countries that were historically excluded from, or harmed by, rule-making to realize national objectives through WTO agreements. In this context, negotiations over new disciplines on fisheries subsidies emerged as a ray of hope because of their potential to alleviate tensions by delivering a 'triple win'. In doing so, they highlight how prioritizing environmental and social dimensions of liberalization is a survival imperative for a deeply troubled WTO, and one that (tenuously) extends the

reach of the WTO into areas previously out of its scope (for a detailed discussion of this dynamic at the World Bank, see Goldman 2005).

Though the fisheries subsidy reform effort stems from 1) the ideology that the WTO is the strongest available reform body and 2) theoretical alignment with the WTO's liberalization mission, the effort is peculiar because it sidesteps concerns not only about the WTO's troubled intersections with the realms of environment and development, but also with *liberalization* in and of itself. On the latter point, it is well established that states navigate their national interests at the WTO (and the 1947 GATT before it) – rather than commit to liberalization *per se*. Industry and civil-society interact with home and host governments to engage in WTO decision-making arenas. As a result, complex national interests take form in WTO negotiations and are translated into rules that often diverge from the principles of liberalization (Shaffer et al., 2008; Smith, 2009) in order to represent the interests of capital accumulation, important social classes, and increasingly, lobby groups such as environmentalists (differences between these sometimes competing interests can be contradictory). Making matters more complex, developing countries broadly object to WTO regulations that would limit 'policy space' by adhering to the principles of liberalization (Chang, 2002; DiCaprio and Gallagher, 2006; Wade, 2003). This is true in subsidies debates, not least because present day developed countries made extensive use of subsidies to achieve their 'industrial' status (Bairoch, 1993; Selwyn, 2009), and many continue to do so, including in the fishing sector (Campling et al., 2012; Cantorna et al., 2007; Hong et al., 1999; Meuriot, 1986; Sharp and Sumaila, 2009).

Unsurprisingly, politically and economically stronger states and interest groups are more successful at representing their interests at the WTO. Most significant for our

assessment of the triple win is that power dynamics and politics – not adherence to the principles and practice of liberalization – dictate WTO policy outcomes (Jawara and Kwa, 2004; Narlikar, 2004; Shaikh, 2005), and in turn the broader rules of liberalization. Indeed, powerful WTO members rely on the central claim that liberalization will maximize growth and generate conditional convergence between countries to push forward deeply asymmetrical bargains, despite that the rules that emerge from these bargains often directly conflict with the principles of free trade (Maddison, 2006; Wilkinson, 2009). In short, “power relations within and across sovereign spaces” at the WTO (Pritchard, 2005, page 779) create a fissure between the *theory* of trade liberalisation and the *practice* of rule negotiation and formation.

These dynamics are significant to the theory of the triple win, which is to create synergy between trade, environment and development by *strict* adherence to the practice of liberalization (subsidy elimination, and by association, reduction of state interference in fisheries markets). They are also significant in explaining how rule-making processes help to explain the inconsistent and often contradictory forms of actually existing liberalism in the world economy. To explain how, we review the evolution of proposed fisheries subsidies disciplines at the WTO, highlighting how the positions taken by four negotiating blocks are framed around the triple win. We base this description upon formal submissions and room documents to the WTO Negotiating Group on Rules and the authors’ participant observation in the negotiation process and discussions with WTO negotiators (Campling as an advisor to the Pacific Island WTO members since November 2007 and Havice in research interviews and participant observation between 2005 and

2007).¹ Tracking the fisheries subsidies negotiations, we demonstrate how the theory and practice of the triple win diverge in the rule-making process, and in doing so, reveal the role that the rule-making process plays in constituting the vagaries and variations of present-day economic liberalisms.

3 Origins and Evolution of Fisheries Subsidies Negotiations

Seventy-five percent of all fisheries are fully or overexploited, due in large part to overfishing. Yet, global fisheries production and trade continue to expand. The value of global fish trade has increased by over 50 per cent since 1994. By 2006, global marine capture fisheries caught over 90 million metric tons of fish with a first-sale value of US\$93.9 billion (FAO, 2010). This growth has been encouraged by subsidies: many of the largest players in the fishing industry receive subsidies from their ‘home’ and/or ‘host’ states for things like vessel construction, gear, price supports and port infrastructure. So large are subsidy provisions that, in the aggregate, marine fisheries are estimated to operate at a net economic loss (World Bank, 2008).

