

WORLD TRADE ORGANIZATION AND INDIAN FISHERIES: OPPORTUNITIES AND THREATS

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Introduction

The 1994 Agreement Establishing the World Trade Organization was developed during the Uruguay Round, a series of trade negotiations among 125 countries spanning seven and a half years. The Agreement specifies the purpose of the WTO, its functions, structure, and legal status, and provides for a Secretariat. The preamble text states that parties to the Agreement recognize that, "their relations in the field of trade and economic endeavor should be conducted with a view to raising standards of living, ensuring full employment and a large and steadily growing volume of real income and effective demand, and expanding the production of and trade in goods and services, while allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so in a manner consistent with their respective needs and concerns at different levels of economic development".

The WTO's rules - or agreements - are also the result of negotiations between its members. The current set of agreements is the outcome of the 1986-94 Uruguay Round negotiations. Among the functions of the WTO outlined in the Agreement Establishing the World Trade Organization are the facilitation of implementation of the Uruguay Round Agreements and the furthering of their objectives; the provision of a forum for negotiations among WTO members; and the administration of a mechanism for settling disputes.

The General Agreement on Tariffs and Trade (GATT)

The original General Agreement on Tariffs and Trade, now referred to as "GATT 1947", provided the basic rules of the multilateral trading system from 1 January 1948 until the World Trade Organization entered into force on 1 January 1995. The 1986-94 Uruguay Round negotiations included a major revision of the original GATT. "GATT 1994" is now the agreement under the WTO that deals with trade in goods (whereas WTO as a whole also covers other aspects of trade, such as services and intellectual property).

GATT 1994 sets out the main WTO rules that have a specific bearing on trade in goods, thereby providing the basis for multilateral trade in the same. The two fundamental principles of GATT are reflected in its Articles III, and I both of which are intended to enhance and protect liberalized trade among party nations. According to the "Most-favored Nation" (MFN) obligation, expressed in GATT Article I, member nations must

unconditionally grant all other member nations equal trade advantages for like products. In other words, there is to be no discrimination in the way one Member State treats other member States in relation to matters covered by GATT. The fundamental GATT principle enshrined in Article III is known as the "National Treatment" obligation. This obligation ensures that members of GATT treat imported products no less favorably than "like" domestic products, so as to allow domestic and imported products to compete on an equal basis. Other substantive GATT requirements of relevance to RFO trade measures are contained in Articles V and XI. Article V (2) guarantees freedom of transit through the territory of each WTO Member State, "via the routes most convenient for international transit". This provision might apply to vessels of a WTO member State seeking to land their catch in another member State before transporting it on to a third State. Article XI of GATT prohibits, with certain very specific exceptions, quantitative restrictions on the import and export of products. This latter provision has been germane to most environmental disputes within GATT/WTO.

The requirements of the GATT Articles outlined above have a bearing on RFO conservation measures that distinguish between countries, create differences between imported and domestic products, restrict landing or transshipment rights, or create import or export restrictions. However, there is an additional consideration, namely that requirements of the GATT Articles mentioned are subject to the conditions of GATT Article XX, which outlines a set of general exceptions to GATT's substantive requirements. The most relevant parts of Article XX read as follows: "Subject to the requirement that such measures are not applied in a manner which would constitute a means of arbitrary or unjustifiable discrimination between countries where the same conditions prevail, or a disguised restriction on international trade, nothing in this

Agreement shall be construed to prevent the adoption or enforcement by any contracting party of measures:

1. Necessary to protect human, animal or plant life or health;
2. Necessary to secure compliance with laws or regulations, which are not inconsistent with the provisions of this Agreement,
3. Relating to the conservation of exhaustible natural resources if such measures are made effective in conjunction with restriction on domestic production or consumption."

Articles I, III, and XI of GATT would be likely to apply to many of the restrictions and other requirements relating to the importation of fish products described in the previous chapter, but the question is whether the provisions of these Articles would be covered by the general exceptions provided for under GATT Article XX. This is further examined in the following chapter of this report (Processes and likely outcomes).

