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Balancing Livelihood and Sustainability: India and the WTO Fisheries Agreement

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Abstract

The interrelation between trade and environmental sustainability is complex with both positive and negative impacts. It is accepted that global trade contributes to environmental degradation by focusing on increasing production and transportation dependent on pollution causing materials and fuels. However, a shift in the role of global trade has occurred with the promotion of sustainability through the adoption of green technologies. An increased focus on a global action towards sustainability on a multilateral level began at the beginning of the 21st century. This focus gained momentum with the adoption of the sustainable development goals by countries globally.

A reading of the World Trade Organisation (WTO) framework provides an understanding of the recognition of the balance between environment and trade even prior to the recognition provided in the 2000s. The legal agreements including the preamble have provided for specific provisions regarding environment while imposing provisions regarding free trade. Thus, it can be said that a balance was struck by the framers of the General Agreement on Tariffs and Trade.

One of the WTO's most significant steps in this direction in the recent times is the Agreement on Fisheries Subsidies, adopted in June 2022 after more than two decades of negotiations. The focus of the Agreement is the subsidies granted by the countries leading to depletion of marine life and illegal fishing. The WTO, by laying down a legally binding agreement, attempts to ensure protection of marine biodiversity while protecting global seafood production. While the aim

of the Agreement seems noble, its provisions have been flagged by developing countries including India. The concerns are founded in the dependence of millions of small-scale fishing communities on government subsidies. The prohibition on subsidies will leave such communities financially deprived overnight. India has currently opposed the draft of the Agreement citing the internal situation and the lack of accountability of developed countries who account for majority of the fishing subsidies provided globally.

Keywords: fisheries subsidies, India, negotiations, sustainability, WTO

Introduction

Over the past eight decades, the multilateral economic architecture, including the trading system, has delivered a great deal for the world. We have reinvented it before. We can do so again, for people and planet.

Director General Okonjo-Iweala¹

The relationship between trade and environmental sustainability is an intricate and multidimensional one. Trade contributes to environmental degradation on a direct basis by attempting to increase production leading to increase in consumption and emissions. However, it also plays a crucial role in promoting sustainability by enabling more efficient resource allocation and facilitating the innovation, adoption, and global spread of environmentally friendly technologies.² The World Trade Organisation (WTO) is the sole global international organisation working on rules for free and fair trade.³ The WTO provides for a balance between promoting trade between nations and other factors being impacted by trade. One such factor under constant consideration by the WTO is environment.

The importance provided to sustainable development and environmental protection can be observed through deliberate inclusion within the organisation's legal framework. This act by the parties to the Agreement is significant considering that the binding effect it has on the nations. The dispute settlement mechanism of the WTO ensures that nations abide by the Agreement. Thus, it is pertinent to examine the legal framework of the WTO integrating environment and trade.

The preamble of the Agreement establishing the WTO is a reflection of the importance accorded to optimal use of resources and the protection and preservation of the environment.⁴ Subsequent to the Uruguay Round in 1994, trade ministers from participating nations agreed to launch a broad-based initiative by establishing the WTO Committee on Trade and Environment, thereby, addressing the intersection of trade and environmental concerns within the WTO framework.⁵

WTO rules seek to maintain a balance between a nation's authority to regulate trade for valid policy objectives—such as protecting public health, conserving natural

resources, and preserving ecosystems—and the rights of other member countries under international trade agreements. The foundation of the WTO lies in certain core principles like non-discrimination, transparency and predictability.⁶ While these principles are aimed at ensuring free and fair trade, they bolster the power given to nations to balance trade with environmental concerns according to internal needs. Article XX of the General Agreement on Tariffs and Trade (GATT) provides for general exceptions granted to the nations.⁷ These exceptions include environmental protection and are made to ensure that measures adopted aren't arbitrary or a form of disguised trade protectionism. Additionally, agreements within the WTO framework including the Agreement on Technical Barriers to Trade focusing on the regulation of product standards⁸ and the Agreement on Sanitary and Phytosanitary Measures focusing on the protection of animal and plant health, allow governments to pursue environmental objectives while maintaining fair trade practices.⁹

The recent tryst of WTO with sustainability comes with the Agreement on Fisheries Subsidies (“Agreement”)¹⁰ As a result of decades of negotiations, a significant multilateral agreement was reached in June 2022 during its Twelfth Ministerial Conference to address the issue of harmful fisheries subsidies.¹¹ This agreement will be etched in history as it is centred solely on environmental concerns while other provisions aimed at ensuring free trade. This agreement provides for legally binding restrictions aimed at preventing governmental subsidies leading to depletion of marine resources and diversity. This Agreement holds potential to curb harmful fishing activities thereby promoting sustainability in the ocean. By promoting sustainable management strategies, this initiative benefits not only fishers and global seafood production but also the countless communities and industries that rely on healthy oceans.

While the Agreement has been drafted and negotiated upon, in order for it to take effect, at least two-thirds of WTO member countries must officially endorse it by submitting an “instrument of acceptance” to the WTO, formally confirming their commitment to the Protocol of the Agreement on Fisheries Subsidies. Many developing countries have raised concerns regarding the provisions and have formally opposed the same. One such country is India. India still has to ratify the agreement and is opposing the same. The line of argumentation adopted by India is that adopting the Agreement would negatively impact millions of fishermen who are living below the poverty line currently. Along with India, Indonesia and Brazil have opposed the Agreement, however, haven't completely written it off.

Building on these considerations, this paper examines the WTO Agreement on Fisheries Subsidies and its impact on India's fishing communities. It begins by tracing

the Agreement's negotiating history before analyzing its practical effects on developing nations like India compared to developed countries. The study further explores whether the Agreement adequately addresses the needs of vulnerable fishing communities and ultimately assesses whether India should accede to it or not.

Understanding the Agreement on Fisheries

A. Negotiating History

It is important to understand the drafting history of the Agreement prior to looking at its provisions. The subsidies on fisheries have been regulated under the ambit of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) since 1995.¹² The ASCM governs prohibited subsidies and actionable subsidies. The fisheries subsidies come under the ambit of actionable subsidies which means that if it is trade distortive, it can be actionable.¹³ There is a need to prove the adverse effects of a subsidy to ensure its actionable. Since the focus of the ASCM is on trade related effects of subsidies rather than its ecological impact, there was a need for a renewed focus. More pressing concerns often revolve around their detrimental impact on fish stocks, biodiversity, and food security—issues that the ASCM does not directly address.¹⁴ The ASCM primarily address trade distortions rather than the environmental harm caused by such subsidies.

