BY DEFINITION IGNORED?: INDIGENOUS PEOPLES' FISHING RIGHTS IN THE WTO FISHERIES SUBSIDIES AGREEMENT 2022

Tomohiko Kobayashi*

ABSTRACT

Inclusive trade is a pressing need for the future world trading system. Indigenous peoples are among the most vulnerable and marginalized groups in many countries, either developed or developing countries, throughout their entanglement with globalization and require public support to maintain their traditions as well as economic life. For these reasons, many World Trade Organization (hereinafter "WTO") member states provide fisheries subsidies as a tool for economic development and a proper means for reconciliation with indigenous rights.

However, fisheries subsidies have been subject to greater scrutiny, and the need for further international regulation is widely recognized from the perspective of sustainable development. Against this background, this study examines the impact of the WTO Agreement on Fisheries Subsidies (hereinafter "FSA") 2022 to cast light on potential legal impacts that the current FSA 2022 could have on indigenous communities, especially those who depend on fishing for their subsistence.

We start with a brief description of the factual background of the difficulties that many indigenous peoples are facing, and then

* Professor of international economic law at Otaru University of Commerce (Japan). Email: tkobayashi@res.otaru-uc.ac.jp. This study was supported by the Arctic Challenge for Sustainability II (ArCS II), Program Grant Number JPMXD1420318865, funded by the Ministry of Education, Culture, Sports, Science and Technology of Japan (MEXT) and by JSPS KAKENHI Grant Number JP22K01171.

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summarize indigenous peoples' rights to fishing in the relevant fields of international law (Section II). Next, we find legal uncertainties in the jurisdictional part of the FSA 2022, especially in its scope and definition clauses (Section III.A). We identify several systemic concerns that may emerge from such uncertainties (Section III.B) and propose that such concerns should be addressed in the course of the ongoing negotiations for the comprehensive disciplines, and that inserting an exception clause for the indigenous peoples' rights is an option (Section IV).

KEYWORDS: *WTO, fishery subsidies, indigenous rights, the Arctic, free trade agreements (FTAs)*

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I. INTRODUCTION

Indigenous peoples are among the most vulnerable social groups facing the threat of climate change. At the same time, they are marginalized in many countries while being entangled with the outer world through globalization. As the impact of the World Trade Organization (hereinafter "WTO") and other trade agreements on indigenous peoples is increasing, inclusive trade must be an indispensable part of the world trading system.

"Fishing [has] always been, and continues to be, the heartbeat" of many indigenous communities.[1] It is partly because fish is in many cases one of the most accessible sources of protein, clothing and artifacts,[2] and partly because many indigenous peoples still have to depend on this traditional primary industry for their living. Though the fishing style and intended catch quantity vary among indigenous communities—with some fishing for minimal subsistence and others engaging in commercial fishing[3]—in many cases, indigenous peoples need public support to maintain their local businesses.

Given the state of globalization, indigenous communities are not shielded from the impact of the markets, laws, and regulations of the world. In fact, such impacts from trade agreements and international organizations,

[1] This quote is borrowed from a recent US circuit court judgment that addressed the coverage of fishing rights of a specific tribe in Metlakatla Indian Community v. Dunleavy, 58 F.4th 1034, 1047 (9th Cir. 2023).

[2] Adam Crepelle, *The Never-Ending Struggle for Tribal Fishing Rights*, FUTURE FISHERIES MGM'T ISSUE BRIEF 1, 1 (2023).

[3] For example, in Japan, a group of native Ainu people recently filed a lawsuit against the prefecture of Hokkaido, asking for the recognition of their traditional fishing right in a river, not for commercial fishing, but just to reintroduce nominal fishing rituals, while current local regulations denounce fishing rights on the river across the board. *See generally* Naoki Nitta, *A Fight for Salmon Fishing Rights Connects Indigenous Peoples Across the Pacific Ocean*, CIVIL EATS (July 26, 2023), https://civileats.com/2023/07/26/a-fight-for-salmon-fishing-rights-connects-indigenous-peoples-across-the-pacific-ocean/.

including the WTO, on indigenous peoples are increasing.[4] For example, a number of WTO member states use fisheries subsidies to support fishing as an economic activity through shipbuilding, processing, marketing, and capacity building as well as traditional cultural expressions or rituals.[5]

Subsidies are generally considered an effective tool for the economic development of vulnerable or underdeveloped sectors, including many indigenous populations, especially those who depend on fishing for their subsistence.[6] In addition, subsidies help uphold the rights of indigenous populations while alleviating past and present suffering and harm from colonialist or imperialistic maltreatment.[7] However, the overall impact of industrial subsidies on the world trade stage has long been criticized.[8]

Within this context, the present study examines the impact of the WTO Agreement on Fisheries Subsidies (hereinafter "FSA") 2022,[9] with a special focus on its impact on the indigenous peoples' fishing-related rights. Notably, FSA 2022 fails to explicitly refer to the need for government support for indigenous peoples, although negotiating history reveals that extensive discussions were made during the course of the negotiations until 2021.

To our knowledge, there is no specific analysis of this issue by scholars of the WTO law. Therefore, assuming that the FSA 2022 will enter into force in a few years, regardless of the fate of the ongoing follow-up negotiations, this study attempts to cast light on potential legal issues that may arise in relation to the indigenous peoples' fishing rights and interests, with specific focus on the scope and definition sections. We focus on these sections because it is less likely that the scope of the agreement and the definitions of the key terms will change drastically during the follow-up negotiations. The study also explores options the future FSA should address during

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[4] *See* SERGIO PUIG, AT THE MARGINS OF GLOBALIZATION: INDIGENOUS PEOPLES AND INTERNATIONAL ECONOMIC LAW 148 (2021).

[5] *See, e.g.*, Fiona Macmillan, *Finding Space in the Margins? Recognising the Rights of Indigenous Peoples in the WTO*, *in* INTERNATIONAL TRADE IN INDIGENOUS CULTURAL HERITAGE: LEGAL AND POLICY ISSUES 88, 113 (Christoph B. Graber et al. eds., 2012).

[6] *See, e.g.*, BIRGITTE FEIRING, INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS – KEY ISSUES AND ENTRY POINTS FOR ADVOCACY 22 (2023), https://www.humanrights.dk/files/media/document/INDIGENOUS%20PEOPLES'%20CUSTOMARY%20FISHING%20RIGHTS_KEY%20ISSUES%20AND%20INPUT%20FROM%20THE%20EXPERT%20MEETING%20ON%20INDIGENOUS%20PEOPLES%20AND%20FISHERIES_2023_accessible.pdf.