The WTO Agreement on Technical Barriers to Trade (TBT Agreement)

The TBT Agreement comprises disciplines (i.e. rules) for setting and enforcing technical standards, so as to reduce restrictions on international trade. The Agreement fosters the

harmonization of technical requirements by favoring the use of international standards. The TBT Agreement distinguishes between a "technical regulation", which "lays down product characteristics or their related processes and production methods, including the applicable administrative provisions" xli and compliance with which is mandatory; and "standards", which are similar to technical regulations, except that compliance is not mandatory. xlii In principle, an RFO instrument can include both technical regulations and standards. For example, many RFO trade measures designed to support compliance, including documentation systems such as the CDS, are binding and therefore might be considered as "technical regulations". Other provisions, such as encouraging port States to use vessel-monitoring systems to verify where catches were taken, might be considered as "standards". When a WTO member adopts, or expects to adopt, technical regulations for a product, it is required to participate, within the limits of its resources, in efforts to set international standards for that product. xliii If "relevant international standards" exist, then members must use these as a basis for their technical regulations, unless these standards would be "ineffective or inappropriate means for the fulfillment of the legitimate objectives pursued". xliv Article 2.2 of the TBT Agreement explicitly recognizes the protection of "human health or safety, animal or plant life or health, or the environment" as legitimate objectives. A technical regulation for legitimate objectives that is based on international standards is "rebuttably presumed not to create an unnecessary obstacle to international trade". xlv The key issue in relation to RFOs is whether their rules would be considered "international" standards. Although the Agreement does not define what is meant by "international standards", the TBT Committee has adopted a Decision, which provides some guidance. xlvii These criteria include transparency, openness, impartiality and consensus, effectiveness and relevance, coherence, and taking account of developing country concerns.

Technical regulations and conformity assessment procedures must obey the MFN and National Treatment obligations (see pages 7-8). xlviii In addition, such regulations "shall not be more trade restrictive than necessary to fulfill a legitimate objective, taking account of the risks nonfulfillment would create". xlviii Proposed technical regulations that are not based on international standards and that may have a significant effect on trade are to be communicated to other WTO members through the WTO Secretariat, so as to allow them to provide comments. xlix To date, no notifications of technical regulations based on RFO rules have been received by the WTO Secretariat, suggesting either that WTO members consider these as "international standards", or that they do not have a significant effect on trade. It could also be that the notification requirements are not being fully complied with. In the case of "standards", the Code of Good Practice for the Preparation, Adoption and Application of Standards, annexed to the WTO Agreement on Technical Barriers to Trade, is to be followed if a central government standardizing body establishes the standard. If the standard is set by a non-governmental organization (NGO), reasonable efforts are to be taken by governments to ensure that these comply with the Code. As with the mandatory technical regulations, the Code expresses a preference for international standards.

Certification and labeling programmes operated by governments, such as the case of certification and labeling stemming from AIDCP (see page 6), would be considered

“standards” for the purposes of the TBT, since they are not mandatory. Other certification programmes operational in the fisheries sector, such as that of the Marine Stewardship Council (MSC), would also be considered as standards.

The most controversial aspect of certification and labeling is whether voluntary initiatives involving “non-product-related production and processing methods” are covered by the TBT Agreement. Non product- related production and processing methods (PPMs) are those PPMs that do not form part of the physical characteristics of the end product. For example, the subject of Principle 3 of the MSC Principles and Criteria would be likely to be considered a non-product-related PPM, since it relates to an intangible aspect of fishery.

It states, “The fishery is subject to an effective management system that respects local, national and international laws and standards and incorporates institutional and operational frameworks that require use of the resource to be responsible and sustainable.” If non-product-related PPMs are indeed covered by the TBT Agreement, then some of the disciplines in the Code of Good Practice might interfere with voluntary certification and labeling schemes that are based on such PPMs. These disciplines include the non-discrimination in relation to “like products” and the avoidance of unnecessary obstacles to international trade depending on how these terms are interpreted. So far, there is no consensus as to whether such PPMs are indeed covered by the TBT agreement.

Relevant GATT / WTO jurisprudence

The rulings in several WTO disputes have been based on interpretation of most of the GATT provisions already referred to but, so far, there is no WTO jurisprudence on Article V. The European Communities (EC) did file a complaint based on Article V against Chile, in 2000, because Chile was denying port facilities to European ships carrying Swordfish. However, that case was settled before a WTO panel was convened to adjudicate it. It is perhaps noteworthy that a significant percentage of GATT/WTO cases pertaining to GATT Articles I, III, XI, and XX have concerned disputes over fish, which reflects the important international nature of the fisheries trade. None of these cases have directly involved a conservation measure adopted by an RFO; indeed, no cases directly based on an MEA have been heard by the WTO. However, in all these cases, GATT and WTO panels have indicated a preference for the use of multilaterally agreed trade measures to achieve environmental objectives, rather than trade measures taken unilaterally.

