

South Africa's Ratification of the World Trade Organisation Agreement on Fisheries Subsidies

Portfolio Committee on Trade, Industry and Competition
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Department
Trade, Industry and Competition
REPUBLIC OF SOUTH AFRICA

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Outline of the Presentation

Benefits of the Agreement

Understanding the Fisheries Subsidies Agreement

- IUU Fishing
- Overfished Stocks; & Fishing on the Unregulated High Seas
- Notification and Transparency
- Dispute Settlement

The need to ratify

Implementation Plan

Risk & Risk Mitigation; Financial Implications

Benefits for vulnerable groups, broader society and the economy

Consultations

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Benefits of the Agreement

This presentation seeks approval of the Portfolio Committee to ratify the completed first phase of the World Trade Organisation (WTO) Agreement on Fisheries Subsidies (the Agreement) as recommended by Cabinet.

Implementing the Agreement will contribute to:

- South Africa's ratification of the Agreement will contribute towards MTSF 2019-2024 Priority 7: A better Africa and World, by reducing fishing pressure on global fish stocks.
- Meeting the United Nations Sustainable Development Goal (SDG) 14.6 which provides that certain forms of fisheries subsidies which contribute to overcapacity and overfishing should be prohibited and subsidies that contribute to illegal, unreported and unregulated fishing should be eliminated.
- The National Development Plan provisions pertaining to environmental sustainability, in particular, sustaining South Africa's marine ecosystem.
- Global sustainable management of fisheries and fish stocks are in the interest of SA and particularly communities that are dependent on this resource for their livelihood. The implementation of the Agreement will contribute to the global sustainability of fisheries and fish stocks.

Fisheries Subsidies Agreement (FSA)

- The first phase of the Agreement was adopted by consensus at the WTO's 12th Ministerial Conference (MC12) held in Geneva on 12-17 June 2022. It sets new binding, multilateral rules to curb harmful subsidies, which are a key factor in the widespread depletion of the world's fish stocks.
- The Agreement recognizes and provides for special and differential treatment to address the needs of developing and least-developed countries (LDCs), albeit in the form of transitional periods.
- It also establishes a fund to provide technical assistance and capacity building to help these countries implement the obligations.
- The Agreement prohibits support for illegal, unreported and unregulated (IUU) fishing, bans support for fishing overfished stocks and subsidies for fishing on the unregulated high seas.
- The FSA that is submitted for ratification, therefore constitutes a phased approach, this first part being phase 1 of the Agreement. Negotiations on the more contentious issues relating to overfishing and overcapacity continue in the 2nd phase.

Fisheries Subsidies Agreement cont.

- The scope of the Agreement covers subsidies as defined in the WTO Agreement on Subsidies and Countervailing Measures that are specific to wild marine capture fishing and fishing related activities taking place at sea.
- The scope of the Agreement does not extend to aquaculture, inland fisheries, or payments under government-to-government access agreements.
- The Agreement thus includes new disciplines to subsidies attributed to the member conferring the subsidy, regardless of where the vessel is registered or the nationality of the recipient of the subsidy.
- Due to the complexities in relation to disciplines to address overcapacity and overfishing, MC12 delivered the first phase of an Agreement that only covers IUU fishing, overfished and fishing in unregulated seas.
- Members agreed to continue with the second phase of negotiations towards delivering a comprehensive agreement by MC13 to be held in February 2024 in Abu Dhabi, United Arab Emirates.
- Such recommendations would cover additional provisions that would address overcapacity and overfishing and are necessary to comply with the mandate of the United Nations SDG 14.6.

Provisions on IUU Fishing

The first phase of the concluded Agreement entails three main prohibitions:

- i. Firstly, it prohibits subsidies for IUU fishing, with comprehensive transparency provisions.
 - IUU fishing costs Africa over \$2.3 billion in economic losses every year, according to estimates from the African Union Commission.
 - The Agreement provides that once a final finding or determination has been made against a vessel or operator for IUU fishing or fishing related activities, and subject to the entity that made the determination following certain procedural rules, including notification of the determination to the WTO, the subsidizing member is required to stop any subsidies to the vessel or operator.
 - The entities that can make these findings are the coastal member for areas under its jurisdiction, the flag State Member for vessels flying its flag, or a Regional Fisheries Management Organization or Arrangement (RFMO/A) for areas and species under its competence.

Provision on Overfished Stocks; & Fishing on the Unregulated High Seas

- ii. The Agreement prohibits fishing or fishing related activities regarding overfished stocks.
 - The responsibility for recognizing that a stock is overfished rests with the coastal state for areas under its jurisdiction, and with an RFMO/A for areas and species under its competence.
 - The only subsidies that are allowed in the overfished areas are subsidies for rebuilding the stock or the subsidizer must have other measures being implemented to rebuild the stock to a biologically sustainable level.
- iii. The Agreement prohibits all subsidies to fishing and fishing related activities related to areas outside the jurisdiction of coastal members and non-members and outside the competence of a relevant RFMO/A i.e in the unregulated high seas.
 - Members are also expected to exercise “due restraint” for subsidies provided to vessels not flying the subsidizing member’s flag; and when the status of the fish stock is unknown.