[7] *See, e.g.*, Stephen Cornell, *What Makes First Nations Enterprises Successful?: Lessons from the Harvard Project* 3 (Joint Occasional Papers on Native Aff. (JOPNA), No. 2006-01, 2006), https://www.researchgate.net/profile/Stephen-Cornell/publication/239569735_What_Makes_First_Nations_Enterprises_Successful_Lessons_from_the_Harvard_Project/links/5559f0ed08aeaaff3bfab4b7/What-Makes-First-Nations-Enterprises-Successful-Lessons-from-the-Harvard-Project.pdf.

[8] Jennifer A. Hillman & Inu Manak, *Rethinking International Rules on Subsidies*, 96 COUNCIL SPECIAL REP. 1, 16 (2023), https://cdn.cfr.org/sites/default/files/report_pdf/Rethinking%20International%20Rules%20on%20Subsidies_0.pdf.

[9] World Trade Organization [hereinafter WTO], Agreement on Fisheries Subsidies, WTO Doc. WT/MIN(22)/33, WT/L/1144 (2022).

negotiations to avoid a hindrance of government support for indigenous fishing and to ensure harmonious application of the FSA 2022 for the benefit of all stakeholders, encompassing both indigenous and non-indigenous peoples.

The remainder of the paper is organized as follows. Section II starts with a brief description of the factual background of the difficulties that many indigenous peoples are facing and describes their rights to fishing in international law. Section III examines the newly introduced restrictions under the FSA 2022 on the types and degrees of fishery subsidies to identify their impact on indigenous fishing and fishing-related activities. Section IV concludes the article.

II. INDIGENOUS PEOPLES' RIGHTS TO FISHING IN INTERNATIONAL LAW

A. Factual Background

The role of subsidies is generally larger for those who conduct noncommercial, subsistence fishing in maintaining cultural/traditional fishing practices,[10] while those who already established independent and commercialized fishing would require less government support from the viewpoint of the indigenous peoples' rights. Many indigenous fishing practices lie somewhere between these two extremes, as seen with the fishing and seal-hunting practices of the Inuit people in Canada and Norway.[11] It is noteworthy that even indigenous communities who reside in highly developed countries that may employ highly mechanized methods for fishing and hunting activities still need significant government support. This underscores the importance of subsidies for the overall well-being of the indigenous peoples. In fact, developed countries, such as Canada and Australia, continue to support the indigenous peoples' fishing industry with substantial contributions.[12]

[10] John Briley, *A Global Deal to End Harmful Fisheries Subsidies*, TR. MAG. (Feb. 1, 2023), https://www.pewtrusts.org/en/trust/archive/winter-2023/a-global-deal-to-end-harmful-fisheries-subsidies.

[11] For example, a WTO panel acknowledged seal hunting practices are varied, but the subsistence aspect of their hunts has "significance for their culture and tradition as well as for their livelihood." Panel Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, ¶ 7.289, WTO Doc. WT/DS400/R (adopted June 18, 2014) [hereinafter *EC — Seal Products* Panel Report].

[12] *See, e.g.*, CANADIAN N. ECON. DEV. AGENCY, THE GOVERNMENT OF CANADA CONTINUES TO SUPPORT NUNAVUT'S FISHING INDUSTRY (2022), https://www.canada.ca/en/northern-economic-development/news/2022/06/the-government-of-canada-continues-to-support-nunavuts-fishing-industry.html.

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B. Relevant Laws

1. Human Rights and Sustainable Development — The right of a private person to fish is primarily a matter of domestic jurisdiction, depending on the laws and regulations of each country. However, a set of international human rights norms for indigenous peoples gradually came into existence starting in the 1960s and later in the 2000s. Notably, the United Nations Declaration on the Rights of Indigenous Peoples (hereinafter "UNDRIP")[13] recognizes the fishing rights of indigenous peoples. Although the declaration is not legally binding, significant progress has been made in crystallizing a number of fundamental rights for indigenous peoples.

Those rights include the rights to self-determination (Article 3 UNDRIP); to autonomy or self-government in ways and means for financing their autonomous functions (Article 4 UNDRIP); "not to be subjected to forced assimilation or destruction of their culture" (Article 8(1) UNDRIP); "to practice and revitalize their cultural traditions and customs" (Article 11(1) UNDRIP); and "to the lands, territories and resources which they have traditionally owned, occupied or otherwise used or acquired" (Article 26(1) UNDRIP), among others. Additionally, UNDRIP sets forth procedural rights by identifying that indigenous peoples are "entitled to just and fair redress" (Article 20(2) UNDRIP) that includes "fair and equitable compensation when restitution is not possible" (Article 28(1) UNDRIP).

Traditional fishing activities conducted by indigenous peoples are part of "their cultural traditions and customs" (Article 11(1) UNDRIP mentioned above) the exercise of which is one of the "means for financing their autonomous functions" (Article 4 UNDRIP). Undoubtedly, the fishing right is a "right to . . . resources which they have traditionally . . . used" (Article 26(1) UNDRIP). If such rights were unduly taken or restricted, indigenous peoples are "entitled to just and fair redress" (Article 20(2) UNDRIP). With regard to the method of "just, fair, and equitable compensation," when restitution is not possible (Article 28(1) of the UNDRIP), subsidies can be an option.

For example, in the Arctic region, where the density of indigenous peoples is relatively high, subsidies for fishing activities, processing, and marketing are commonly used. Scholars characterize subsidies as part of the restitution, along with monetary compensation, employment, and other benefit-sharing schemes, to mitigate the losses that the indigenous communities have suffered since modernization, which were caused by colonialism and industrial developments in the region.[14]

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[13] *United Nations Declaration on the Rights of Indigenous Peoples*, UNITED NATIONS, https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous-peoples (last visited Mar. 10, 2023).