The WTO’s Dispute Settlement Body establishes panels and an “Appellate Body” to hear cases and adjudicate disputes. The Appellate Body is a standing body, composed of independent experts, whereas panels are made up on a case-by-case basis. Once a case has been heard by a panel, a plaintive member involved in a dispute may appeal against the panel ruling to the Appellate Body, which reviews questions of law, but cannot re-open questions of fact. In all environmental cases concerning GATT Articles I, III and XI, the panels and Appellate Body quickly found that the environmental provisions at

issue had violated one or more of those Articles. Accordingly, all the cases have turned on the application of Article XX, the interpretation of which has evolved over time.

Disputes involving the afore-mentioned provisions date back to the 1980s,^{lv} however it was the well-known 1991 Tuna-Dolphin Case that triggered worldwide concern about potential incompatibilities between the international trade regime and environmental conservation. That case concerned US import restrictions imposed on Mexican tuna caught using purse-seine nets, which, it was found, violated GATT Article XI - and were not otherwise allowed in accordance with exceptions provided for under GATT Article XX. Particularly difficult for the conservation community was the rationale used in interpreting GATT Article XX. Specifically, the ruling panel found that Article XX (b) (see page 8) could not be used to justify trade measures taken in respect of the environment, beyond national jurisdiction. The ruling in this case also followed the rulings of previous cases, namely that the word "necessary" in Article XX (b) was to be interpreted as requiring the "least trade-restrictive" measure, meaning that a measure could not be maintained if an alternative measure existed that was less trade restrictive.

Following a set of WTO cases that further developed the interpretation of Article XX, the WTO decision in the first Shrimp-Turtle Case, in 1998, is especially important. ^{lviii} The dispute involved a US import ban on shrimp caught in a manner that was considered to endanger sea turtles, i.e. that did not involve the use of "turtle excluder devices" required of US fishers. The Appellate Body in that case found that the US measure was covered by Article XX (g), in that it aimed to conserve turtles (which fell within the definition of "natural resources"). However, the measure did not meet the requirements expressed in the chapeau of Article XX because, the Appellate Body determined, inter alia, that the US action aimed to influence the environmental policies of other countries in such a way that they should essentially adopt the same standards as the USA. This "imposition" of US policy was considered to be "arbitrary or unjustifiable discrimination between countries". Another factor leading to this WTO ruling against the USA was the fact that the USA had not sought to find a multilateral solution to the environmental problem at the root of the dispute. This case was important because, among other things, it consolidated a trend of interpreting Article XX in such a way that it became less difficult for an environmental measure to pass the "tests" in GATT Article XX (b) and (g): however, the more significant tests are now to be found in the chapeau of Article XX.

WTO & Regional Fisheries Organization

The World Trade Organization (WTO) is the only global international organization dealing with the rules of trade between nations. WTO's agreements - or rules - are negotiated and signed by the bulk of the world's trading nations and are intended to help ensure that trade flows as smoothly, predictably and freely as possible. Regional fisheries organizations (RFOs) are affiliations of nations which co-ordinate efforts to manage fisheries in a region. RFOs may focus on certain species of fish (as in the case of the Commission for the Conservation of Southern Blue fin Tuna) or have a wider remit related to living marine resources in general within a region (as does the Commission for the Conservation of Antarctic Marine Living resources (CCAMLR), for example). This

report examines the relationship between the rules and regulations of RFOs and the rules of the WTO. It seeks to identify possibilities of compatibility or conflict, and makes recommendations on how to minimize conflicts.

RFO measures relating to trade (hereafter often referred to as "trade measures") are to be found in three repositories. Firstly, trade measures are contained within the RFO treaties themselves. For example, the Convention for the Prohibition of Fishing with Long Driftnets in the South Pacific ("Driftnet Convention") contains prohibitions on the imports and landing of fish caught using driftnets. A second, and more common, source of trade measures is the decisions and/or recommendations taken by the RFO commissions and, thirdly, RFO trade measures are contained in the various global instruments adopted to strengthen or reinforce RFOs.

The relationship between the WTO and multilateral environment agreements (MEAs) in general has been on the international agenda for over 10 years, and compatibility between the two sets of rules is still uncertain. Indeed, the effort to achieve mutual supportiveness is likely to continue for some time to come. The debate over the WTO-MEA interface generally relates to global MEAs - in other words the debate is about coherence at the global level. Although trade measures stemming from regional agreements present a subset of the general WTO/MEA problematic, this is not necessarily so for RFOs, most of which are open to any State fishing within the area covered by the treaty, including those from outside the region.

To date, there has not been a WTO dispute over a measure stemming from an MEA or an RFO. Although one cannot, therefore, be certain how these will be treated by the WTO, recent WTO jurisprudence involving environmental issues sheds some light on how some of its relevant provisions will be interpreted. However, that insight can be taken only so far, since most trade measures adopted so far by RFOs have been aimed at improving compliance with their conservation and management measures, and there is relatively little experience in the WTO in addressing trade policy in the context of compliance with other treaties.