Subsidies are linked to environmental problems because they create incentives to catch fish when it would not be economically viable to do so without subsidies. Developed countries’ provisions of fisheries subsidies to their industries are also vilified for generating actual and potential problems for the global South. Fish is a critical food source in the developing world, millions are employed as fish workers and in fisheries-related activities, and fish exports from developing countries generate a higher export

¹ We do not address Doha Round modalities beyond fisheries subsidies negotiations, nor potential trade-offs between fisheries subsidies and other modalities except to note that a deal on fisheries subsidies disciplines is highly sensitive to progress in Agriculture and Non-Agricultural Market Access negotiations, and is subject to being a pawn in horse-trading in any agreement.

value than coffee, bananas, cocoa, tea, sugar and tobacco *combined* (FAO, 2010). As a result, when subsidies drive overexploitation and resource decline, they reduce the availability of fish for these socio-economic activities. Further, unsubsidized producers are disadvantaged compared to their subsidized counterparts, often from the developed countries.

The most comprehensive study to-date estimated that in 2003 governments provided US\$ 19.3 billion in fisheries subsidies that have the potential to cause environmental harm (Sumaila et al., 2010). Subsidies linked to environmental problems are categorized as ‘capacity-enhancing’ – subsidies that contribute towards an increase in fishing capacity globally (such as subsidies for vessel construction, fuel, gear, price supports, port infrastructure) – or ‘ambiguous’ – subsidies that *may* lead either fisheries conservation or overcapacity depending on the context (such as fisher assistance programs targeting social welfare and vessel buy-back programs) (Tables 1 and 3; Sumaila et al., 2010).²

Table 1. Types and Values of Potentially ‘Environmentally Harmful’ Fisheries Subsidies (Sumaila et al., 2010)

	‘Capacity-enhancing’ subsidies	‘Ambiguous’ subsidies
Estimated annual value (2003)	US\$ 16.2 billion	US\$ 3 billion
Examples of subsidy programs	Boat construction, fishing gear, price supports, tax breaks, fuel, fishing port infrastructure, resource access agreements.	Fisher assistance programs targeting social welfare, vessel buy-back programs or development aid that intentionally or unintentionally contribute to fishing effort and/or capacity.

² ‘Good’ subsidies, which are environmentally neutral (such as supports for crew safety) or positive (such as supports for management or conservation), are generally exempt from negotiations.

Explanations for problems in fisheries have long centered on state-failures, rather than market failures or the broader dynamics of uneven capitalist development (Havice and Campling 2010; Mansfield 2011; Mansfield 2004). The move to eliminate fisheries subsidies in the quest for the triple win builds on the notion that state-failure contributes to fisheries decline. In this case, states create problems in fisheries by offering subsidies that distort the efficient functioning of markets; to improve, states can eliminate subsidies and create or restore efficient markets. Further, subsidy elimination is a central component of the post-World War Two international economic agenda devoted, in part, to eliminating forms of government intervention that prevent international trade from expanding as extensively and intensively as possible and that prioritize national (rather than global) priorities (Brown and Stern, 2006). The move to abolish fisheries subsidies aligns directly with this ideal by discouraging economically ‘inefficient’ production that is promoted by states, rather than markets (Stone, 2002) with the added bonuses of eliminating economic incentives that increase pressure on fish stocks and enabling developing countries with small budgets to better compete with larger producers.

Fisheries subsidies have not been challenged under the WTO’s *existing* Agreement on Subsidies and Countervailing Measures (ASCM) for an array of reasons. First, it is difficult to objectively identify and prove a ‘trade distortion’ for fish products since the same species normally fetch widely different prices because of complex quality and market differentials (e.g. Bestor, 2004). Second, the WTO’s analytical emphasis on relationships of *exchange*, makes the ASCM structurally incapable of capturing fisheries

subsidies which distort how *production*, rather than trade, happens (Schorr, 2004). Further, countries have been reluctant to take a fisheries subsidies case to WTO dispute settlement for fear of turning a lens on their own subsidy policies (Young, 2009). Likewise, notifications of fisheries subsidies under the ASCM are notoriously scant (WTO, 2010).