[14] *E.g.*, Violetta Gassiy & Ivan Potravny, *The Compensation for Losses to Indigenous Peoples Due*

In addition, the 2030 Agenda for Sustainable Development, which established Sustainable Development Goals (hereinafter "SDGs"),[15] refers to the need to empower indigenous peoples as one of the most vulnerable groups. Notably, Target 2.3 of Goal 2, which aims to end hunger, achieve food security, improve nutrition, and promote sustainable agriculture, aspires to double the agricultural productivity and incomes of indigenous peoples, who are recognized as small-scale food producers. In addition, Target 4.b of Goal 14 aims to provide "access for small-scale artisanal fishers to marine resources and markets" and "[c]onserve and sustainably use the oceans, seas, and marine resources for sustainable development." Fisheries have historically been a major source of protein and vitamins for many indigenous communities; thus, the enhanced capacity for fishing, along with other food-producing industries, is an important element for the welfare of indigenous peoples.

Contrarily, it is recognized that providing subsidies may cause more harm than good. Various targets of the SDGs reflect this argument—i.e., Target 2.b of Goal 2 supports the elimination of agricultural export subsidies and equivalent measures, Target 14.6 of Goal 14 prohibits certain forms of harmful fisheries subsidies, and Target 12.c of Goal 12 stipulates the rationalization of inefficient fossil-fuel subsidies (in order to "[e]nsure sustainable consumption and production patterns" (Goal 12)). As the maintenance of sustainable fisheries is a prerequisite for food security and the preservation of indigenous cultural identity, comprehensive, coordinated, and harmonious measures are required to provide subsidies.

Evidently, SDGs consist of diverse targets that can bring conflict of interest in terms of indigenous fishing subsidies. Assuming that indigenous peoples have a good moral cause to request appropriate government support in the form of subsidies to reclaim their traditional rights, it is necessary to set aside the technical issue of the legally binding force and draw a favorable interpretation of these targets for the benefit of the indigenous peoples. Further, from the perspective of harmonious development of international laws, we analyze relevant international trade laws and regulations involving fisheries subsidies in the next subsection.

2. Trade — Indigenous rights are integrated into many aspects of international trade law, including the protection of cultural heritage, artistic materials, and intellectual property rights regarding their traditions and cultural expressions.[16] Under the WTO Agreement, a subsidy is defined as a financial contribution from a government or public body that confers a benefit. More specifically, the WTO Agreement on Subsidies and Countervailing Measures (hereinafter "SCMA") set forth international

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to the Arctic Industrial Development in Benefit Sharing Paradigm, 8(2) RES. 1, 9 (2019).
[15] G.A. Res. 70/1, ¶ 23 (Oct. 21, 2015).
[16] For cultural rights, *see* Macmillan, *supra* note 5, at 116.

regulations on subsidies provided to specific recipients to avoid trade distortions caused by their excessive use. Fish and fish products are subject to the SCMA because they are excluded from the scope of the WTO Agreement on Agriculture,[17] but the SCMA deals only with trade in goods. In addition, there are over 300 regional trade agreements, including free trade agreements (hereinafter "FTAs") and customs unions, many of which contain chapters on subsidies (see Section III.B.2 below for details).

Under Article 3 of the SCMA, fisheries subsidies are prohibited if they are "contingent, in law or fact, whether solely or as one of several other conditions, upon export performance." Subsidies are actionable if the conditions in Article 5 of the SCMA are satisfied. Fisheries subsidies provided to indigenous peoples tend to be limited to domestic support rather than export promotion, and the relatively small subsidies provided to them are less likely to generate serious injury to domestic industries in other WTO member states. However, there are no exception clauses in the SCMA that justify the special treatment of indigenous peoples.[18]

As a multilateral trade agreement to be inserted after the SCMA in Annex 1A of the WTO Agreement,[19] the FSA 2022 was adopted at the 12th Ministerial Conference of the WTO on June 17, 2022. Although FSA 2022 has been accepted by almost one-third of the WTO member states as of the end of 2023, acceptance by two-thirds of the member states is required for the FSA 2022 to enter into force.[20] In parallel, further negotiation is underway to resolve outstanding issues, including the coverage of prohibited measures and the scope of special and differential treatment (hereinafter "SDT"), with an aim to reach a "comprehensive agreement"[21] by the next Ministerial Conference in 2024, or within four years after the entry into force of the FSA 2022 (Article 12 thereof).

From the perspective of environmental protection, the FSA 2022 is a major step forward for ocean sustainability as it prohibits harmful fishery subsidies that contribute to overfishing and overcapacity, such as funding

[17] Agreement on Agriculture, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, § 1(i), 1867 U.N.T.S. 410.

[18] We need a separate investigation to determine whether or not a departure from the WTO Agreement on Subsidies and Countervailing Measures [hereinafter SCMA] obligations can be justified by outside norms, such as general exception clauses under the General Agreement on Tariffs and Trade. On this issue, see Luca Rubini, *Ain't Wastin' Time No More: Subsidies for Renewable Energy, The SCM Agreement, Policy Space, and Law Reform*, 15(2) J. INT'L ECON. L. 525, 561-64 (2012).

[19] While Article 11.5 of the FSA 2022 mentions that FSA "does not modify or nullify any rights and obligations as provided by the SCM Agreement," FSA, once entered into force, creates additional obligations on the WTO member states. For example, FSA prohibits the provision of certain fisheries or fisheries-related subsidies, on top of the list of prohibited subsidies under Article 3 SCMA, thereby reducing the policy space of the member states concerned.

[20] WTO, *supra* note 9, at 2.

[21] *Id.* at 1.

illegal, unreported, and unregulated (hereinafter "IUU") fishing or incentivizing excessive fishing vessels (see the next section for details). However, FSA 2022 fails to mention indigenous peoples' rights on its face, lacking any mentions on this issue in supplementary documents attached to the outcome, although indigenous peoples' rights and interests have been recognized from an early stage of the negotiation.[22] Therefore, its impact on traditional fishing and fishing activities of indigenous peoples is uncertain.

In the next section, we examine the newly introduced restrictions on the types and degrees of fishery subsidies to identify their impact on indigenous fishing and fishing-related activities, focusing on the scope and definition clauses.