The first chapter of this report describes the types of trade measures used or potentially used by RFOs; the second chapter assesses the potential for conflict between RFOs and WTO, including by examining the relevant WTO rules and the jurisprudence; the third chapter delves deeper into the legal considerations and possible scenarios involving RFO measures which could be challenged at the WTO; and the final chapter draws some conclusions and makes some recommendations.

Types of Trade Measures used or Potentially used by RFOs

Trade measures used, or potentially used, by RFOs aim to achieve various purposes, the most important of which is to ensure compliance with their conservation and management regimes. As such, most trade measures are aimed at combating illegal, unreported and unregulated (IUU) fishing. These measures include:

- Requiring specified documentation on catches, from all vessels, as a condition of landing or transshipments;

- Prohibiting landings and transshipments (to RFO parties) from particular vessels; and
- Enacting trade-restrictive measures, for example import bans, against parties, or nonparties, in fish products covered by an RFO.

Key international processes and instruments that address the relationship between WTO and environmental measures UN Conference on Environment and Development (UNCED) and the World Summit on Sustainable Development (WSSD).

Both the Rio Declaration and Agenda 21, adopted at UNCED in 1992, addressed the interface between trade and the environment. lxix The key messages were based on an affirmation that both trade liberalization and environmental protection were necessary for sustainable development. As such, there was consensus at UNCED that an open economic system was necessary; environmental measures based on an international consensus were preferred; and that trade measures to achieve environmental objectives may sometimes be necessary, but should be based on certain principles so as to avoid trade distortions. These messages were reaffirmed at the UN Special Session of the General Assembly to Review and Appraise the Implementation of Agenda 21 ("Rio+5"), held in June 1997, with the caveat that Agenda 21 was not yet being fully implemented and that the benefits of the Uruguay Round to developing countries were less than expected.

Trade and the environment was also a dominant theme in the run up to WSSD, held in 2002. Although very controversial, little substantive progress was made on the relationship between WTO and environmental rules. The Plan of Action of the WSSD called for the ratification, accession and implementation of the Straddling Stocks Convention and the FAO Compliance Agreement. Although UNCED, Rio+5 and the WSSD did not specifically address the relationship between RFOs and the WTO, they are broadly relevant to the subject of this report in two main ways. Firstly, by discouraging unilateral trade measures, these meetings appear to have enhanced the legitimacy of trade measures adopted in multilateral fora, such as RFOs. The major caveat is that such measures should not constitute arbitrary or unjustifiable discrimination or disguised restrictions on international trade. Secondly, these assemblies established that trade and environmental regimes should be mutually supportive in order to achieve sustainable development. This is the benchmark against which current and future negotiations ought to be measured.

The WTO's New Doha Agenda for Fisheries

Once again secret deals are being cut in back rooms by corporate-dominated and little known international trade groups that will directly impact the lives of commercial fishermen and our industry for decades to come. In this account we will explain that threat and help guide you through the 'trade-speak' maze as well as tell you what you can do to see that fishermen's concerns are addressed. The outcome of this struggle really matters. What happens in this fight will directly affect your markets, your price and even

whether you will still be able to go fishing in the future. In one-way or another, the issue affects us all.

After failing famously in Seattle in November 1999, the World Trade Organization (WTO) finally succeeded in launching a new round of trade talks in November 2001. Two years following the "Battle in Seattle," trade ministers from 140 nations agreed to expand the WTO's scope over fisheries policies worldwide.

As recently signed in Doha, Qatar, world governments have now agreed to begin negotiations in key areas of fisheries policy, making these issues, which have traditionally been decided in local or national arenas, now an international trade agenda item. Everything from gear requirements to labeling requirements to fishermen's federal pensions could be impacted. Once again, fishing men and women, and the coastal communities they support, have been shoved out of the rule-making process and currently have no voice at the table (see the November, 1999 FN article "The World Trade Organization (WTO): Flying Under Fishermen's Radar," available on the Internet. The Pacific Coast Federation of Fishermen's Associations (PCFFA) and the World Forum of Fish Harvesters & Fish workers (WFF) are important voices for sustainable fisheries and for fishing-dependent peoples worldwide. Like small farmers, fishing communities everywhere are by necessity uniting globally to defend their rights and to protect their traditional livelihoods from potential WTO attack. Global trade rules currently reflect mainly the interests of large multinational businesses who certainly do not have the interests of commercial fishermen in mind. WTO rules now being proposed for the world's fisheries could also seriously restrict national governments' abilities to regulate their own fisheries, and prevent them from protecting those fisheries from rapacious multi-national corporations.