The Doha Mandate in 2001 provided the stepping stone to the efforts by WTO to regulate subsidies in fisheries sector.¹⁵ This interest was renewed with a more specific agreement reached during the 2005 Hong Kong Ministerial Conference.¹⁶ These mandates provided an impetus to member nations to work towards imposing stricter limits on fisheries subsidies with specific focus on illegal, excessive fishing and overcapacity.¹⁷

After years of stalled discussions, the cause regained momentum in 2015 when several member nations identified it as a key issue to be negotiated upon.¹⁸ With the adoption of the Sustainable Development Goals (SDGs) in September 2015, these efforts solidified.¹⁹ Among the 17 SDGS which were adopted to replace the Millenium Development Goals, the author places specific focus on Goal 14.6. Goal 14 calls for the “*conservation and sustainable use of oceans, seas and marine life for sustainable development.*”²⁰ Specifically, Target 14.6 called for the elimination of harmful fisheries subsidies—those that contribute to overcapacity, overfishing, and illegal, unreported, and unregulated (IUU) fishing—by 2020. It also emphasized the need for special and differential treatment within the WTO framework to support developing and least-developed countries in this transition.²¹

The years of 2016 and 2017 witnessed the textual proposal submitted by WTO member aimed at disciplining fisheries subsidies. These proposals were initially

consolidated into a single document.²² Unfortunately, despite vigorous negotiations, no agreement was reached in the 11th WTO Ministerial Conference (MC11) in 2017. However, negotiators sought the continuation of negotiations with a renewed deadline of the 2019 Ministerial Conference.²³ Subsequent to the MC 11, various textual proposals were tabled by WTO members on differing aspects of the negotiations.²⁴ A breakthrough was anticipated with the Ministerial Conference scheduled in June 2020. To facilitate progress, the chair of the negotiations released a streamlined draft text, incorporating advancements made in 2019 and early 2020. However, owing to the outbreak of the COVID-19 pandemic, the 12th WTO Ministerial Conference (MC12) was postponed to November 2021. Throughout the year, intensive negotiations continued, culminating in the release of the first comprehensive draft text of the agreement in May 2021 by the chair of the negotiations.

Negotiations were intensified by WTO members with constantly updated draft texts to reflect growing consensus among the parties.²⁵ By November 24, 2021, only days before ministers were scheduled to meet in Geneva, a nearly finalized agreement had taken shape, with just a few outstanding issues remaining for ministerial discussion. However, unexpected obstacles emerged with the resurgence of COVID-19.²⁶ In 2022, geopolitical tensions between member nations led to significant negative impact on the progress reached in fisheries subsidies negotiations. A final landmark agreement was achieved by the members at the 12th Ministerial Conference in June 2022. This agreement remains as the sole WTO agreement focused on sustainable development and environmental conservation.

B. Scope

The scope of the Agreement is outlined in Article 1.²⁷ The scope of the Agreement applies to subsidies as defined under Article 1.1 of ASCM. Article 1.1 of ASCM consists of three fundamental components: (i) a financial contribution, (ii) provided by a government or any public entity within a WTO member's jurisdiction, and (iii) resulting in a benefit.²⁸ Article 1 of the Agreement further explicitly states that requirement of "specificity" under Article 02 of the ASCM²⁹ is also an important consideration. A look at the scope thus delineated provides an understanding that both the Agreement and the ASCM must be read together. While ASCM covers all subsidies fulfilling the components of Article 1.1, the Agreement is restricted to subsidies given to *marine wild capture fishing and fishing related activities at sea*.

Further clarifications have been provided in the footnotes. The first footnote to Article 01 of the Agreement clarifies that aquaculture and inland fisheries are not covered.³⁰ Further, specificity has been provided with the second footnote to Article 01 which excepts government to government payments from the ambit of the agreement.³¹

These footnotes mean that the agreement applies to subsidies directed towards marine fishing and doesn't include inland fishing. The difference between the two lies with the fact that marine fishing includes fishing within the territory like ponds, lakes and reservoirs. Additionally, the agreement throws light on the fact that a vessel can be registered with one member state and operating in another. The third footnote specifies that subsidies are attributed to the member providing them, irrespective of the vessel's registration or the nationality of the subsidy recipient.³²

Several key definitions are provided in Article 02 of the Agreement.³³ These definitions include "fish", "fishing", "fishing related activities", "vessel" etc., Many of these definitions are derived from the Port State Measures Agreement of the FAO. Notably, the Agreement adopts a broad definition of fish, encompassing "*all species of living marine resources*." Resultantly, the regulations apply to all marine life including mammals, reptiles, invertebrate etc., Other definitions like "fishing" and "fishing related activities" are also widely drafted to include a wide range of activities. The term "vessel" isn't limited to a ship or boat but includes any vessel used for fishing activities. Similarly, an "operator" need not be the owner of the vessel but includes anyone directing or controlling it.

C. Provisions

I. Illegal, Unreported and Unregulated Fishing (IUU Fishing)

Subsequent to the clause on scope and definitions, the Agreement focuses on various types of subsidies that are existing. Subsidies contributing to illegal, unreported and unregulated ("IUU") fishing are covered under Article 03.³⁴ Article 03.1 prohibits the WTO members from providing or maintaining existing subsidies for vessels engaged in IUU fishing or other related activities. The definition of the term IUU fishing is provided for under paragraph 03 of the International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing by the Food and Agricultural Organisation of the United Nations.³⁵ Illegal fishing occurs when national or foreign vessels operate in a State's waters without permission or in violation of its laws. It also includes activities by vessels registered under States that are part of a regional fisheries management organization but fail to comply with its conservation measures or relevant international laws, as well as any fishing that breaches national regulations or international commitments made by cooperating States within such organizations.³⁶ Unreported fishing refers to activities that have not been reported or have been misreported to the relevant national authority, violating national laws and regulations. It also includes fishing conducted within the

jurisdiction of a regional fisheries management organization that has not been reported or has been misreported, breaching the organization's reporting procedures.³⁷ Unregulated fishing includes activities carried out in the jurisdiction of a regional fisheries management organization by vessels without nationality, those flying the flag of a non-member State, or a fishing entity, in a way that disregards or violates the organization's conservation and management measures. It also refers to fishing in areas or for fish stocks where no specific conservation or management measures exist, but the activities are conducted in a manner that contradicts State responsibilities for marine resource conservation under international law.³⁸