III. THE FSA 2022 AND ITS POTENTIAL IMPACT ON INDIGENOUS FISHING

A. What the FSA Says About Indigenous Fishing

1. Overview of FSA Provisions — This subsection begins by identifying several provisions on the scope and definitions under Articles 1 and 2 of the FSA that can impact subsidy programs for indigenous peoples. First, the FSA applies subsidies to "marine wild capture fishing and fishing-related activities at sea" (Article 1, FSA). Second, for the purpose of this agreement, "fish" means "all species of living marine resources, whether processed or not" (Article 2(a) FSA). Although several previous drafts contained an illustrative list outlining the coverage of "living marine resources,"[23] there are no references in the final text about the scope of the term "living marine resources." Third, in the FSA, "fishing" is defined as "searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish" (Article 2(b) FSA), and "fishing related activities" are defined as "any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping, or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear, and other supplies at sea" (Article 2(c) FSA). Fourth and lastly, "operator" is defined in the FSA as "the owner of a vessel, or any person, who is in charge of or directs or controls the vessel"

[22] Negotiating Group on Rules, *Draft Consolidated Chair Texts of the AD and SCM Agreements*, Annex VIII, Article III.2(a), WTO Doc. TN/RL/W/213 (Nov. 30, 2007); Negotiating Group on Rules, *Communication from the Chairman*, at 58, ¶ 58, WTO Doc. TN/RL/W/254 (Apr. 21, 2011); CHEN-JU CHEN, FISHERIES SUBSIDIES UNDER INTERNATIONAL LAW 136 (2010).

[23] For example, a Chair's draft in November 2018 defined the term "fishing" as "the catching, taking, or harvesting of [commercial living marine resources including] fish[, molluscs [and] crustaceans] [and aquatic plants]." Negotiating Group on Rules, *Fisheries Subsidies Working Document: Communication from the Chair – Revision*, at 4, WTO Doc. TN/RL/W/274/Rev.6 (Nov. 14, 2018).

(Article 2(e) FSA).

Provisions that create substantive obligations follow these scope-related provisions. The FSA prohibits WTO member states from granting or maintaining (i) subsidies that contribute to IUU fishing (Article 3 FSA), (ii) "subsidies for fishing or fishing related activities regarding an overfished stock" (Article 4 FSA), and (iii) other subsidies, which include subsidies for fisheries conducted outside the national jurisdiction and competence of a relevant Regional Fisheries Management Organization or Arrangement (hereinafter "RFMO/A") (Article 5 FSA). Note that a subsidy "regarding an overfished stock," referred to in Article 4.1, is excused "if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level" (footnote omitted) (Article 4.3 FSA). The content of "other subsidies" is subject to further negotiation. Thereafter, the specific institutional provisions follow: due considerations for Least Developed Countries member states (Article 6 FSA); technical assistance and capacity-building on a voluntary basis (Article 7 FSA); notification requirements (Article 8 FSA); establishment of the Committee on Fisheries Subsidies, which has a periodic review function (Article 9 FSA); dispute settlement procedures (Article 10 FSA); exceptions for disaster relief and other caveats (Article 11 FSA); and the automatic termination if comprehensive disciplines are not adopted within 4 years of entry into force (Article 12 FSA).

Again, the FSA is not the outcome of the entire negotiation but rather a milestone in the ongoing process aspiring to reach comprehensive disciplines. The contents of the operative section can be clarified and/or modified during negotiations. Therefore, in this study, we deferred to conduct a thorough analysis of these operative parts. However, it is less plausible that the scope of the agreement and the definitions of the key terms will change drastically. Thus, in the next subsection, we focus on the scope and definitions of the FSA—specifically, Articles 1 and 2.

2. Legal Uncertainties Relating to the Scope and Definitions — The problem here is the unintended impact that the artificial definitions and scope setting of the FSA 2022 might cause on the indigenous peoples' traditional way of living.

First, by limiting the scope to such activities as "marine wild capture fishing" and "at sea," as set forth in Article 1 of the FSA, subsidy programs on harvesting at an inland area, including a river, such as those the Japanese Ainu people are currently fighting for (see the previous section), are outside the scope of the FSA. Aquaculture products such as farmed salmon are also excluded from the application of FSA.

Second, the lax definition of "fish" may affect seal hunting by Inuit people. If an ordinary dictionary meaning would include marine mammals as part of the "living marine resources," whales and seals can be deemed "fish" under the FSA. Thus, indigenous traditional hunting such as seal

hunting, mentioned in the previous section, can be included in these criteria, although the FSA applies only to the subsidies on fishing and fishing activities "at sea," as mentioned above. For example, a seal hunted by a sealer on the ice floating in the Arctic Ocean can fall under the concept of "fish" "at sea" under the FSA, while a seal hunted on the shore, even if harvested by the same sealer on the same day, is excluded from this definition. This would incentivize governments to redesign subsidy programs strictly by geographical area, at sea or otherwise, which could generate excessive burdens on the recipient fishers, whose tradition does not distinguish such artificial scope settings.

Third, the definition of "fishing" and "fishing related activities" mentioned above is vague and broad, which can excessively restrict policy space for governments to support indigenous communities. Specifically—in many cases—fishing or fishing-related activities are not purely economic sources of income but, rather, are important aspects of traditional rituals and cultural expressions.[24] Thus, the more seriously governments intend to implement the FSA, the more stringently they would reform the individual subsidy programs by compartmentalizing the subject activities: for example, whether or not the fishing is conducted "at sea," who is in charge of the fishing as the "operator," and so on. Such technical subsidy reform would unevenly increase the logistical burden on recipients with less capacity to handle paperwork, which could further marginalize indigenous peoples in fishing and fishing-related activities and hamper the traditional culture of indigenous communities living on the shore.

Fourth and finally, regarding the definition of the "operator" mentioned above, it is not exceptional for an indigenous community to own vessels as a form of collective ownership rather than as personal property. In such cases, it is not always easy to identify the person in charge.

All these frictions are caused by the newly created definitions/scopes, not intentionally but due to lack of due diligence. It is not a problem in itself to exclude aquaculture fishing and inland fishing themselves are not a problem: it could be the only available option available to the negotiators as a political compromise. However, it is problematic if such artificial and politics-based definitions/scopes create unintended and unnecessary burdens on the indigenous communities.

Needless to say, there might be some "need to adjust to modern society rather than to continuing their cultural heritage."[25] Nevertheless, such adjustment should not be forced from the outside, particularly if no pressing need is presented to do so.

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[24] *EC — Seal Products* Panel Report, *supra* note 11, ¶ 7.229.
[25] *Id.* ¶ 7.287.