Countless popular movements have roundly criticized the WTO as a threat to democracy and the public interest. By joining the WTO, our government restricts what its own citizens can do to sustain fisheries and fishing communities, as well as set limits on the behavior of large corporations. Thus fisheries policy-making is increasingly moving offshore, to the arena of international trade negotiations between nations. As a result, nearly every national fishery management policy, tool or conservation program that might restrict corporate access to fisheries or seafood markets could, potentially, be classified to be a violation of the rules of global free trade.

Market Access: The Global Free-Fishing Agreement

WTO bureaucrats and corporations already consider many of the policies that conserve fisheries (and the communities that depend on the resource) to be "barriers to free trade." Since conservation measures always imply some restrictions on harvest, the WTO's market access agenda could undermine sustainable fisheries and livelihoods by weakening legal protections that promote natural resource conservation and communities. The forestry, fishing, and farming sectors are particularly likely to be impacted. Ongoing WTO negotiations for wider market access are broken down into two general categories: 1) eliminating tariffs, and; 2) eliminating "Non-Tariff Measures (NTMs)".

Eliminating Tariffs

In Seattle, trade ministers were pushing to finalize a deal to eliminate tariffs (import taxes) between nations. Critics pointed out that tariff elimination could also expose small-scale fishing communities, whose survival depends on sustaining local fisheries, in a variety of ways. Lowering tariffs in the absence of adequate safeguards for marine ecosystems and for fishermen, for instance, could accelerate the death spiral of the world's fish stocks and fishing communities.

Although the UN Food & Agriculture Organization (FAO) reports increasingly dire news about dwindling worldwide stocks, no assessment has yet been done on the biological health impacts on fish stocks that are being prioritized for tariff elimination. Nor has anyone even consulted the fishing communities themselves about what issues they want addressed. The Pacific Coast Federation of Fishermen's Associations in the US has been unable to even obtain information on the status of these trade talks. Apparently the only ones who are kept aware of the WTO fisheries agenda are the very importers, processors, and distributors who are driving the "full market access" trade agenda via the WTO. Their goal is to be able to dominate local markets everywhere at the expense of local fishermen.

Forest tariffs were an issue of great concern to protesters in Seattle, as ministers had prepared to finalize a deal that week. However, forest conservationists succeeded in getting the United States Trade Representative (USTR) to publish its first-ever environmental assessment of trade liberalization, released just before the 1999 Ministerial Summit. In the report, which was done by a timber industry-funded group, trade officials buried the real findings: tariff reductions would result in increased logging in some of the world's most threatened old-growth forests inhabited by indigenous peoples or home for important salmon streams. Precipitous WTO tariff elimination could also undermine efforts to reduce wood, oil and other resource consumption, a priority identified by the 1992 UN Rio Earth Summit.

The U.S. recently imposed a 29 percent tariff on the important of Canadian softwood lumber to protect against the dumping of Canadian government subsidized lumber on the U.S. market, putting many rural logging-dependent communities out of work. However, many countries are joining Canada to attack those tariffs within the WTO process. In addition to forest and fish products, tariff cuts are also being discussed for minerals, fuels, chemicals, and other "non-agricultural products." Without any clue as to the impacts of expanding trade in these controversial commodities, the WTO is potentially putting the planet's future at risk.

Cutting tariffs reduces prices for consumers, in turn stimulating consumption, especially in the rich nations where tariffs are highest. This could be disastrous for fisheries. In third world nations it creates pressures on government to export fish otherwise intended for local markets or simply sell quotas to foreign fleets to the detriment of local fishing fleets. In turn, these cheap imports hurt fishermen in the wealthy countries by driving their ex-vessel prices down and subjecting them to a type of third world poverty. Also,

some of America's oldest fisheries conservation programs (like the 1954 Saltonstall-Kennedy Act) that are financed by tariff revenues could face difficulty in securing continued funding.

Eliminating Non Tariff Measures (NTMs)

The most dangerous thrust to fishermen of world trade agreements is the covert effort, by some countries who want to flood our markets, to include just about anything that might keep them out as a "non-tariff measure" or "NTM." In trade-speak, NTMs are considered to be any government measure, policy, or practice that has the effect of "distorting" trade. Obviously this definition is wide open to interpretation and abuse.