In the 1990s, the environmental advocacy group WWF along with FAO, OECD, UNEP and the World Bank drew attention to the size and scope of subsidies in the fishing sector, mobilizing opposition to subsidies on the grounds that they support economically unsustainable fishing to the detriment of fish populations and resource-dependent peoples across the planet (FAO, 1992, 1996; Milazzo, 1998; WWF, 1997). These organizations lobbied governments and engaged in public campaigns, eventually alongside several WTO members. They framed the effort as an opportunity for the WTO to correct an environmental problem brought on by economic policies inconsistent with the WTO's liberalization mission and to generate the often sought, but seemingly fabled, 'triple win' (Deere and Havice, 2006; von Moltke, 2011). This is something of a curious turn of events since WWF, the leading organization pushing for fisheries subsidy reform, historically approached the WTO's intersection with the environment and environmental regulation with caution, if not skepticism (Gonzales, 2002; WWF, 1999a, b).

Initial discussion on the WTO's role in reforming fisheries subsidies began in 1994 in what is the present-day WTO Committee on Trade and Environment (e.g. PC/SCTE/M/5, 1994). By 1997, inter-governmental organizations and environmental non-governmental organizations (ENGOS) began to collaborate with an *ad hoc* coalition

of WTO Members – the so-called ‘Friends of Fish’³ – supporting subsidy reform. That same year, the WTO Committee on Trade and the Environment began formal work to develop rules to reform fisheries subsidies (e.g. WT/CTE/W/51, 1997). WTO members officially committed to using international economic law to eliminate fisheries subsidies in 2001 when they agreed in the Doha Ministerial Declaration to:

clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries (WT/MIN(01)/Dec/1, 2001: para 28).

Subsequent intergovernmental efforts validated the Doha Round effort. For example, the 2002 United Nations World Summit on Sustainable Development declaration cited targeting fisheries subsidies and completing WTO efforts to discipline them as key actions to achieve ‘sustainable fisheries’ (United Nations, 2002: para 31). In 2005, after four years of Doha Round negotiations, the WTO mandate became even more focused when members agreed in the Hong Kong Ministerial Declaration agreed to use trade negotiations to generate explicit environmental and development outcomes. They agreed to:

recall their commitment at Doha to enhancing the mutual supportiveness of trade and environment, *note* that there is broad agreement that the Group should strengthen disciplines on subsidies in the fisheries sector, including through the prohibition of certain forms of fisheries subsidies

³ The ‘Friends of Fish’ is a loosely organized group that has at various times included: Argentina, Australia, Brazil, Chile, Ecuador, Iceland, Mexico, New Zealand, Norway, Peru and the United States.

that contribute to overcapacity and overfishing. ... 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 (WT/MIN(05)/Dec, 2005: Annex D, para 9).

The Hong Kong declaration was historic. For the first time, WTO members committed to introducing disciplines to limit explicitly those subsidies that cause environmental harm, and in doing so, moved the WTO directly into the realm of making legally-binding judgments on environmental outcomes of trade relations; terrain that most WTO members have firmly resisted. In another first, WTO members committed to addressing development issues as a core component of negotiations, rather than as an add-on (UNEP, 2008).

Between Hong Kong and late 2007, the quest to achieve the triple win narrowed to several key negotiating issues, including: the scope of the ban on subsidies, developing countries rights to use otherwise ‘prohibited’ subsidies to develop their fisheries sectors (S&DT), and how to regulate permitted subsidies, including by imposing ‘sustainability criteria’ – a complex set of fisheries management requirements to ensure that subsidies not contribute to overfishing or overcapacity (von Moltke, 2011). In November 2007, the Chair of the Negotiating Group on Rules released a draft legal text of proposed fisheries subsidies disciplines (TN/RL/W/213, 2007). This draft legal text – seen by many members as a pathway to the final negotiating stages – outlined a series of compromises

that reflected six years of negotiations. The text, and subsequent debates around it, offer a snapshot of how the ‘triple win’ has been interpreted and formulated through the process of negotiated rule-making (see Table 2).