B. Options to Address the Legal Concerns

1. Issues to be Addressed via the Ongoing Negotiations — Indigenous fishing might not be the most contentious legal topic in implementing the FSA because the vast majority of fisheries by indigenous peoples and the subsidies provided to them are modest and small, making it less likely to be suspected as harmful in terms of overfishing or overcapacity.[26] Moreover, each WTO member state that accepted the FSA has a substantial margin of appreciation in interpreting the treaty text to avoid jeopardizing indigenous peoples' rights and interests.[27] Therefore, it is less likely that the coastal state or a relevant RFMO/A would carelessly deem vessels owned by indigenous peoples and their fishing activities as IUU fishing, especially if such vessels are unregistered, owing to the limited capacity of the fishers themselves or the government.[28]

However, even a perusal of the scope and definitions reveals considerable burdens placed on the indigenous peoples (see Section III.A.2 above). First, there are discrepancies between current FSA assumptions and the reality (or diverse realities) of indigenous peoples engaged in fishing and fishing-related activities. The forms and types of subsidies anticipated in the FSA are based on highly segmented, individualized, and capitalized images of society that do not fully fit into indigenous communities. Second, the coverage of the FSA lacks integrity. Limiting the geographical scope to the catch "at sea" is artificially narrow, excluding inland fisheries and aquaculture, while the definitions of a "fishing related activity" or "living marine resources" are considerably broad, which makes it difficult for governments to process subsidy reform, leaving indigenous peoples in less predictable and vulnerable positions.

Third and finally, FSA 2022 says little about the due consideration of developing countries, let alone vulnerable social groups within each country, either developed or developing, such as women, youth, minorities, and indigenous peoples. Overall, the current FSA fails to show a normative balance among diverse legal values, including sustainable development, human rights, and SDT. It is known from the supplementary materials that negotiators devoted considerable time and effort to SDT during the course of

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[26] Basten Gokkon, *WTO Ban on 'Harmful' Subsidies Won't Impact Small-Scale Fishers, Indonesia Says*, MONGABAY (June 29, 2022), https://news.mongabay.com/2022/06/wto-ban-on-harmful-subsidies-wont-impact-small-scale-fishers-indonesia-says/.

[27] For similar argument concerning the interpretation of the U.N. Convention on the Law of the Sea (UNCLOS), see Endalew Lijalem Enyew & Nigel Bankes, *Interaction Between the Law of the Sea and the Rights of Indigenous Peoples*, *in* THE LAW OF THE SEA: NORMATIVE CONTEXT AND INTERACTIONS WITH OTHER LEGAL REGIMES 151, 166 (Nele Matz-Lück et al. eds., 2023).

[28] For a contrary view, see *Briefing Paper: WTO's 2022 Geneva Package: Historic or Just Rhetoric?*, LA VIA CAMPESINA (Oct. 19, 2022), https://viacampesina.org/en/briefing-paper-wtos-2022-geneva-package-historic-or-just-rhetoric/.

negotiation,[29] and indigenous peoples' rights were mentioned in parallel with the rights of other vulnerable social groups such as women, youth, peasants and micro, small and medium-sized enterprises (hereinafter "MSMEs") , particularly as part of the discussions on "the area of subsistence, artisanal, and small-scale fisheries."[30] However, the final text of the current FSA lacks an overall reference to SDT, which is said to be on the agenda for ongoing negotiations.

Under these circumstances, clarifying or modifying individual terms of definitions or scope settings specifically for the indigenous peoples is not the first option to address the problems mentioned above. First of all, assuming that definitions and scope provisions are outcomes of the political compromise, it is less likely that negotiators modify the scope and definitions for specific sectors or specific groups of people. If alternatively they intend to do so, it is necessary to expressly recognize the interests and special treatment of vulnerable social groups, by inserting a provision in the treaty text.[31]

For this purpose, the inclusion of the SDT clause is not a panacea. It is true that SDT can indeed involve diverse interests shared in developing countries. However, fishing and fishing-related activities can involve vulnerable social groups in both developed and developing counties. If each vulnerable group is vulnerable in its own way, then dedicated instruments are required. Focusing on the developing countries and providing a country-wide SDT would increase disparity within the society, and make vulnerable social groups in the country more vulnerable. Research indicates that providing targeted support to specific vulnerable social groups can be more effective than providing countrywide support for SDT.[32] In this sense, providing a country-wide SDT for developing countries is not sufficient to respect the legitimate interests of the indigenous peoples, either in developed or developing countries..

Achievements made by the FSA should not be ignored, as they are straightforward and easily understood by the general public and widely announced by the United Nations (hereinafter "U.N.") and other international forums, along with the WTO. However, this may lead to over-adaptation by WTO member-state governments to the detriment of the varied interests of vulnerable social groups, including indigenous peoples.

2. Exception Clause as an Option: Lessons from FTA Practices — To

[29] *See, e.g.*, Negotiating Group on Rules, *Fisheries Subsidies Draft Consolidated Chair Text: Chair's Explanatory Note Accompanying TN/RL/W/276 Addendum*, ¶ 55, WTO Doc. TN/RL/W/276/Add.1 (May 11, 2021).
[30] *See, e.g.*, *id.* ¶¶ 72-73.
[31] Crepelle, *supra* note 2, at 3. Alternatively, recognizing such rights in the preamble can be an option.
[32] Sarah Harper & U. Rashid Sumaila, *Distributional Impacts of Fisheries Subsidies and Their Reform: Case Studies of Senegal and Vietnam* 20, 24 (iied, Working Paper, 2019), https://www.iied.org/sites/ default/files/pdfs/migrate/16655IIED.pdf.

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address the concerns identified in the previous subsection, the insertion of an exception clause that provides special treatment to indigenous peoples is an option. Some may wonder if inserting the provision that specifically addresses their special treatment, among many others, is necessary or appropriate, because it would require the insertion of exception clauses for each individual vulnerable social groups. However, recognizing the specific rights of the indigenous peoples can be justified in the context of international regulation of the fisheries subsidies, because they are particularly affected by it. From this point of view, it is noteworthy that several FTAs concluded recently explicitly recognize the indigenous peoples' rights as an overall exception.