Proposed lists of fishing NTMs by some countries have included measures such as normal and biologically necessary harvesting restrictions, bans on destructive gear, precautionary measures against the import of species suspected of disease or illness, residency requirements ("fish here, live here" provisions), and even ecolabels. The Asia Pacific Economic Community (or APEC, which includes the U.S.) has already surveyed what it considers the various NTMs in Pacific Rim markets, with a view to using its list as a framework for negotiations on market access in the WTO. Governments have yet to make this NTM report public, however, as it could reveal a laundry list of important fisheries regulatory or conservation measures being targeted for elimination via WTO negotiations. Yet the United States Trade Representative (USTR) plans to also use this still-secret APEC laundry list as a "negotiating framework" for upcoming market access talks in Geneva.

In the forestry sector, the WTO official definition of NTMs already extends to measures that may have a "potential" to impact trade, such as labeling requirements. Although they admittedly have not yet had any impact on trade, eco-labels are also being closely observed under the WTO microscope.

WTO's predecessor, the General Agreement on Tariffs and Trade (GATT), used to lecture "misguided conservationists" not to use trade measures to influence foreign fishing practices. Instead, GATT insisted, informing consumers through labeling would be a more efficient and effective method that would not impede trade. But now that such labeling systems exist, WTO is saying that labels informing consumers are themselves barriers to trade because they might discriminate against imports.

Recently, Alaskan fishermen requested Senator Frank Murkowski to sponsor legislation requiring seafood labeling. The Trade Adjustment Assistance Act (S. 1209) thus would require all U.S. fish and shellfish labels to inform consumers of country of origin, how the fish was harvested (wild or farmed), and whether the fish is a genetically modified organism (GMO). However, the WTO has already ruled (or indicated that it could rule) against onerous labeling measures targeted against exporting nations. While the WTO already has rules on labeling by country of origin for most goods, food (and fish) products are still exempt, thanks to intensive lobbying by global food companies.

As this article is being written, conferees are now busy negotiating the final versions of the Farm Bill in Congress. In the Senate version (S. 1731) is Senator Ted Stevens' (R-AK) similar language (requested by fishermen) that would also finally require seafood to be labeled by nation of origin and whether it is wild or farmed. This innocuous language is badly needed, but could nevertheless be determined by the WTO to be a non-tariff measure, and if so the U.S. would be required either to eliminate it or face trade sanctions and penalties.

The rising tide of genetically modified organisms (GMOs) that are hitting world markets are also of major concern to scientists and the general public. However, the WTO has already ruled that governments may not "discriminate" against imports based on how something was produced, for instance by traditional and sustainable versus industrial and destructive methods of production. Under this rubric, other nations' initiatives to label genetically engineered species are already being threatened with WTO action.

Eco-labels, such as the Marine Stewardship Council's (MSC) program for sustainably harvested seafood products, are also directly threatened by WTO's new mandate given in Doha, including the recent certification by MSC of Alaskan salmon as a sustainable fishery. Trade ministers specified in the Doha Summit's final declaration that eco-labels would be closely observed and assessed for their impacts on trade. Some nations have already made clear their intentions to challenge eco-labels as discriminatory under the WTO's free trade rules. However you might feel about such labeling schemes, this attack, if successful, would also eliminate another type of eco-label most fishermen support, the labeling of wild versus farmed seafood products.

The WTO also restrains governments from taking precautionary measures to prevent the entry of invasive species and foreign diseases. Canada has already successfully challenged Tasmania's ban on salmon eggs, imposed because of possible entry of foreign salmon diseases with foreign eggs. The Sanitary & Phyto-Sanitary (or SPS) Agreement of the WTO does not recognize the precautionary principle at all when allowing governments to implement protections at the border. The burden of proof is thus always on the public to prove something is NOT safe, never on the industries to prove that it is. U.S. Congressman Nick Rahal (D-WV) has proposed the Invasive Species & Coastal Protection Act (H.R. 3558) to set up a comprehensive national program to protect native fish and wildlife from the impacts of invasive species. In drafting such bills, however, lawmakers are discouraged from enacting any meaningfully precautionary measures, on the theory that such measures would impede global trade and thus could be slapped down by the WTO.

In short, the NTM elimination agenda has become the final push by major multi-national corporations to remove all national or regional governmental controls over natural resources like fisheries. If their full agenda is ultimately adopted, any nation's policies or regulations for the conservation of important biological resources, or for the protection of the communities that depend upon those resources, would become subservient to expanding global trade requirements.

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The expansion of global trade and investment overseen by the WTO has created a crisis in rural communities everywhere. Fluctuating global commodity prices have destabilized local communities and made long-term planning for natural resource protections impossible. Trade rules need to give communities and nations the right to do whatever is necessary to protect sustainable resource management practices and the livelihoods those resources support.