Notably, the proposed text diverges from the idealized version of the liberalization upon which the theory of the ‘triple win’ rests. In particular, rather than a broad ban on all subsidies (with exceptions specified on a case-by-case basis) that would most directly align with the principles of subsidy elimination and alleviate fishing pressure, the draft text includes a heavily negotiated *selection* of banned subsidies (a prohibited list). While development gains were originally conceptualized to emerge from alleviated fishing pressure and the ‘even playing field’ that unsubsidized fishing sectors would theoretically generate, in the negotiations, development issues are firmly centered on the politics of S&DT. Likewise, though large developing countries’ subsidies were originally conceptualized as the source of environmental problems in fisheries systems, the technical debate over the links between subsidy elimination and the environment has shifted towards identifying how to prevent *developing* countries lacking fisheries management mechanisms from causing environmental damage. From here, we investigate how trends that have emerged from negotiations relate to the political economy interests of WTO member countries.

Table 2. Key ‘triple win’ issues in fisheries subsidies debates at the WTO

Issue	Explanation
Scope of subsidies ban (extent of liberalization)	Members debate whether fishing subsidies should all be illegal and exceptions noted (broad ban), or if only harmful subsidies should be defined and deemed illegal (prohibited list).
Special & Differential Treatment (development dimension)	Members committed to S&DT for developing countries as a part of their initial negotiating mandate – a first at the WTO. Debate centers on how to provide ‘policy space’ without contributing to fisheries decline.
Sustainability Criteria (environmental dimension)	Some members propose that S&DT should only be granted to developing countries that are able to demonstrate that subsidies will not contribute to fisheries decline (e.g. those that have strong fisheries management).

4 Inside the Negotiation: The Political Economy of the Triple Win

Four broad negotiating blocks have emerged in fisheries subsidies negotiations. We assess the platforms of member countries in each block against their fisheries commodity production and potentially ‘harmful’ (‘capacity-enhancing’ and ‘ambiguous’; Table 1) subsidy levels (Table 3). We also offer some discussion of the influence of the environmental movement supporting fisheries subsidies eradication. This approach enables us to assess how the negotiating stances of members within each of the blocks reflect national political economy interests and relate to the theoretical framing of the triple win. However, the analysis is limited to a snapshot of ever-evolving positioning and *ad hoc* alliances within the ‘moment’ of fisheries subsidies negotiations and does not capture the dynamism of negotiating stances over time. We note that the negotiating process and blocks there within are rife with internal contradictions and nuances – part and parcel of the rule-making and concomitant liberalization process – which we draw

out where possible. Our categorization of key players in the fisheries subsidies negotiations totals 38 countries which together undertook an annual average of 82 percent of total global volume of fish commodity production between 1998 and 2007 (FAO Fish Stat +).⁴

Table 3. Key players and negotiating blocks in WTO fisheries subsidies negotiations (Sources: FAO Fish Stat+ Commodities Production & Trade time series; Sumaila et al., 2010).

Group (selected country)	% annual average volume of world fish commodity production (1998-2007)	Value of ‘capacity- enhancing’ and ‘ambiguous’ subsidies (US\$ million, 2003) ⁵	Broad position on subsidy negotiations
Developed demandeurs⁶	11.0	1,951	Supports broad ban or ambitious prohibited list, limited S&DT, strong sustainability criteria.
United States	5.2	1,320	
Norway	3.4	214	
New Zealand	0.7	0	
Developing demandeurs⁷	13.1	994	Supports broad ban or ambitious prohibited list, moderate S&DT, strong sustainability criteria.
Chile	3.9	46	
Argentina	1.3	236	
Mexico	1.0	243	
Brazil	0.5	236	
Defensive developed⁸	26.8	6,999	Opposes broad ban and ambitious prohibited list, limited S&DT, strong sustainability criteria.
Japan	11.4	4,045	
EU-15 ⁹	10.9	1,808	
Defensive large developing¹⁰	31.1	6,464	Supports ambitious prohibited list, significant S&DT, moderate sustainability criteria.
China	16.9	2,911	
Thailand	5.7	522	
Indonesia	4.0	811	

⁴ We use commodity production, which includes intermediate and finished goods, rather than total world capture fisheries production volume, to emphasize broad commercial interests in the sector (i.e. fishing *and* processing).

⁵ Categories are *indicative* rather than definitive because definitions and data can be problematic.

⁶ Australia, Iceland, New Zealand, Norway, United States.

⁷ Argentina, Brazil, Chile, Colombia, Ecuador, Mexico, Peru and Pakistan (based on signatories to Friends of Fish statements in March and September 2009).