It is true that, owing to the limited population and size of economic activities, bilateral or regional trade agreements rarely contain chapters specifically designed for indigenous peoples, except those negotiated in a few countries such as New Zealand and Canada. However, there are a growing number of references to indigenous rights in several trade agreements—for example, in the original Trans-Pacific Partnership Agreement of 2016 (also in its successor, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership Agreement)[33] in the chapter on biodiversity [34] and several country-specific schedules for Australia, Chile, Mexico, New Zealand, and Peru, although the U.N. Special Rapporteur on the Rights of Indigenous Peoples criticized the lack of sufficient consideration for their rights and need for preferential treatment.[35]

Later, for example in the United States-Mexico-Canada Agreement (hereinafter "USMCA"), signed in 2018, measures taken for the benefit of indigenous peoples were explicitly treated as legitimate "exceptions," which require the government to take special care:

> Article 32.5: Indigenous Peoples Rights
>
> Provided that such measures are not used as a means of arbitrary or unjustified discrimination against persons of the other Parties or as a disguised restriction on trade in goods, services, and

[33] "REAFFIRM the importance of promoting corporate social responsibility, cultural identity, and diversity, environmental protection and conservation, gender equality, indigenous rights, labour rights, inclusive trade, sustainable development, and traditional knowledge, as well as the importance of preserving their right to regulate in the public interest." Trans-Pacific Partnership, pmbl. para. 6, Feb. 4, 2016, https://www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf [hereinafter TPP].

[34] "The Parties recognise the importance of respecting, preserving, and maintaining knowledge and practices of indigenous and local communities embodying traditional lifestyles that contribute to the conservation and sustainable use of biological diversity." *Id.* Art. 20.13(3).

[35] Victoria Tauli-Corpuz, *Statement of Ms. Victoria Tauli-Corpuz, Special Rapporteur on the Rights of Indigenous Peoples, at the 33rd Session of the Human Rights Council*, UNITED NATIONS (Sept. 20, 2016), https://www.ohchr.org/en/statements/2016/10/statement-ms-victoria-tauli-corpuz-special-rapporteur-rights-indigenous-0.

> investment, this Agreement does not preclude a Party from adopting or maintaining a measure it deems necessary to fulfill its legal obligations to indigenous peoples.

For greater certainty, for Canada, the legal obligations include those recognized and affirmed by section 35 of the Constitution Act 1982 or those set out in self-government agreements between a central or regional level of government and indigenous peoples.

Notably, the indigenous peoples' rights exception is one of the six exception clauses listed in Section A of Chapter 32, along with the general exceptions, essential security, taxation measures, temporary safeguard measures, and cultural industries.

More recently, the Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States of America and Taiwan (hereinafter "AIC-TECRO Trade Agreement") that was signed in June 2023 contains a similar provision:[36]

> Article 7.5: Rights of Indigenous Peoples
>
> Provided that these measures are not used as a means of arbitrary or unjustified discrimination against persons of the territory represented by the other Party or as a disguised restriction on trade in goods, services, and investment, this Agreement does not preclude a Party, either on its own or through its Designated Representative, from adopting or maintaining a measure the authorities of the territory represented by the Party deem necessary to fulfill its obligations to Indigenous peoples.

This exception clause is, similarly, one of the five exception clauses listed in Section A of Article 7, along with general exceptions, essential security, taxation measures, and exceptions for financial services.

When comparing these two articles, the scope of the exceptions created by Article 7.5 of the AIC-TECRO Trade Agreement extends to any measures necessary to fulfill "its obligations," seemingly wider than "its legal obligations" as is set forth in Article 32.5 of the USMCA. On its face, a measure taken to meet a non-legal or moral obligation to indigenous peoples could be justified under this provision, though the legal impact of the omission of the word "legal" requires further investigation.

In parallel, there is a growing trend to explicitly mention indigenous

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[36] Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States of America and Taiwan, art. 7.5, June, 2023, https://ustr.gov/sites/default/files/2023-05/AIT-TECRO%20Trade%20Agreement%20May%202023.pdf [hereinafter AIC-TECRO Trade Agreement].

peoples' rights as part of the substantive obligations in trade agreements, especially in chapters dealing with supporting mechanisms for MSMEs. A few recent examples include the Taiwan-US trade initiative negotiations[37] and the USMCA small and medium-sized enterprises (SME) Dialogue,[38] among others. This could be considered a kind of "normalization" process, in which indigenous peoples are treated as one of the many vulnerable social groups, who need reasonable accommodation. However, as mentioned in the previous subsection (III.B.1), mentioning the indigenous peoples as one of the small and medium enterprises is not always a solution. This can lead to undermining distinct features of the indigenous peoples, further marginalizing them in legal regimes, by failing to recognize historical and social aspects of indigenous peoples' struggles and by failing to recognize their rights as a standing and independent right category.[39]

Such clarification can be made in the form of *ad* articles, supplementary ministerial declarations, explanatory notes attached to the treaty text, or any appropriate documents. From this viewpoint, though, the place of the indigenous peoples' rights in the AIC-TECRO Trade Agreement is noteworthy. However, inserting an exception clause exempting measures for indigenous peoples' rights from obligations under the FSA 2022 would be the most straightforward way of alleviating the burdens placed on the indigenous peoples. This option can avoid reopening of the textual negotiations on the scope and definition clauses, and it will be less likely to jeopardize the overall design of the FSA 2022 and the comprehensive agreement for which the follow-up negotiations are underway, owing to the limited size of indigenous fishing.

Needless to say, this paper does not intend to argue that the insertion of an exception clause for the indigenous peoples is always necessary for all fields of the WTO framework, either in SCMA or WTO as a whole, nor does it argue that the indigenous peoples' rights are more important than rights and interests of other vulnerable social groups.[40] Rather, this paper illustrates an option that has been overlooked in the course of the negotiations for FSA 2022, although fishing and fisheries subsidies have a significant impact on

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[37] Hannah Monicken, *U.S., Taiwan Conclude Talks on Trade Facilitation, Services, SMEs*, INSIDE US TRADE'S DAILY REP. (May 18, 2023), https://insidetrade.com/daily-news/us-taiwan-conclude-talks-trade-facilitation-services-smes; Dan Dupont, *USTR Outlines Proposed Texts for 'High-Ambition' Taiwan Trade Initiative*, INSIDE US TRADE (Mar. 16, 2023), https://insidetrade.com/daily-news/ustr-outlines-proposed-texts-high-ambition-taiwan-trade-initiative. *See also id.* art. 6.2(b).

[38] Margaret Spiegelman, *Tai, Ng, Buenrostro Set Out 'Next Steps' as USMCA Enters Fourth Year*, INSIDE US TRADE (July 13, 2023), https://insidetrade.com/daily-news/tai-ng-buenrostro-set-out-next-steps-usmca-enters-fourth-year.

[39] Analyzing what we can learn from the best practices in several countries such as New Zealand, Canada, and Australia requires a separate investigation.