Subsidies: The WTO Swings Its Axe Again

One of the major fisheries problems covered in the Doha Summit was the problem of the world's badly overcapitalized fishing fleets, with several proposals for cutting national subsidies that maintain fleets too large for the available fish resource.

This item on the Doha agenda, which at first glance may appear innocuous if not helpful, could easily turn out to be a corporate Trojan horse. Embedded within it are hidden agendas of large corporations for capturing what is left of the planet's fisheries resources. While governments absolutely need to cut subsidies and reduce overcapacity in their fishing industry, the WTO is not the appropriate place to handle this problem. Letting a trade body, whose main constituents are global trading firms and not people tied to the land and sea, decide which subsidies are allowable almost ensures that what happened to small scale family farmers under the WTO's last round will now be repeated with the world's small scale family fishermen.

Beyond the WTO's well-documented history of cutting subsidies for the poor while further enriching the wealthy, the true WTO agenda for dealing with fisheries subsidies is revealed by who has been at the table in the discussion to date. Attempts by national networks of fishermen's organizations (including PCFFA) to get a seat at the negotiating table have been ignored, while the U.S. trade association of importers, processors, and distributors (the National Fisheries Institute) has long been an official advisor to U.S. trade negotiators. Some environmental organizations involved with the WTO seem to be playing into this strategy as well, despite being informed repeatedly of the concerns of small fishermen's organizations.

The Doha Summit text mentions the subject of fisheries subsidies under the section calling for the strengthening of the Agreements on Subsidies and Countervailing Measures (Anti-Dumping). But the language contains no explicit conservation mandate, nor even an implied one. Indeed, its only specific directive is "taking into account the importance of this sector to developing countries," which likely signals an orientation

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This item on the Doha agenda, which at first glance may appear innocuous if not helpful, could easily turn out to be a corporate Trojan horse. Embedded within it are hidden agendas of large corporations for capturing what is left of the planet's fisheries resources. While governments absolutely need to cut subsidies and reduce overcapacity in their fishing industry, the WTO is not the appropriate place to handle this problem. Letting a trade body, whose main constituents are global trading firms and not people tied to the land and sea, decide which subsidies are allowable almost ensures that what happened to small scale family farmers under the WTO's last round will now be repeated with the world's small scale family fishermen.

Beyond the WTO's well-documented history of cutting subsidies for the poor while further enriching the wealthy, the true WTO agenda for dealing with fisheries subsidies is revealed by who has been at the table in the discussion to date. Attempts by national networks of fishermen's organizations (including PCFFA) to get a seat at the negotiating table have been ignored, while the U.S. trade association of importers, processors, and distributors (the National Fisheries Institute) has long been an official advisor to U.S. trade negotiators. Some environmental organizations involved with the WTO seem to be playing into this strategy as well, despite being informed repeatedly of the concerns of small fishermen's organizations.

The Doha Summit text mentions the subject of fisheries subsidies under the section calling for the strengthening of the Agreements on Subsidies and Countervailing Measures (Anti-Dumping). But the language contains no explicit conservation mandate, nor even an implied one. Indeed, its only specific directive is "taking into account the importance of this sector to developing countries," which likely signals an orientation

toward maximizing and industrializing the exports of fish products from poor countries, where, not coincidentally, some wealthy nations are increasingly investing in foreign fishing because they have over-fished their own territories.

It is still not clear how the WTO will be defining "fisheries subsidies." If past negotiations on farming subsidies are any guide, definitions can range as far as the largest multinationals can stretch them. With no clear conservation mandate, it is hard to say how the WTO's Doha Declaration will impact federally financed programs specifically intended to develop more selective/less destructive fisheries, or efforts to restore habitat, or for the buyback of excessive fleet capacity and permits (including through the Capital Construction Fund), to guarantee retirement accounts for fishermen, or to provide marketing assistance (such as Alaska, Oregon and California's seafood marketing commissions). If any of these important programs are deemed "fisheries subsidies" they could ultimately be declared violations of the WTO rules, exposing the U.S. to stiff sanctions.

Investment: Freeing Finance

The WTO's current rules apply mostly to international trade in goods and services. But the Doha Summit agenda would also expand the WTO's powers to cover foreign investment. If accepted and implemented by WTO member nations, citizens would lose enormous power to regulate foreign capital through their own governments, threatening fisheries resources in a number of ways. Around the world, many state and local governments grant commercial fishing licenses based on various criteria, such as fleet sizes, standards of gear, and residency requirements ("fish here, live here" policies). Trade negotiators (especially from nations with substantial long-distance fleets looking for new fishing grounds to exploit) view these kinds of measure as "discriminatory" against foreign investors and are trying to use the WTO process to prohibit all WTO member nations from using them.