⁸ Japan, South Korea, Taiwan (the ‘Friends of Fishers’), and the EU-15 (minus Austria and Luxembourg).

⁹ Belgium, Denmark, Finland, France, Germany, Greece, Ireland, Italy, Netherlands, Portugal, Spain, Sweden, and the UK. No data available for Austria or Luxembourg.

¹⁰ China, India, and key ASEAN countries (i.e. Indonesia, Malaysia, Philippines, Thailand, Vietnam).

India	2.5	887
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4.1 Developed Demandeurs

The developed country ‘demandeurs’ (countries that originally advocated for the WTO to address fisheries subsidies) are the developed members of the ‘Friends of Fish’, led by New Zealand, Norway and the United States.¹¹ From the outset, this group has emphasized the fisheries subsidy reform as a ‘triple win’ and framed their negotiating stances around its rhetoric, which our analysis reveals is closely aligned with their national political economy interests. Members of this grouping have supported an enhanced prohibited list (though originally advocated a broad ban on subsidies with a list of exceptions, see below), limited S&DT, and the use of strong sustainability criteria as a condition of subsidy use.

The national political economies of subsidy provision and of fishing sectors help to explain this group’s negotiating stance. First, they have significant fishing and processing sectors, though in comparison with other major fish producers, their ‘capacity-enhancing’ and ‘ambiguous’ subsidy levels are relatively low in relation to commodity production volumes.¹² Second, their fishing industries have high operational costs which, with or without subsidies, make them vulnerable to international competition. Third, for all countries, the ‘triple win’ offers domestic benefits crossing environmental, commercial and political interests (Grynberg and Tsamenyi, 1998). For example, the United States has long sought to respond to criticisms that its trade policy causes environmental harm; US support for fisheries subsidies reform inserts an element of ‘greening’ (or, more skeptically, ‘green washing’) in US trade policy. Further, the move

¹¹ Members grouped as ‘Friends of Fish’ in March 2009 Cluster: Argentina, Australia, Brazil, Chile, Ecuador, Iceland, Mexico, New Zealand, Norway, Peru and the United States. In September 2009 Cluster, Brazil, Ecuador and Mexico dropped from the group and Colombia and Pakistan joined.

¹² Australia is an exception to this general framing: 72% of its subsidies are categorized as ‘ugly’.

was spearheaded by the influential ENGO WWF and has since been backed by US-based ENGO Oceana. New Zealand publicizes that it has championed fisheries subsidy reform to generate environmental improvements and in response to domestic environmental lobbies, but New Zealand's stance also reflects a commercial logic. New Zealand has offered no subsidies to its fishing industry since 1996; an international subsidy ban would do much to relieve competition from subsidized fleets.

Developed demandeurs consistently advocated for a broad ban on fisheries subsidies, where all exemptions would be listed individually. The Chair's 2007 draft text instead recommended banning individual harmful subsidies. The 'Friends of Fish' suggest that they made a concession in negotiations by going along with this recommendation and regularly refer back (individually and collectively) to their 'concession' to gain ground in ongoing debates.¹³

Developed demandeurs consistently express rhetorical support for S&DT, but in practice have resisted granting broad subsidy allowances to developing countries. There is a dual-rationale for this position: first, and consistent with the triple win rhetoric, if developing countries that offer large subsidies and have major fishing industries are exempt from disciplines under S&DT (especially India and China, Table 3), overcapacity and overfishing will continue. Second, if developed countries can no longer subsidize, but developing countries can, capital invested in developed country fisheries may flow to developing countries that can still offer subsidies. These dynamics could shift economic power from developed countries (many of which, including the US and New Zealand, are

¹³ However, the scope of the Chair's draft list of prohibited subsidies is highly ambitious for the defensive developed members (see below). It includes a range of indirect subsidies (such as those to processing and fishing port infrastructure) and a 'catch-all' clause (Article I.2) designed to target environmentally harmful subsidies the prohibited list does not capture.

already struggling to remain competitive on account of higher labor and operating costs) to the developing world.