[40] Obviously, it is a matter of political decision making that the United States-Mexico-Canada Agreement [USMCA] and AIC-TECRO Trade Agreement explicitly recognized the indigenous peoples' rights as an across-the-board exception to the entire agreement.

the indigenous peoples' living, and FSA 2022 and its successor agreement will impose serious burdens on such groups. Nevertheless, further investigations are needed to scrutinize the viability of different options.

IV. CONCLUSIONS

This study aims to clarify the legal impact of the FSA 2022 on indigenous peoples as one of the most vulnerable social groups globally from the perspective of inclusive trade. Needless to say, the FSA is still conducting further negotiations aimed at establishing a set of comprehensive disciplines within a few years. Specific arrangements for indigenous peoples as a part of domestic implementation measures by individual member states are yet to be seen. No specific legal disputes involving indigenous fisheries subsidies were evident before the WTO dispute settlement mechanism.[41] In this sense, policy discussions are key at this juncture. Furthermore, a number of WTO member states that take significant care, including the US, Peru, Nigeria, New Zealand, the EU, Gabon, China, and Canada, have already accepted the FTA.

However, a textual analysis of the scope and definition provisions of the current FSA shows several systemic concerns about its coverage and how to accommodate different and sometimes conflicting policy needs, as discussed in Section III.B.1. Further clarification is necessary for subsistence, artisanal, and small-scale fishers—or, more specifically, for indigenous peoples—to ensure proper representation of their rights.[42] As is proposed in Section III.B.2 above, inserting an exception clause for the indigenous peoples' rights, learning from Article 7.5 of the AIC-TECRO Trade Agreement, can be a viable option.

Integrity and predictability are indispensable elements for ensuring the effective application of international rules. Overly broad and stringent subsidy reforms based on the FSA would jeopardize the legitimate interests of the indigenous peoples in coastal areas in their access to resources and the preservation of their traditional culture. Negotiators need to pay due attention to this issue in the course of the ongoing negotiations for a comprehensive version of the FSA, anticipating that comprehensive disciplines would be more inclusive and balanced, especially for the fishing sector, where the vast majority are small-scale fishers. The comprehensive FSA should avoid

[41] Litigating and representing the rights of indigenous peoples requires multi-dimensional/multi-perspectival approaches. Joseph Marko, *Comparing Jurisprudence from Five Continents: Concluding Observations in Search for Meaning through Intercultural Understanding*, *in* LITIGATING THE RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES IN DOMESTIC AND INTERNATIONAL COURTS 239, 261 (Bertus de Villiers et al. eds., 2021).

[42] Kathleen Gwynneth Auld, Sustainable Development of Small-Scale Fisheries and the Need for Strong Measures to Protect Small-Scale Fisheries in International Trade Law 185 (Oct. 2020) (Ph.D. dissertation, University of Cape Town) (on file with University of Cape Town).

potential criticism of "green colonialism" in order to attract wider support from the WTO member states.[43] Negotiators should take indigenous peoples' rights and interests more seriously in the course of the ongoing follow-up negotiations, because they are "one of us",[44] and their interests deserve appropriate attention and respect.

[43] Disparity between indigenous peoples in developed and developing countries is another concern. Article 4.3 of the FSA is an exception clause that allows the provision of fisheries subsidies regarding overfished stocks "if these measures are implemented to rebuild fish stocks to a sustainable level," as is shown in Section III.A.1 above. In reality, it favors fishers in developed countries that have sufficient regulatory capacity and expertise to invoke this exception.

[44] *See* JOAN OSBORNE, ONE OF US (Mercury Records 1995) ("What if God was one of us, Just a slob like one of us, Just a stranger on the bus, Trying to make his way home?").

REFERENCES

Books

CHEN, CHEN-JU (2010), FISHERIES SUBSIDIES UNDER INTERNATIONAL LAW.

PUIG, SERGIO (2021), AT THE MARGINS OF GLOBALIZATION: INDIGENOUS PEOPLES AND INTERNATIONAL ECONOMIC LAW.

Articles

Crepelle, Adam (2023), *The Never-Ending Struggle for Tribal Fishing Rights*, FUTURE FISHERIES MANAGEMENT ISSUE BRIEF 1.

Enyew, Endalew Lijalem & Nigel Bankes (2023), *Interaction Between the Law of the Sea and the Rights of Indigenous Peoples*, *in* THE LAW OF THE SEA: NORMATIVE CONTEXT AND INTERACTIONS WITH OTHER LEGAL REGIMES 151 (Nele Matz-Lück et al. eds.).

Gassiy, Violetta & Ivan Potravny (2019), *The Compensation for Losses to Indigenous Peoples Due to the Arctic Industrial Development in Benefit Sharing Paradigm*, 8(2) RESOURCES 1.

Macmillan, Fiona (2012), *Finding Space in the Margins? Recognising the Rights of Indigenous Peoples in the WTO*, *in* INTERNATIONAL TRADE IN INDIGENOUS CULTURAL HERITAGE: LEGAL AND POLICY ISSUES 88 (Christoph B. Graber et al. eds.).

Marko, Joseph (2021), *Comparing Jurisprudence from Five Continents Concluding Observations in Search for Meaning through Intercultural Understanding*, *in* LITIGATING THE RIGHTS OF MINORITIES AND INDIGENOUS PEOPLES IN DOMESTIC AND INTERNATIONAL COURTS 239 (Bertus de Villiers et al. eds.).

Rubini, Luca (2012), *Ain't Wastin' Time No More: Subsidies for Renewable Energy, The SCM Agreement, Policy Space, and Law Reform*, 15(2) JOURNAL OF INTERNATIONAL ECONOMIC LAW 525.

Cases

Metlakatla Indian Community v. Dunleavy, 58 F.4th 1034 (9th Circuit 2023)

Panel Report, *European Communities — Measures Prohibiting the Importation and Marketing of Seal Products*, WTO Doc. WT/DS400/R (adopted June 18, 2014).

Treaties

Agreement Between the American Institute in Taiwan and the Taipei Economic and Cultural Representative Office in the United States Regarding Trade Between the United States of America and Taiwan, June, 2023, https://ustr.gov/sites/default/files/2023-05/AIT-TECRO%20Trade%20Agreement%20May%202023.pdf.

Agreement on Agriculture, April 15, 1994, Marrakesh Agreement Establishing the World Trade Organization, Annex 1, 1867 U.N.T.S. 410.