Individual Fishing Quotas (IFQs) may also be seriously impacted by new WTO investment rules. The capital-rich nations, looking to "liberalize" markets for themselves, want to make it so that any time any member government privatizes a public entity (say, state-owned companies, social services or even concessions to exploit natural resources), they must do so only according to new WTO rules. Thus, conditions imposed on IFQ systems to protect fishermen and fishing communities could be threatened by WTO investment rules.

One of the other main principles pushed by the United States and the European Union is a ban on so-called "performance requirements." Performance requirements can be any government condition or standard placed on a foreign investor to ensure that local communities accrue at least some benefit from the foreign investment, as opposed to simply being economically sucked dry. When the U.S. Congress approved IFQs, for instance, a number of requirements were put in place, such as limits on ownership of quota shares by non-fishermen (i.e., corporations). These protective measures are precisely the kind that global corporations could challenge as "discriminatory" and as

“unfair barriers to trade” under new WTO investment rules. If such WTO challenges were successful in overturning ownership limits, then large foreign investment corporations, turning real commercial fishermen into a new variety of sharecropper, would gradually dominate IFQ programs.

The investment agenda’s worst element, according to many critics, is the “Investor-State Mechanism,” which already exists under the North American Free Trade Agreement (NAFTA) and which the U.S. would like to universalize via the Free Trade Area of the Americas (FTAA) Agreement and through the WTO. By establishing new legal protections for foreign investors, this policy allows private corporations to sue a foreign government for enacting measures that reduce the planned profits of the foreign investor. Under NAFTA, for instance, a Canadian chemical manufacturer is now suing the U.S. government for projected profits lost because of California’s recent legislative ban on the fuel-additive MTBE. Even though the state’s fresh water supply is now being heavily contaminated by cancer-causing MTBE, and even though the cleanup of that pollution may now cost California billions of dollars, the foreign investor is demanding cash compensation from the U.S. government of nearly one billion dollars for losing its MTBE market because of the state ban on what is clearly a dangerous pollutant.

Allowing “regulatory takings” of this sort would make it impossible to protect our environment from whatever environmental assault some foreign investor figured to make money off of. Among other things, it might make dam removal, watershed restoration and limits on clear-cut logging, all necessary for salmon restoration, nearly impossible, and then only at great cost to the taxpayer. The corporations and their investors, who make money from destroying those watersheds, would thus have to be paid “protection money” not to continue their destruction.

Usurping Global Governance: WTO Takeover of the UN

On the global level, one of the Doha Summit’s most stunning results was the mandate to negotiate “clarifications” between the WTO rules and the many trade measures that already enforce multilateral environmental agreements (MEAs). Under this process, the many existing UN treaties protecting migratory fisheries and global habitat could be institutionally subordinated to the rights of multi-national corporations established under WTO.

We may have already seen a smoking gun on this major policy change: The UN Straddling Stocks Agreement (a direct result of the 1992 Earth Summit in Rio) established rules on how nations will collaborate to manage fisheries that migrate across national borders. In accordance with that Agreement, and at the request of traditional fishing communities in northern Chile, Spanish ships were blocked from landing their swordfish catch in Chile because they were depleting the spawning grounds for the species in the eastern Pacific Ocean. Docking only to transship onto ships serving the lucrative U.S. market, the Spanish government quickly got the European Union to threaten a WTO challenge against Chile’s blocking of the transport of those goods through its waters. An “arrangement” was then negotiated under the WTO auspices that

effectively reversed the ban imposed by Chile, letting Spain continue to transship its swordfish to U.S. markets while continuing to over fish the species, and forcing Chile's coastal fisheries communities to compete with capital and technology intensive Spanish vessels that are so intensively mining the fishery that it may soon biologically collapse. The United Nations Food & Agriculture Organization (FAO) has observer status in several WTO committees but seems to do little critical analysis of WTO policies. Indeed, FAO has a cooperative arrangement with the WTO to help national fisheries ministries implement the WTO's trade rules.

Such international environmental agreements, negotiated by treaty, need to be defended because they protect community rights to resources and natural resources. Examples of WTO efforts to undo them abound: efforts to regulate the import of genetically modified organisms (GMOs), such as Senator Murkowski's and Stevens' labeling efforts mentioned earlier, are fully allowed under the UN Bio-safety Protocol, but could also be challenged as a barrier to trade by WTO rules. The Basel Convention on the Trade in Hazardous Waste could also be jeopardized by the WTO rules preventing measures that block imports, even the import of hazardous materials that may be unwelcome by the nation receiving it. Many other examples could be cited.

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