Developed demandeurs have also opposed ‘differentiating’ between large and small developing economies as a way to offer specific flexibilities for very small developing countries. This despite that the smallest countries, such as the small island developing states, are predominantly the *victims* of the environmental and commercial effects of industrial overcapacity and overfishing, and do not (and are unlikely to) have the fiscal capacity to develop significant subsidy programs.¹⁴ Developed demandeurs have diverted attention from their *internal* opposition to differentiation by informally arguing that developing country differentiation beyond the existing category of Least Developed Country is a non-starter at the WTO because the larger, more powerful developing countries will block any provisions that water-down their ‘developing country’ designation and the rights that go along with it. In January 2010, the developed demandeurs formally opposed additional flexibilities for small developing countries on a point of principle in relation to the ambition of the proposed disciplines (and related environmental outcomes associated with the triple win), rather than in relation to differentiation being a ‘non-starter’.

To prevent S&DT or differentiation that would harm domestic interests while still being seen to meet the negotiating mandate’s developmental dimensions (including livelihood and food security concerns, not to mention the broader spirit of the ‘Development’ Round), developed demandeurs support wide and flexible subsidy allowances *only* to small scale and artisanal vessels below a certain size, thereby largely

¹⁴ Formal and informal discussions and observation at the negotiations indicate that developed demandeurs *and* defensive developed members (see below) highlight and attempt to perpetuate divisions among developing members to advance their own interests.

limiting subsidized fisheries development to the small-scale sector. They seek to block S&DT for fishing activities in the high seas and justify their position on environmental grounds. They also call for all subsidy provision (except for the tiniest small-scale vessels) to be contingent upon specified environmental conditionalities, such as the ability to demonstrate effective fisheries management. In short, developed demandeurs are willing to allow developing members *some* room to subsidize their fisheries-based development, but argue that S&DT must comply with the environmental dimension of the triple win mandate and not harm the resource base, an approach that could also benefit some of their industrial fleets by reducing the potential for competition.

In sum, developed demandeurs have situated their position in each of the three key negotiating arenas in ways that emphasize environmental sustainability and, in practice, would have the effect of ‘locking-in’ the current competitive advantages of their ‘home’ firms in the fisheries sector. Since developed demandeurs generally offer relatively few ‘capacity-enhancing’ and ‘ambiguous’ subsidies and have commercial interests in limiting subsidy provisions to competing firms, many of their domestic interests are largely consistent with the mechanisms of the triple win.

4.2 Developing Demandeurs

The *developing* demandeurs’ negotiating interests diverged slightly from those of developed demandeurs beginning in 2009 when especially Argentina, Brazil and Mexico, moved from supporting a broad ban approach to the ambitious prohibited list proposed in the Chair’s 2007 draft legal text. They also promote moderate but *effective* (as per the terminology in the negotiating mandate) S&DT that provides options for diverse forms of

fisheries development, and assert that any subsidy provision should be contingent upon extensive sustainability criteria.

How do national political economy conditions weigh up against these framings? Argentina and Brazil's positioning relative to their domestic industry at first appears contradictory: both countries support ambitious subsidies disciplines *and* have very high estimated 'capacity-enhancing' and 'ambiguous' subsidy programs. For example, Brazil has a history of sustained fisheries subsidy provision; a program that is environmentally problematic because it pairs with a poor fisheries management record (Abdallah and Sumaila, 2007). However, Brazil can offset strong subsidy disciplines by supporting ambitious S&DT.¹⁵ Brazil, and other developing demandeurs such as Mexico, are adamant that to be *effective* (as per the Hong Kong negotiating mandate) S&DT must extend subsidy allowances to commercially significant subsidies, including at the industrial scale.¹⁶ This position is a strong contrast to proposals from the *developed* demandeurs seeking to block S&DT for fishing activities in the high seas (noted above). Brazil and Mexico strongly object to *developed* demandeurs tempered position on S&DT – their fleets need to be able to 'follow the fish' whether in national waters or the high seas. In general, developing demandeurs have pushed for subsidy reform on liberalization and environmental grounds, while advocating for protecting their rights to subsidize small and industrial fishing activities by speaking to the 'development' dimension of the triple-win mandate.

¹⁵ Another explanation might be that Argentina and Brazil support strong *multilateral* disciplines as a strategy to counter domestic political struggles over reform and/or removal of subsidy programs. This form of disciplinary mechanism 'from without' that government can frame as being out of the individual government's hands is known as 'buck passing', see: (Christensen and Snyder 1990).