The determination of the subsidy program leading to IUU fishing is done by a formal determination made by one of three authorities: a coastal state for activities occurring within its jurisdiction (Exclusive Economic Zone - EEZ), a flag state for vessels registered under its flag operating either on the high seas or within another country's EEZ, or a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) in accordance with its established rules and international legal standards.³⁹

Specific conditions have been listed under Article 03.3 of the Agreement for application of the prohibition provided under Article 03.1 of the Agreement.⁴⁰ A determination must be a final ruling by a WTO member or an official RFMO/A listing of a vessel or operator engaged in IUU fishing. If a coastal state makes such a determination, it must be based on factual evidence, and the state must notify the flag state and, if applicable, the subsidizing member, providing key details about the investigation and its findings. The coastal state must also inform the WTO Committee on Fisheries Subsidies. RFMO/As must adhere to their established rules and international law to ensure transparency and consistency in their determinations. While the agreement does not require WTO members to conduct investigations or issue IUU determinations, it mandates the withdrawal of subsidies once a competent authority has made an official ruling. However, the validity and enforceability of an IUU determination remain separate from the procedural conditions for implementing the subsidy prohibition.

The Agreement under Article 3.4 vests the responsibility for determining the duration of the subsidy prohibition to the member providing the said subsidy. The grounds for duration must account for the severity and recurrence of the IUU fishing activities.⁴¹ The limitation of this discretion lies with fact that the prohibition is in effect until the sanctions continue or while the vessel or operator is listed by an RFMO/A. Additionally to ensure transparency and predictability, the measures taken by the

subsidizing members must be reported to the WTO Committee. Article 03.8 provides for special and differential treatment for developing and least developed countries. A two-year period is provided where there will be no WTO dispute settlement challenge for the subsidies in question.⁴²

In cases where a port state informs a member subsidising fishing activities the existence of evidence regarding IUU fishing by the vessel, the subsidising member has additional responsibilities.⁴³ In such cases, the subsidizing member is required to consider the information carefully and take appropriate action concerning its subsidies. While this provision does not automatically trigger a subsidy prohibition, it ensures that potential IUU violations are acknowledged and evaluated. Finally, Article 3.7 requires all WTO members to establish and maintain legal and administrative frameworks to prevent the granting of subsidies to vessels or operators engaged in IUU fishing. These measures must be in place at the time the Agreement enters into force and apply to both existing and future subsidies, ensuring long-term compliance.⁴⁴

II. Subsidies Regarding Overfished Stocks

Article 04.1 prohibits the members from granting or maintaining subsidies for fishing or fishing related activities when there are overfished stocks. The goal of this provision is to curb the financial backing leading to the decline of fish populations.⁴⁵ A fish stock is considered “overfished” when it is formally recognised as such by the coastal member states within whose jurisdiction the fishing is taking place or the relevant RFMO/A. This determination must be based on the best available scientific evidence.⁴⁶ Article 4.3 provides an exemption to the subsidy prohibition in cases where the subsidies or other measures are explicitly designed to help restore an overfished stock to a biologically sustainable level.⁴⁷

The definition of a biologically sustainable level is outlined in Footnote 11 of the Agreement.⁴⁸ It refers to levels established by either the coastal member with jurisdiction over the fishery—using scientific reference points like maximum sustainable yield (MSY)—or by a relevant RFMO/A within its area of authority. The agreement recognizes that members may have different capacities for monitoring fisheries, allowing flexibility in setting sustainability benchmarks. Although it does not explicitly require proof that subsidies or management measures are successfully restoring fish stocks, their main purpose is to support stock recovery.

Article 4.4 establishes a special and differential treatment (SDT) provision that provides developing countries, including Least Developed Countries (LDCs), with a two-year exemption from WTO dispute settlement proceedings related to subsidies for overfished stocks within their Exclusive Economic Zone (EEZ). Like the SDT provision in Article 3, this “peace clause” does not remove the prohibition but temporarily protects

developing countries from enforcement actions under WTO dispute resolution mechanisms.⁴⁹

III. Other Subsidies

The subsidies beyond those covered under Article 03 and 04 of the Agreement is addressed in Article 05 of the Agreement. Titled as “Other subsidies”. It addresses subsidies beyond those leading to IUU fishing and overfished stocks.⁵⁰ The member states are prohibited from granting or maintaining subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal member or a coastal non member and outside the competence of a relevant RFMO/A.⁵¹ This means that subsidies are prohibited for fishing activities on the high seas where no relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) has the authority to manage those fisheries, in terms of both geographic area and the species being fished. The rationale behind this prohibition is that effective fisheries management on the high seas requires international cooperation through RFMO/As. Without such a management regime in place, there is no mechanism to ensure sustainable exploitation, making subsidization in these areas particularly risky. This prohibition is not triggered by a specific determination but rather by the absence of a competent management regime.⁵²

Article 5 also contains two provisions that, while not outright prohibitions, however, require members to exercise "special care and due restraint" when providing subsidies in certain circumstances. Members must take special care and exercise due restraint when providing subsidies to vessels registered in other countries. This is because the subsidizing member may have limited jurisdictional control over the activities of such vessels, particularly if they operate outside the subsidizing member's waters, which can pose risks to sustainability.⁵³ Article 05.3 provides that Members must also take special care and exercise due restraint when granting subsidies to fishing or fishing-related activities concerning fish stocks for which the status is unknown.⁵⁴ Lack of information about a stock makes it difficult to determine sustainable catch levels and implement effective management plans, thus incentivizing increased fishing effort on unassessed stocks through subsidies is considered risky. However, it is to be noted that the Agreement does not provide for a standard in the interpretation of “special care and due restraint”.