Trans-Pacific Partnership, February 4, 2016, https://www.iilj.org/wp-content/uploads/2018/03/CPTPP-consolidated.pdf.

WTO-Related Documents

Negotiating Group on Rules, *Communication from the Chairman*, WTO Doc. TN/RL/W/254 (April 21, 2011).

Negotiating Group on Rules, *Draft Consolidated Chair Texts of the AD and SCM Agreements*, WTO Doc. TN/RL/W/213 (November 30, 2007).

Negotiating Group on Rules, *Fisheries Subsidies Draft Consolidated Chair Text: Chair's Explanatory Note Accompanying TN/RL/W/276 Addendum*, WTO Doc. TN/RL/W/276/Add.1 (May 11, 2021).

Negotiating Group on Rules, *Fisheries Subsidies Working Document: Communication from the Chair – Revision*, WTO Doc. TN/RL/W/274/Rev.6 (November 14, 2018).

World Trade Organization (2022), *Agreement on Fisheries Subsidies*, WTO Doc. WT/MIN(22)/33, WT/L/1144.

U.N.-Related Document

G.A. Res. 70/1, (October 21, 2015).

Internet Sources

Briefing Paper: WTO's 2022 Geneva Package: Historic or Just Rhetoric?, LA VIA CAMPESINA (October 19, 2022), https://viacampesina.org/en/briefing-paper-wtos-2022-geneva-package-historic-or-just-rhetoric/.

CANADIAN NORTHERN ECONOMIC DEVELOPMENT AGENCY (2022), THE GOVERNMENT OF CANADA CONTINUES TO SUPPORT NUNAVUT'S FISHING INDUSTRY, https://www.canada.ca/en/northern-economic-development/news/2022/06/the-government-of-canada-continues-to-support-nunavuts-fishing-industry.html.

Cornell, Stephen (2006), *What Makes First Nations Enterprises Successful?: Lessons from the Harvard Project* 3 (Joint Occasional Papers on Native Affairs (JOPNA), No. 2006-01), https://www.researchgate.net/profile/Stephen-Cornell/publication/239569735_What_Makes_First_Nations_Enterprises_Successful_Lessons_from_the_Harvard_Project/links/5559f0ed08aeaaff3bfab4b7/What-Makes-First-Nations-Enterprises-Successful-Lessons-from-the-Harvard-Project.pdf.

Dupont, Dan, *USTR Outlines Proposed Texts for 'High-Ambition' Taiwan Trade Initiative*, INSIDE US TRADE (March 16, 2023), https://insidetrade.com/daily-news/ustr-outlines-proposed-texts-high-ambition-taiwan-trade-initiative.

臺大學術期刊資訊網

FEIRING, BIRGITTE (2023), INDIGENOUS PEOPLES' CUSTOMARY FISHING RIGHTS – KEY ISSUES AND ENTRY POINTS FOR ADVOCACY 22, https://www.humanrights.dk/files/media/document/INDIGENOUS%20PEOPLES'%20CUSTOMARY%20FISHING%20RIGHTS_KEY%20ISSUES%20AND%20INPUT%20FROM%20THE%20EXPERT%20MEETING%20ON%20INDIGENOUS%20PEOPLES%20AND%20FISHERIES_2023_accessible.pdf.

Gokkon, Basten, *WTO Ban on 'Harmful' Subsidies Won't Impact Small-scale Fishers, Indonesia Says*, MONGABAY (June 29, 2022), https://news.mongabay.com/2022/06/wto-ban-on-harmful-subsidies-wont-impact-small-scale-fishers-indonesia-says/.

Hillman, Jennifer A. & Inu Manak (2023), *Rethinking International Rules on Subsidies*, 96 COUNCIL SPECIAL REPORT 1, https://cdn.cfr.org/sites/default/files/report_pdf/Rethinking%20International%20Rules%20on%20Subsidies_0.pdf.

John Briley, *A Global Deal to End Harmful Fisheries Subsidies*, TRUST MAGAZINE (February 1, 2023), https://www.pewtrusts.org/en/trust/archive/winter-2023/a-global-deal-to-end-harmful-fisheries-subsidies.

Monicken, Hannah, *U.S., Taiwan Conclude Talks on Trade Facilitation, Services, SMEs*, INSIDE US TRADE'S DAILY REPORT (May 18, 2023), https://insidetrade.com/daily-news/us-taiwan-conclude-talks-trade-facilitation-services-smes.

Nitta, Naoki, *A Fight for Salmon Fishing Rights Connects Indigenous Peoples Across the Pacific Ocean*, CIVIL EATS (July 26, 2023), https://civileats.com/2023/07/26/a-fight-for-salmon-fishing-rights-connects-indigenous-peoples-across-the-pacific-ocean/.

Spiegelman, Margaret, *Tai, Ng, Buenrostro Set out 'Next Steps' as USMCA Enters Fourth Year*, INSIDE US TRADE (July 13, 2023), https://insidetrade.com/daily-news/tai-ng-buenrostro-set-out-next-steps-usmca-enters-fourth-year.

Tauli-Corpuz, Victoria, *Statement of Ms. Victoria Tauli-Corpuz, Special Rapporteur on the Rights of Indigenous Peoples, at the 33rd Session of the Human Rights Council*, UNITED NATIONS (September 20, 2016), https://www.ohchr.org/en/statements/2016/10/statement-ms-victoria-tauli-corpuz-special-rapporteur-rights-indigenous-0.

United Nations Declaration on the Rights of Indigenous Peoples, UNITED NATIONS, https://social.desa.un.org/issues/indigenous-peoples/united-nations-declaration-on-the-rights-of-indigenous -peoples.

Working Paper, and Other Source

Auld, Kathleen Gwynneth, Sustainable Development of Small-Scale Fisheries and the Need for Strong Measures to Protect Small-Scale

臺大法律期刊資料庫

Fisheries in International Trade Law (October, 2020) (Ph.D. dissertation, University of Cape Town) (on file with University of Cape Town).

Harper, Sarah & U. Rashid Sumaila (2019), *Distributional Impacts of Fisheries Subsidies and Their Reform: Case Studies of Senegal and Vietnam* (iied, Working Paper), https://www.iied.org/sites/default/files/pdfs/migrate/16655IIED.pdf.

OSBORNE, JOAN (1995), ONE OF US (Mercury Records).

臺大學術期刊資料庫