¹⁶ This is distinct from the defensive developing block (below) which supports an S&DT 'carve-out'.

4.3 Defensive Developed

On the other end of the negotiating spectrum, the core group of defensive developed countries – Japan, South Korea and Taiwan – initially opposed *any* rules on fisheries subsidies at the WTO. They framed their objection according to the logic of the fisheries subsidies negotiating mandate by arguing that if the objective of the negotiations is to protect fish stocks, subsidies are not the appropriate target because they, in and of themselves, do not cause ecological problems in fisheries systems. These countries pointed instead to weak fisheries management regimes that fail to control fishing effort, whether subsidized or not, imploring that strengthening fisheries management regimes, not disciplining fisheries subsidies at the WTO, should be the focus of fisheries conservation efforts. Further, they (persuasively) argue that the WTO does not have the technical capacity to make judgments on fisheries science or conservation mechanisms, including in order to develop and enforce ‘sustainability criteria’ associated with subsidy rules (e.g. WT/CTE/W/226, 2003).

The EU has also opposed a broad ban on subsidies, though its interests are not entirely aligned with the large Asian countries. Some European Union member states and environmental groups lobby hard for subsidy reform, but are countered by EU ‘fishing nations’ that oppose reform based on the interests of sub-national, economically disadvantaged and/or politically sensitive regions such as Brittany, the Basque Country and Galicia (Findlay and Searle, 1998; Lequesne, 2004).

It comes as no surprise that the defensive developed countries’ fishing fleets are among the most heavily subsidized in the world, including in the ‘capacity-enhancing’ and ‘ambiguous’ categories (Table 3). Further, East Asian countries’ commitment to

strong management has been viewed skeptically as some East Asian fishing interests have been reported as engaging in illegal, unreported and unregulated (IUU) fishing practices (MRAG, 2005).

Defensive developed countries advocate a prohibited list of banned fisheries subsidies, which would leave all subsidies legal, save those explicitly listed because they can be *directly* linked to overcapacity and overfishing, an approach that made its way into the 2007 draft legal text. Defensive developed countries have openly expressed doubt that it is possible to demonstrate a direct causality between subsidies and overfishing and overcapacity (Campling and Havice, 2009).

On subsidy allowances for small developing countries, the EU has noted that a one-size fits all approach to S&DT is not practical (Campling, 2009) and Japan has informally shown interest in additional S&DT flexibilities for small developing countries. This support for ‘differentiation’ in S&DT appears to be an example of the ‘horse-trading’ common in WTO negotiations: the defensive developed countries have supported differentiating large and small developing countries to align small developing members with their platform, rather than the interests of the ‘defensive large developing’ grouping, within which China’s booming seafood industry is a particular threat to all developed country players.

Within the defensive developed grouping, countries represent national interest in ways that are directly in conflict with comprehensive subsidy reform at the WTO, but frame these conflicts around the environmental and development logic of the triple win. This grouping speaks to the environmental mandate by shifting attention away from subsidy provision and towards fisheries management as the culprit for environmental

problems in fisheries systems. On the development front, they emphasize the significance of carve-outs, rather than an even, unsubsidized playing field. Functionally, both strategies, if implemented, would maintain entrenched subsidy patterns, or at least minimize losses associated with subsidy reform.

4.4 Defensive large developing

Large developing countries with significant fisheries interests and, in some cases, significant subsidy provisions – led by China and India – have formed a distinctive, albeit informal, grouping that emphasizes that S&DT must be granted equally to *all* non-LDC developing countries. They support the use of some sustainability criteria to ensure that subsidies do not harm fisheries populations, but with considerably less ambition than the developing demandeurs (Campling et al., 2009).¹⁷ China and India seek a high ambition in subsidy prohibitions for developed members and frame this approach as consistent with the environmental objectives of the negotiation, but it would of course also give their fleets a competitive advantage, especially China as its industrial fleet is heavily subsidized and it is the largest fish commodity producer and exporter in the world.