IV. Notification and Transparency

The requirements for notification and transparency have been provided for in Article 8⁵⁵ of the Agreement. The members have to submit specific information included under their regular subsidy notifications under Article 25 of the ASCM⁵⁶ to improve oversight of fisheries subsidies. This includes the fishing activity for which the subsidy has been

provided. Additionally, members shall, where feasible, to provide further information such as the condition of fish stocks, conservation and management efforts, fleet capacity, details of subsidized vessels, and catch data. Each Member must annually submit a written notification to the Committee listing vessels and operators it has officially identified as engaged in IUU fishing.⁵⁷ Within one year of the Agreement's entry into force, Members must inform the Committee of existing or newly adopted measures to implement and enforce the Agreement, including steps taken to uphold the prohibitions in Articles 3, 4, and 5. Members must also promptly report any updates or new measures related to these prohibitions.⁵⁸

Additionally, within the first year, each Member must provide a description of its fisheries regime, including relevant laws, regulations, and administrative procedures, and keep the Committee informed of any modifications. This obligation may be fulfilled by providing an up-to-date electronic link to an official webpage containing this information.⁵⁹ Members may request further details from notifying Members regarding their submissions, and the notifying Members must respond promptly and comprehensively. If a Member believes that required information has not been provided, it may raise the issue with the Member concerned or bring it to the Committee's attention.⁶⁰

Upon the Agreement's entry into force, Members must notify the Committee of any RFMO/A they are part of, including details such as the legal framework, area and species under its jurisdiction, stock status, conservation and management measures, IUU fishing determination procedures, and updated lists of vessels or operators engaged in IUU fishing. Any changes must be promptly reported, and the Committee Secretariat will maintain a list of notified RFMO/As. Members acknowledge that notification of a measure does not determine its legal status under GATT 1994, the SCM Agreement, or this Agreement, nor does it affect its implications under the SCM Agreement or define the measure's nature. Finally, nothing in this Article requires the disclosure of confidential information.⁶¹

A key provision grants LDC members and developing countries with a minimal share in global marine capture production the flexibility to submit additional fisheries-related data every four years instead of every two.⁶² The article also ensures that these reporting obligations do not require the disclosure of confidential information.⁶³

IV. Dispute Resolution

The dispute settlement mechanism under the WTO Agreement on Fisheries Subsidies primarily follows standard WTO procedures but includes certain modifications. Notably, it excludes non-violation complaints and applies the procedures of ASCM Article 4 to key substantive obligations.

Potential Implications of Implementation

Fishing subsidies are estimated to be as high as \$35 billion worldwide.⁶⁴ Out of the \$35 billion subsidies being handed out worldwide, 60% of it has proved to be harmful and leading to IUU fishing.⁶⁵ Fisheries subsidies can negatively impact fish stocks by artificially increasing profitability, either directly or indirectly, even when the "common pool" nature of fisheries is not a factor.⁶⁶ Harmful subsidies come in various forms, such as financial support for vessel construction or modernization and cost reductions for essentials like fuel, bait, and fishing equipment. These subsidies can enable fishing fleets to operate beyond sustainable limits, both economically and biologically, allowing vessels to continue fishing even when revenues decline or fish stocks are depleted.⁶⁷

The five largest providers of fisheries subsidies—China, the European Union, the United States, the Republic of Korea, and Japan—account for 58% of the total estimated subsidies, amounting to USD 20.5 billion.⁶⁸ However, looking globally amongst the large fleets and small scale farmers, it is seen that 80% of the subsidies never reach the small scale fishing communities and is capitalised upon by large scale industrial fleets.⁶⁹ This disparity is something that is highlighted by developing countries including India and is addressed in subsequent sections of this Article. The Agreement doesn't provide for a discrimination on the industrialised fishing vessels and the small-scale fishing vessels. The only recognised distinction is with respect to the developing and least developed countries who have relaxed provisions as is seen in the previous section of this paper.

Coming to the achievement of the aims of the Agreement, a major challenges stems from the effective implementation of the provisions by the member countries. Firstly, there is a requirement of more precise and unambiguous definitions within the Agreement and secondly, the nations acceding to the Agreement must ensure compliance through domestic laws accordingly.⁷⁰ With effective addressing of challenges and issues, countries can collectively address issues like marine diversity and ensuring food security a well. However, another significant impact of implementation that has been raised repeatedly by developing nations including India is the issue of small-scale fishing communities living below the poverty line. It is imperative to understand this concern in detail.

In the negotiating history of the Agreement, there were two approaches to the restriction on subsidies. One approach was the *listing approach* endorsed primarily by the European Union which provided for distinction to be made between different types of subsidies.⁷¹ The other approach was the "effects approach" which provided for a ban on all subsidies contributing to IUU and overfishing.⁷² The latter approach is reflected

in the Agreement. The impact of this can be the potential negative on small scale fishermen in developing and developed countries whose fishing doesn't substantially contribute to IUU fishing or overfishing compared to the large-scale fleets. Scholars have also argued otherwise contending the positive impact of prohibiting subsidies to the fishing vessels. The contention rests on the ground that the subsidies don't reach the small-scale fishing communities and is usually concentrated amongst the larger fleets.⁷³ Contrary arguments include the understanding that, at times, small scale fishermen participate in larger fleets due to lack of resources and this can be detrimental to their livelihood. While it is undisputed that the Agreement would definitely assist the ecological conservation of marine life, there is a need to further look at inclusion of human rights issues within the Agreement.⁷⁴ The author also seeks to understand the provisions of the Agreement addressing Developing and Least Developed Countries and the implications of the same on their fishing communities.

Interests of Developing and Least Developed Countries

Prior to examining the representation of the interests of the Developing and Least Developed countries, it is pertinent to examine the countries which constitute 'Developing' and 'Least Developed' countries. According to the United Nations, the poorest part of the world community is the Least Developed Countries ("LDCs"). They account for less than 2% of the world GDP but 12% of the global population. Since the WTO recognises LDCs based on the designation by the United Nations⁷⁵, the author seeks to elaborate on how the United Nations decides on the designations. The United Nations depends on various criterion such as:

1. an income criterion based on an average three-year estimate of gross national income in United States dollars with the threshold for inclusion being \$1,088 or below;
2. A human assets index which looks at health indicators like mortality rates and an education indicators like literacy rates and gender parity in schools. The threshold for inclusion is 60 or below;
3. An economic and environmental vulnerability index with the threshold for inclusion being 36 or above.⁷⁶

Out of the 48 LDCs on the UN list, 31 of them are members of the WTO.

Since there are no provisions in any of the agreements of the WTO regarding "developed" and "developing" countries, the members announce for themselves that they are "developing countries". The WTO recognises that the DCs and LDCs require special provisions which keep in mind the disparity between LDCs and developed countries. These special provisions are contained in the special and differential

treatment provisions in various WTO agreements. With this context in mind, the author will examine the provisions of the WTO Agreement on Fisheries Subsidies.