Provisions on Notification and Transparency

- The Agreement entails new notification and transparency provisions.
- In addition to the regular periodic notifications of subsidies under the WTO Agreement on Subsidies and Countervailing Measures, every member is required to provide information relevant to the implementation of the Agreement. SA as a member of fisheries international organisations and RFMO/A has been complying with notification provisions in those organisations. Further, parts of our fisheries domestic laws and policies satisfy the notification requirements for transparency purposes.
- The notification information required includes the type or kind of fishing activity for which the subsidy is provided; and to the extent possible the status of the fish stocks in question, catch data, fisheries management measures, information on vessels benefiting from subsidies, and a list of vessels and operators the notifying member has determined to have engaged in IUU fishing.

Provisions on Dispute Settlement

- The Agreement contains a dispute settlement provision that will apply generally to disputes under the Agreement.
- Effectively a Member that fails to adhere to the new disciplines will be brought to the WTO and the Agreement brings for the first time issues of fisheries management within the scope of dispute settlement in the WTO.

The need to ratify

- 110 ratifications required for entry into force.
- To date, 52 member countries have ratified.
- IUU fishing in the high seas impact on the fish resource globally and impact all coastal nations. However, control over IUU fishing can only be achieved through an international instrument - necessitates the ratification and entry into force of the Fisheries Subsidies Agreement phase 1.
- Ratification is of national importance for SA from a reputational and moral point of view:
 - Send an important signal about SA's commitment to curb IUU fishing and subsidies in support of IUU fishing. IUU fishing has devastating effects on the sustainability of marine resources of coastal states. Dealing with IUU will benefit SA and the Continent's waters.
 - It is an important contribution by SA to preserve its marine resources for the benefit of its people by contributing to international efforts to discipline fishery subsidies that contribute to IUU, depletion of overfished stocks and fishing in the high seas.
- Ratification of phase 1 of this Agreement does not bind SA with respect to phase 2 of the Agreement, when such agreement is concluded.

Implementation Plan

- No specific implementation plan is required since SA is a member of several Regional Fisheries Management Bodies, including international treaties and agreements.
- South Africa is party to the Port State Measures Agreement (PSMA), which are measures that are implemented to combat global Illegal, Unregulated and Unreported fishing.
- Therefore, the country has been implementing sustainable fishing and is already reporting on measures taken.
- In addition, various provisions of the Marine Living Resources Act (Act 18 of 1998) already render South African law in compliance with the Fisheries Subsidies Agreement as confirmed by the OCSLA legal opinion.
- The legal opinions from the Departments of Justice and Constitutional Development, and International Relations and Cooperation direct that the first phase of the WTO Fisheries Subsidies Agreement requires ratification in terms of Article 231(2) of the Constitution.
- Once ratified, SA will deposit the approved instrument of acceptance to the WTO.

Financial Implications; Risk & Risk Mitigation

- There are no financial implications with regards to accepting the instrument for ratification. No new systems will be required to be put in place as SA is already reporting to RFMO/A to which it is a member.
- Without an approved instrument of acceptance, SA risks losing credibility as a negotiating partner and as a responsible fishing nation.
- SA vessels and operators need protection and liberalization in the areas beyond their EEZ in order to operate more efficiently in the rest of the Continent.
- Non ratification of the first phase of the Agreement, which specifically addresses IUU fishing, might in future be used by trade partners against SA fish exports.
- SA's ratification would contribute towards mitigating these risks.

Benefits for vulnerable groups, broader society and the economy

- The completed first phase of the Agreement is a tool for better fisheries management: will strengthen SA and global sustainable fisheries management systems through transparency requirements and improving data collection on the stock status of vulnerable fisheries and on related subsidies.
- Vulnerable groups such as coastal communities and small-scale fishers rely heavily on fish as a protein source; SA's ratification of the first phase of the WTO Fisheries Subsidies Agreement provides a basis to contribute towards the livelihood of these communities. SA will need to safeguard the interests of these vulnerable groups in the 2nd phase of the negotiations.
- A well-managed fishery industry provides stable and predictable income opportunities for local fishermen. By disciplining subsidies that contribute to overfishing and promote sustainable practices, and preserving SA's rights in its Exclusive Economic Zones, SA can enhance long-term economic prospects for these vulnerable groups.

Consultations

- The Agreement has been finalised in consultation with key Departments such as the Department of Forestry, Fisheries and the Environment (DFFE) and Department of Transport (DoT).
- Consultations on the first phase of the WTO Agreement on Fisheries Subsidies were also held with the business and labour constituencies in NEDLAC and the South African Deep Sea Trawlers Industry Association (SADSTIA).

Recommendations

- **It is recommended** that Parliament ratifies the WTO Fisheries Subsidies Agreement in terms of Article 231(2) of the Constitution.
- Once ratified, South Africa will submit an Instrument of Acceptance of the Agreement to the WTO as is required.

Thank you