China and India also favor extensive ‘carve outs’ from the prohibitions for themselves. Broad S&DT would enable them to use their developing country status to continue expanding commercial fisheries activities with limited WTO oversight, a move that if paired with subsidy prohibitions for developed countries would significantly enhance their commercial advantage. They justify this position in the context of the Doha ‘Development’ Round and the specific Hong Kong mandate to consider developing

¹⁷ After consultation with domestic fishing interests and government agencies, India changed from being deeply opposed to sustainability criteria, to accepting them on condition of significant S&DT.

country aspirations in fisheries subsidies negotiations. Within this grouping, India and Indonesia are focused on the impact of proposed disciplines on their artisanal and small-scale sectors, although both also have important (and growing) export-orientated fisheries production systems.¹⁸ The strong position of China and India on S&DT, along with Brazil in the developing demandeur grouping, is consistent with predictions that these countries are emerging maritime powers likely to increase their leadership in ocean-related governance (Suárez de Vivero and Rodríguez Mateos, 2010).

5 Conclusions

There is enormous contention over the complex, contingent and often contradictory relationship between trade liberalization on the one hand and environmental conditions and development on the other. Contentions that free trade has harmful effects on the environment and the aspirations of developing countries have been strong enough to generate resistance against liberalization processes, stalemate in particular negotiations, and institutional innovations (such as ‘green boxes’ and S&DT) designed to protect the environment and socio-economic development dynamics that would otherwise be harmed by the outcomes of the process of liberalization. Within this nexus, the politics of rule-making in trade negotiations is often implicated for undesirable outcomes. WTO members have been charged with using negotiations to represent their stated national interests, even when doing so generates environmental and socio-economic harm and/or rules that conflict with, or diverge from, the principles of liberalization.

Given this context, using the WTO to eliminate subsidies to the fishing sector is notable because it offers a new take on familiar narratives around trade’s relationship

¹⁸ Despite this similarity, India and Indonesia’s subsidy regimes are vastly different in size (Table 3).

with environment and development. It taps into the temptation to use the WTO's binding rule making and enforcement capacity for environment and development outcomes, and does so through the 'triple win' framing that explicitly defines such gains as complementary to the core liberalization mission of the WTO. However, it sidesteps concerns not only about the WTO's troubled intersections with the realms of environment and development, but also with achieving *liberalization* through the highly politicized and power-laden inter-state negotiating process that shapes rules.

Investigating the anatomy of the fisheries subsidies negotiations reveals that while rhetorically unique, the triple win has much in common with familiar contentions in trade-environment-development debates and discussions of the contradictions associated with liberalization. We see evidence that negotiating stances are formulated around a range of national interests (both economic and environmental), which members prioritize over the commitment to eliminating fisheries subsidies; this despite that subsidy elimination is the central mission of the negotiation and the critical element in generating targeted environmental and development gains. There is also evidence of power relations at play. Large developed and developing states lead the debate while small coastal states barely enter into the anatomy of the negotiation, despite that the latter will be greatly impacted (for better or worse) by any outcomes. Finally, the triple win negotiating mandate gives WTO members a new organizing principle around which to frame negotiating stances. Members deploy the environmental and development rhetoric of the triple win to satisfy a wide range of interests, including: to eliminate subsidies that create competitive disadvantages, to obfuscate the relevance of subsidies in the broader debate on fisheries conservation, and to exempt themselves from disciplines.

As commercial interests, political power and liberalization agendas are negotiated into WTO rules on fisheries subsidies, it *is* possible that they will reduce subsidies to the fishing sector, which *may* generate improved environmental outcomes and development opportunities. However, if this is the outcome, it will not be on account of adherence to mainstream economic principles. It will instead be a positive externality emerging from rules formed within the political economy of negotiations. As debates over the utility of using the WTO for the triple win continue, advocates from both within and outside of the WTO must consider the politics of rule-making and the messy and contradictory rules of liberalization that the WTO process yields. These dynamics reflect a core contradiction of liberalization: the liberal imperative to deregulate requires active political intervention, in this case, through the WTO rule making process. This reflects the point noted by Mansfield (2004) and Peck (2001) that liberalization processes, such as those embodied by the WTO, do not free market forces from state intervention, but instead create and naturalize features of the contemporary economy – in this case, highly competitive interstate dynamics around fisheries production and regulation. The emergent inconsistent and varied economic liberalism that emerges from the triple win negotiations is an outcome of this contradiction. This reinforces familiar concerns about the logic of turning to the WTO to generate explicit environmental or socio-economic objectives, and more broadly, offers a snapshot of the kind of politics that have crippled the negotiating process in the Doha Round in its ever-near collapse.

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