The Agreement recognizes the challenges faced by developing countries and least-developed countries and includes several special provisions to support them. These measures provide exemptions, flexibility in enforcement, technical assistance, and reduced reporting requirements to help them transition smoothly.

For the first two years after the Agreement comes into effect, developing countries and LDCs will not face WTO dispute settlement actions for subsidies granted within their exclusive economic zones (EEZ), even if those subsidies are linked to illegal, unreported, and unregulated (IUU) fishing or overfished stocks. While the rules still apply, this clause gives them breathing room to adjust before enforcement begins.⁷⁷ To further support these countries, WTO members are encouraged to be cautious and considerate when bringing complaints against LDCs, recognizing their economic limitations.⁷⁸ They will also receive technical assistance and capacity-building support to help implement the Agreement effectively.⁷⁹ A voluntary funding mechanism, set up in collaboration with organizations like the FAO and the International Fund for Agricultural Development, will provide financial support to developing countries and LDCs.⁸⁰ This fund will rely on voluntary contributions and won't come from the WTO's regular budget.

Additionally, smaller fishing economies—those with a global marine capture production share of 0.8% or less—will only need to submit fisheries-related notifications every four years instead of every two, easing their administrative burden. Overall, these provisions aim to balance the need for sustainable fisheries with the economic realities of developing and least-developed countries, giving them time, resources, and flexibility to comply with the Agreement without unnecessary hardship.

While these are the provisions in the Agreement on Fisheries Subsidies, a comparison between the other WTO agreements shows that the transitional period of two years provided to implement the subsidies ban is shorter than other agreements of the WTO like the ASCM which, for example, provides up to 8 years.⁸¹ Further, considering that members can self-declare themselves as 'developing countries', even China which is one of the biggest providers of fisheries subsidies can benefit from these provisions.⁸² Considering these issues, the author concludes that while the Agreement acknowledges the need to support DCs and LDCs, there is a lack of sufficient representation in this regard which has led to reluctance in joining the Agreement.

In order to further substantiate her claim, the author seeks to refer to the fact that fishers in 87% of the LDCs don't earn sufficient income to reach the poverty line income level of USD1.90/person/day.⁸³ Ninety percent of the small scale fishing

communities are from developing countries in Africa and Asia.⁸⁴ Developing – especially least developed – countries have limited technical and institutional capacities to ensure effective fisheries management.⁸⁵ Considering the same, imposing extensive burden on the DCs and LDCs without a sufficient transition period could pose significant risks to the livelihoods of small-scale fishermen. The Agreement on Fisheries with its prohibition on subsidies has raised alarm in DCs like India which question its lack of consideration of small-scale fishermen compared to commercial fishing undertaken by developed nations.

However, on the other end of the table are DCs and LDCs who argue that they stand to benefit from the Agreement on Fisheries Subsidies. Since sustainable exploitation of fisheries can provide coastal communities better food security, the prohibition on subsidies for IUU fishing can be beneficial.⁸⁶ Further, since the subsidies granted by the government rarely contribute to the income of the small-scale fishermen, it leads to overfishing thereby harming the ecosystem and livelihoods. The author would like to also highlight the fact that it is proven that around 20-37% of all harmful fisheries subsidies support fishing in foreign waters. This leads to an issue with LDCs in Africa, South and Central America and Oceania being affected by North America, Europe and even Asian fishing fleets.⁸⁷ Thus, the ban imposed on subsidies driving IUU and other harmful fishing practices can aid the DCs and LDCs in promoting sustainable fishing and in furtherance their livelihoods.

Since the scope of the paper is limited to India, in the next section of the paper the author will address the Indian response to the Agreement of Fisheries, its potential impact and the way to balance the Agreement and the livelihoods of farmers.

Navigating Indian Waters

Out of 28 states and 8 Union Territories in India, the Indian coastline is divided amongst 9 states and 4 Union Territories.⁸⁸ This expansive length of the coastline assumes importance considering that the Agreement focuses solely on marine fishing. Marine fishing accounts for more than 40% of India's fish production. The fisheries sector in India, also known as the 'sunrise sector' sustains the livelihoods of around 30 million people mainly from marginalised communities.⁸⁹ Although India has assumed the third position with respect to global fish production, the fishing communities within the country are socially and economically marginalised. These conditions have led the Government to provide for schemes and provisions to enable economic backing for the communities.

The subsidies for fisheries in India are provided under the Pradhan Mantri Matsya Sampada Yojana (PMMSY). The basic framework of the Yojana aims at bringing about

a blue revolution through sustainable development of fisheries.⁹⁰ The total investment made by the Government under the Yojana is Rs.20,050 crores⁹¹ to be implemented over 5 years from 2020 to 2024. The focus of the Yojana can be seen under three broad heads i.e. enhancement of Production and Productivity, Infrastructure and Post-harvest Management and Fisheries Management and Regulatory Framework.⁹²

Another scheme which is available for fishermen is the National Scheme for Welfare of Fishermen.⁹³ This scheme is a social welfare scheme ensuring living conditions for the inland and marine fishermen of the country. The Marine Product Export Development Authority (MPEDA) offers financial assistance through subsidies to support export promotion in both cultured and captured fisheries, as well as for infrastructure development and market promotion initiatives. A study conducted by MPEDA in 2002 revealed that during the Ninth Five-Year Plan, the total direct subsidy linked to exports was minimal—amounting to less than Rs. 100 crore—when compared to the total value of marine product exports, which stood at Rs. 26,842 crores during the same period.⁹⁴

Despite the efforts of successive governments over the years, out of the 4 million fishermen in India, around 61% were living below the poverty line (BPL).⁹⁵ The reasons behind this continued poor standard of living are mainly seen as Industrial fishing, Illegal fishing and Socio-cultural discrimination.⁹⁶ Considering the scope of the Agreement, the author seeks to focus on IUU fishing in Indian waters and its impact on India. IUU fishing is a significant public policy concern for India, warranting attention from both policymakers and the general public. However,⁹⁷ IUU fishing is seen mostly as a security concern due to the presence of Chinese vessels rather than ecological depletion of resources.⁹⁸

Recognizing the rising incidents of IUU fishing, the Indian government introduced the Marine Fisheries (Regulation and Management) Bill, 2019.⁹⁹ To combat illegal deep trawler fishing, the bill mandates the impoundment of foreign fishing vessels operating in the EEZ and imposes fines on the owner or master. Additionally, it establishes regulations for foreign fishing vessels transiting the EEZ and prescribes criminal penalties for violations. However, this bill wasn't ratified into a law.

Currently there are two laws governing illegal fishing in India. The Territorial Waters, Continental Shelf, Exclusive Economic Zone and other Maritime Zones Act, 1976¹⁰⁰ which defines India's maritime zones and ensures compliance with United Nations Convention on the Law of the Sea. The Maritime Zones of India (Regulation of Foreign Vessels) Act, 1981¹⁰¹ governs the regulation of foreign fishing vessels within India's maritime zones and related issues. It empowers the Indian Coast Guard to intercept and board fishing vessels when necessary, as well as to seize and detain the

vessel along with any fishing gear, equipment, supplies, or cargo found onboard or associated with the vessel. Additionally, it allows for the confiscation of any fishing gear abandoned by the vessel. The above laws establish the jurisdiction of Indian authorities however, do not govern the environmental concerns caused by IUU fishing and its impact on Indian fishing communities. There is however, the Indian Fisheries Act, 1897¹⁰² which talks of protection of fish against poisonous waters and even empowers the states to make rules to protect marine life.

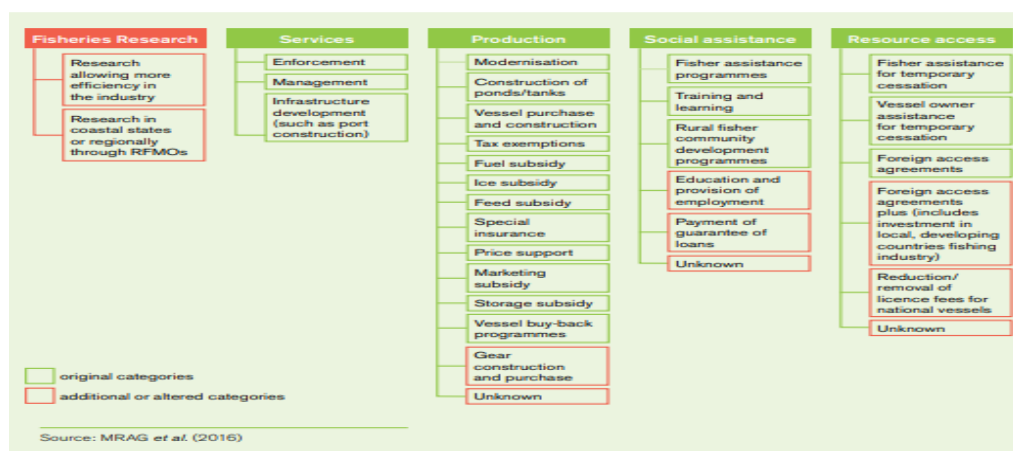
Considering the situation, it is expected of India to accede to the Agreement. However, India has refused to accede to the same and is vehemently opposing the prohibition on subsidies. The Indian stance is driven by the understanding that the large-scale industrial fishing fleets must be restricted instead of affecting the subsidies given to marginalised fishermen.¹⁰³ India's responses to the WTO draft text on fisheries subsidies highlight critical gaps that could enable large-scale industrial fishing nations to continue unsustainable fishing practices. Similar views were echoed by many developing countries including Gambia, Indonesia and Brazil. Further issues include impeachment of sovereign powers. The Indian delegation has raised concerns that the United Nations Convention on Law of Seas has not been mentioned in the Agreement which leads to ambiguities regarding exclusive economic zones.¹⁰⁴ Further issues include the power of the developed countries with economically well-placed fishing communities compared to Indian fishermen. Having understood the legal position within the country pertaining to fishing communities and India's response to the Agreement on Fisheries subsidies, the next section of the paper seeks to strike a balance between India's commitment to sustainability and livelihoods.

Balancing Livelihoods and Sustainability

The previous section of the paper addresses the dependency of the vast number of people on fishing for their livelihoods and the existence of harmful fishing practices in Indian waters. In order to elaborate further on the numbers provided above, it is important to understand the division amongst the states. Considering that India has an estimated 2.80 crore fishermen, the States and Union Territories are directly regulating fishing activities through regional acts and regulations. The State wise population has been attached as Annexure-I to the paper. The vast number of these fishing communities are in poverty and fear the removal of subsidies. However, the author would like to state that in order to effectively balance India's commitments to sustainability and livelihood of fishermen, there needs to be an understanding of the kind of subsidies being handed out by the Government. By the term kind of subsidies, a reference is being made to the

objective of the subsidies being handed out. A classification is further made on the basis of the eventual impact of the subsidies.

Subsidies can be categorised into four broad categories which include Services, Production, Social Assistance and Resource Access.¹⁰⁵



The above illustration is indicative of the kinds of subsidies handed out in fisheries and the eventual impact of the same.

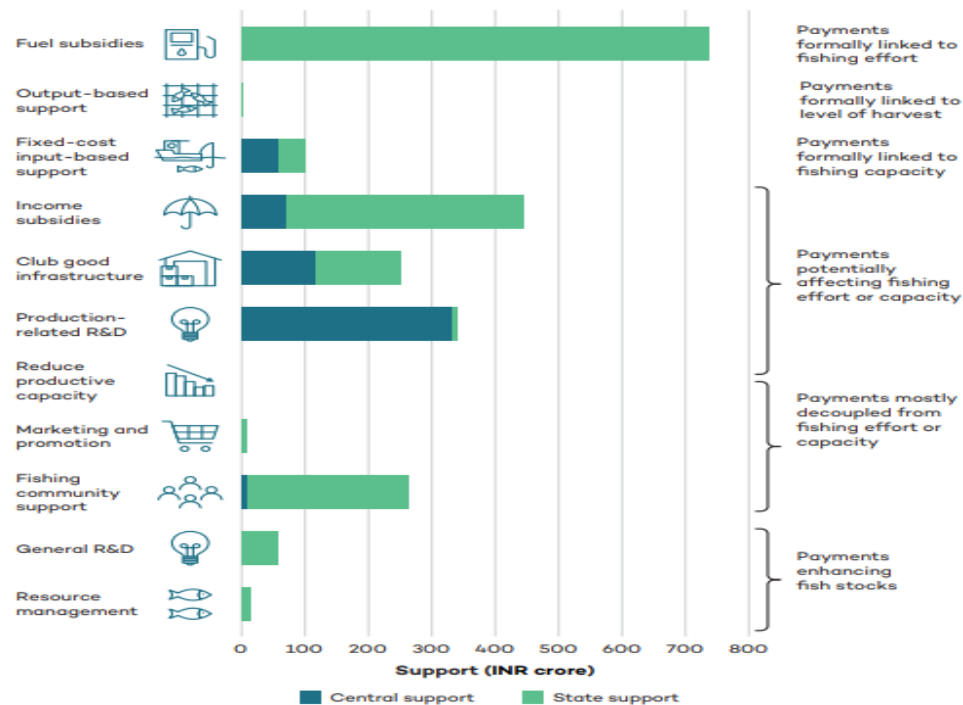
While there is a lack of definition on which of these subsidies are harmful, there exists a proven understanding that the subsidies which enable higher production lead to overfishing and thereby affect sustainability and the livelihoods of the fishermen.¹⁰⁶

Applying the same understanding to the Indian context, it is pertinent for the Indian government to come to the understanding that the Agreement on Fisheries does not prohibit subsidies for fisheries entirely. As is highlight in the chapter dealing with the provisions of the Agreement, there is specific focus on harmful fishing practices which is in turn affecting sustainability and the livelihoods of the fishing communities. The understanding advanced by the author is that the approach must not be sustainability or livelihoods as both are intertwined with one another. If there are sustainable fishing practices, it would lead to better production over the years for the traditional fishing communities.

Amongst the Indian subsidies, the leading programme is the PMMSSY with the aim of bringing about a Blue revolution. These subsidies which are aimed to ramp up production although well intended, might lead to disastrous consequences due to high focus on fuel subsidies. Further subsidies are provided by the State governments. These subsidies are focused on providing cheaper fuel for the fishermen. This can be through reimbursements or exception on tax or specific retail outlets accessible to fishermen.¹⁰⁷

Referring to the data collected by IISD, there is extensive focus of the governments on fuel and income subsidies while Research and Development gets the shorter end of the stick.¹⁰⁸

Figure 1. Government support to India's marine fisheries by category (FY 2019)



The fuel subsidies indicated in the above illustration make it sufficiently clear that the focus is on immediate effectiveness instead of the longer impact on capacity building and sustainably. A redirection of the subsidies provided from fuel subsidies which generally benefit the larger vessels instead of the small vessels on research and development and capacity building could help India create a balance.

Moving onto another aspect that requires to be highlighted according to the author is that the scope of the WTO Agreement on Fisheries is on marine fisheries instead of inland fisheries as highlighted in footnote one of the Article one of the Agreement. According to the Department of Fisheries, more than 75% of the total output on fisheries is through inland fisheries compared to marine fisheries.¹⁰⁹ Under the PMMSY itself, there have been sanctioned development of new fishing areas and technology driven aquaculture. The Indian and State Governments along with redirecting the subsidies granted from fuel subsidies to other needs can also focus more on working towards inland fisheries. According to a recent study by the Food and Agriculture Organisation of the United Nations, inland fisheries hold the key for poverty alleviation, food security, gender empowerment and achieving sustainably development goals.¹¹⁰ This

understanding would also address issues like water scarcity, habitat loss and invasive species which are the issues persisting for inland fishermen. Undoubtedly, the reformed subsidies will ensure sustainability goals and will not lead to overfishing or harmful practices.

Looking at the situation from a bird's point of view, a refined redirection by India can help address the issue of the Chinese fleets overwhelming the Indian ocean. China has emerged as the world's largest exploiter of fisheries on global level.¹¹¹ While increase of Chinese fishing fleets is seen as a geopolitical move, it is also depleting the fish stocks.¹¹² This is highlighted by many reports which state that commercially valuable species are rapidly declining due to excessive fishing by Chinese fleets.¹¹³ While India's stance suggests that the developed countries provide higher subsidies, China has formally deposited its instrument of acceptance. The balance in the Indian stance can be brought about with further negotiations on the Chinese impact as a "developing country" and assessing the situation beyond its maritime and security issues.

The author has focused on continued negotiations having noted that the Agreement on Fisheries explicitly states that, "*Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.*"

India has already put across suggestions such as a 25-year transition period for countries which have not engaged in distant water fishing practices.¹¹⁴ While highlighting the sustainable fishing practices of the native fisherman, India sought a 25-year transition period. Distant water fishing can be understood as fishing beyond 200 nautical miles from the shores of a country.¹¹⁵ Another important issue raised by India is the lack of recognition of rights of the Members for sustainable management of fisheries within their Exclusive Economic Zones under the UNCLOS.¹¹⁶ Under the UNCLOS, a coastal state has full sovereignty over its territorial sea¹¹⁷ and sovereign rights for the management and exploitation of the marine resources in its EEZ.¹¹⁸ The WTO however has insisted that there is no clash between the two as it provides sovereign rights to determine subsidies which do not contribute to harmful practices and with the inclusion of the RFMO/A has provided a legal basis for the establishment

of the same.¹¹⁹ The author recommends the continued negotiations without completely dismissing the Agreement on Fisheries by India. This way, India could help cater to the sustainability of its oceans and hold accountable the countries leading to depletion of resources in the Indian Ocean. While there has been a reference to the UNCLOS, the author would like to also include the aspect of “Access Arrangements”. These arrangements which are in conformity with the UNCLOS provides that if a coastal state does not have the ability to capture the entire allowable catch in its EEZ, it can enter into access agreements allowing other countries to catch the surplus fish stock.¹²⁰ This provides for financial enablement and can act as an incentive for India.

The Indian government in its communications has highlighted that Indian fishermen have long followed sustainable fishing practices.¹²¹ It can be observed that only 37% of the fishing activity is undertaken through mechanised boating in India. The rest are non-motorised fishing through traditional methods. Around 63 percent of traditional fishers have consistently followed their customary value systems and have engaged solely in subsistence fishing throughout history.¹²² Another unique aspect that exists in India is the Annual Seasonal Fishing Ban. Although it began in the state of Kerala in 1988, it was soon adopted by all states. This Ban has been duly followed throughout the country. To elaborate further, there is a ban on fishing along the west coast from June 15-July 31 every year and on the east coast from April 15-May 31 every year.¹²³ It has been seen that the ban has helped reduce the spurt in fishing effort that can be detrimental to fish stocks.¹²⁴

India stands at a unique juncture where it can harmoniously balance the twin goals of sustainability and the protection of livelihoods in the fisheries sector. By leveraging its long-standing traditions of sustainable fishing—such as the seasonal fishing bans and the predominant reliance on non-mechanised, subsistence-based fishing—India already has a strong foundation rooted in environmental stewardship. The key lies in strategically redirecting subsidies away from fuel-based incentives, which often disproportionately benefit larger commercial vessels, towards areas such as research and development, inland fisheries, and capacity-building initiatives for traditional fishing communities. Such a redirection would not only empower vulnerable fishing populations but also foster long-term ecological balance and food security. By integrating traditional wisdom with forward-looking policy reforms, India can create a fisheries framework that champions both environmental sustainability and inclusive economic growth.

Conclusion

The Agreement on Fisheries Subsidies adopted by the WTO is a landmark initiative that marks the global community's growing recognition of the inextricable link between trade and environmental sustainability. By targeting subsidies that contribute to illegal, unreported and unregulated (IUU) fishing, overfished stocks, and unmanaged high-seas activities, the Agreement attempts to strike a balance between free trade and responsible stewardship of marine ecosystems. However, as this paper has shown, the complexities of implementation and the asymmetries in capacity and development among WTO members necessitate a more nuanced and equitable approach—especially for developing countries like India.

India's deep-rooted concerns are not with the objectives of the Agreement per se, but with the inequitable burdens it may impose. Fishing is not merely a commercial activity in India; it is a way of life for over 30 million people, many of whom belong to economically and socially marginalised communities. Around 63% of India's traditional fishers rely on subsistence fishing, governed by local ecological knowledge and community-based norms. These communities have historically coexisted with nature, practicing seasonal bans, non-mechanised fishing, and gear-selective techniques. The blanket application of subsidy prohibitions, without adequate transition periods, technical assistance, and recognition of the unique socio-economic realities in developing countries, risks exacerbating poverty and food insecurity, rather than alleviating it.

Moreover, the current structure of the Agreement does not adequately distinguish between large-scale, industrial fishing—often the main contributor to overfishing and ecological depletion—and small-scale artisanal fishing that is inherently low-impact. The five largest providers of fisheries subsidies—most of whom are developed economies—account for a disproportionate share of harmful subsidies and yet enjoy greater financial and regulatory capacity to adapt to the Agreement's provisions. The absence of stronger accountability mechanisms for such nations creates an uneven playing field for countries like India that are still striving to strengthen their fisheries governance frameworks.

Despite these challenges, India need not reject the Agreement outright. Instead, the Indian approach must be one of constructive engagement—pushing for a more balanced framework that includes longer transition timelines, a clear differentiation between industrial and traditional fishing, and targeted support for capacity building. India has already demonstrated a commitment to sustainability through initiatives like the Pradhan Mantri Matsya Sampada Yojana, the seasonal fishing bans, and the promotion of inland fisheries. What remains is the need to restructure its subsidy programs—

moving away from capital-intensive and fuel-based subsidies that often benefit larger players, and redirecting support towards research and development, ecosystem-based management, aquaculture innovation, and livelihood protection for artisanal fishers. Internationally, India must continue to assert the principle of “common but differentiated responsibilities,” which is central to global environmental governance. India’s suggestions for recognizing traditional practices, excluding non-offending small-scale fishers, and ensuring that the largest subsidy providers are held accountable, are both reasonable and essential for the legitimacy of the Agreement.

In conclusion, the path forward for India lies in harmonizing its developmental priorities with its environmental responsibilities. Sustainability and livelihood protection must not be viewed as opposing ends of a spectrum, but as deeply interconnected goals. Sustainable fisheries ensure not just the long-term health of marine ecosystems but also the resilience and prosperity of coastal communities. With a refined and inclusive approach, India has the opportunity to champion a model of fisheries governance that is equitable, ecologically sound, and rooted in both tradition and innovation. In doing so, it can not only protect its fishers and oceans but also lead the global South in shaping a fair and future-ready multilateral trade order.

Annexure I

Handbook on Fisheries Statistics: 2020

Table 6.1: Fishermen Population and their Percentage: 2019-20				
State/UT's	Number of Districts	Fishermen Population	Whole Population	Fishermen Population per District
Andhra Pradesh	13	14,96,688	5,39,03,393	1,15,129
Arunachal Pradesh	25	24,015	15,70,458	961
Assam	33	25,24,106	3,56,07,039	76,488
Bihar	38	60,27,375	12,47,99,926	1,58,615
Chhattisgarh	27	2,20,355	2,94,36,231	8,161
Goa	2	10,545	15,86,250	5,273
Gujarat	33	5,58,691	6,38,72,399	16,930
Haryana	22	1,18,455	2,82,04,692	5,384
Himachal Pradesh	12	11,806	74,51,955	984
Jharkhand	24	1,40,897	3,85,93,948	5,870
Karnataka	30	9,74,277	6,10,95,027	32,476
Kerala	14	10,44,361	3,56,99,443	74,597
Madhya Pradesh	52	22,32,822	8,53,58,964	42,939
Maharashtra	36	15,18,228	12,31,44,223	42,173
Manipur	16	47,711	30,91,545	2,982
Meghalaya	11	16,567	33,66,710	1,506
Mizoram	11	6,289	12,39,244	572
Nagaland	11	7,958	22,49,695	723
Odisha	30	15,17,574	4,63,56,334	50,586
Punjab	22	7,591	3,01,41,373	345
Rajasthan	33	57,260	8,10,32,689	1,735
Sikkim	4	581	6,90,251	145
Tamil Nadu	37	12,83,751	7,78,41,267	34,696
Telangana	33	8,62,221	3,93,62,732	26,128
Tripura	8	7,761	41,69,794	970
Uttarakhand	13	8,352	1,12,50,858	642
Uttar Pradesh	75	39,00,005	23,78,82,725	52,000
West Bengal	23	32,36,261	9,96,09,303	1,40,707
A and N Islands	3	25,941	4,17,036	8,647
Chandigarh	1	524	11,58,473	524
D & N Haveli, Daman and Diu	3	40,016	6,15,724	13,339
Delhi	11	3,346	1,87,10,922	304
Jammu & Kashmir	22	17,396	1,36,06,320	791
Ladakh	2	22	2,89,023	11
Lakshadweep	1	6,518	73,183	6,518
Puducherry	4	1,07,272	14,13,542	26,818
All India	735	2,80,63,538	1,36,48,92,691	9,56,669
Source: Department of Fisheries, States Government / UTs Administration				

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