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China and the BRICS in WTO E-Commerce and Fisheries Negotiations

Competition and Convergence

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I Introduction

As the guardian of multilateral trade liberalization, the World Trade Organization (WTO) is currently confronted with the deepest crisis since its initial inception. Among other challenges, the rising economic clout of China and the incompatibilities between its model of state capitalism and the rules-based neoliberal economic order have raised important questions about the degree to which China's participation in the WTO may have compromised the effectiveness and credibility of the multilateral trade institution.

Coincidentally, we have also witnessed the growing influence of emerging economies, including India, Brazil, Russia, and South Africa in WTO negotiations in the past two decades. Different from the interactions and policy coordination among the Quad countries consisting of the United States (US), the European Union (EU), Canada, and Japan in past negotiations taking place within the WTO and its predecessor, the General Agreement on Tariffs and Trade (GATT), the BRICS have presented a unique model of "coopetition" featuring both the pursuit of a common development agenda and competing national interests.

What role have China and other BRICS countries played in more recent WTO negotiations? This paper addresses this question through an analysis of the behavior of the BRICS in WTO negotiations on e-commerce and fisheries subsidies. By examining the evolving positions and tactics of this group of countries during various stages of the negotiation process, we illuminate areas where the BRICS have been able to proactively cooperate with one another through coalition building and areas in which they have failed to effectively negotiate as a group due to disparate domestic interests and the absence of a common vision on how (and where) to move forward. The chapter further assesses the extent to which such differences have influenced negotiation outcomes across the key issue areas under consideration.

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We choose to focus on the e-commerce and fisheries subsidies negotiations for a couple of reasons. First, e-commerce and fisheries subsidies are two important ongoing WTO negotiations that have important implications for the future legitimacy and credibility of the WTO. Second, these two negotiations represent two different sets of challenges presented to the WTO in the future – making new trade rules to regulate today's global trade practices in the case of e-commerce and developing viable solutions to the challenges of addressing environmental and developmental concerns within the WTO framework in the case of fisheries subsidies. Third, with the rise of China in the past two decades, its trade interests have diverged from that of the majority of the developing countries and in particular those of India and Brazil in important ways.

In the e-commerce negotiations, seeing itself as a potential leader in this new trade issue area, China seeks a driving seat to write new rules to reflect its dominant position in global e-commerce and to safeguard its commercial interests and ability to effectively compete with the US and other developed countries. In contrast, India and Brazil have been less keen to play a proactive role in the e-commerce negotiations as e-commerce is not a top priority in the making of their trade policy. In the fisheries subsidies negotiations, China chose to take a low-profile and ambiguous position. Today China has emerged as the world's largest fisheries subsidizer. Therefore, pressuring China to make deep cuts in its fisheries subsidies, especially those supporting capacity-enhancing activities, in the negotiation is the only way to ensure a meaningful and impactful WTO fisheries subsidies agreement. Although China, India, and Brazil all support the flexibility of special and differential treatment (SDT), the reality is that India and Brazil stand a better chance of receiving the SDT flexibilities they need to keep some policy space in this issue area when China is no longer viewed as a helpful addition to their coalition. Hence a comparison of these two cases will shed light on the effect of the semi-coordination among the BRICS countries on multilateral trade negotiations, WTO reform, and the BRICS' future cooperation in global governance.

Our findings suggest that while North-South conflicts still present a major impediment to WTO negotiations, the nuanced and differentiated interests among the BRICS have further complicated the picture, contributing to the impasses in the WTO negotiations and to the current crisis faced by the WTO in general.[1] Despite its shared identity and common

[1] This pattern is consistent with China's behavior earlier in the history of its engagement with the WTO. See, for example, discussions of China's negotiation behavior in the WTO agricultural and non-agricultural market access (NAMA) negotiations (e.g., Liang, 2013; Wang and Zeng, 2013).

interests with the latter in promoting the development needs of the South, China's specific negotiation interests frequently departed from those of the emerging economies and the majority of the smaller developing countries. More importantly, since the Uruguay round negotiations, the developing countries coalitions led by India and Brazil have increasingly treated China as a liability which impeded them from receiving SDT flexibilities, and this is especially the case as China has continued to insist that it is still a developing country.

Especially, in e-commerce negotiations, China's much more developed domestic e-commerce market means that it is much less concerned than BRICS countries such as India and South Africa about the potential of e-commerce negotiations to undermine the goals of the Doha Development Agenda (DDA). However, while Beijing is more willing to support negotiations designed to facilitate data flows compared to some other BRICs and the least-developing countries (LDCs), its stronger concerns about the need to maintain sovereignty and domestic regulatory control also means that its preferences are far apart from those of the major players such as the US and the EU over issues such as data localization, privacy and personal data, and transfer of source code. China's different negotiation stance vis-à-vis both developed countries and emerging powers, along with the heterogeneity of the preferences among the BRICS countries, thus undercut the possibility that the BRICs could form an effective coalition to assert and advance their interests in the negotiation process.

In the fisheries subsidies negotiations, China continues to seek greater flexibilities granted to developing countries even though it is the largest fishing nation, the largest exporter of fish, and the largest subsidizer. Both India and Brazil's latest proposals have explicitly provided metrics to exclude China from receiving the preferences associated with SDT. The split of interests among both developed countries and developing countries, in addition to the North-South divide, thus complicated and significantly delayed the negotiation process. The new reality seems to be that being the largest subsidizer, China's effort to defend the SDT has de facto weakened the likelihood for other developing countries to receive it. Excluding China from the developing countries' coalition has become a necessity for developing countries to achieve their desired negotiation outcome.

The rest of the chapter is organized as follows. Section II presents an overview of how the differences in the negotiation preferences and positions between China and the rest of the BRICs have shaped the processes of the WTO e-commerce negotiations. Section III turns to a detailed discussion of the fisheries subsidies negotiations. The chapter concludes by comparing the dynamics of the two sets of negotiations and discussing the implications of our findings for the future of global trade governance.

II WTO E-Commerce Negotiations

The drawn-out negotiations over e-commerce highlight sharp conflicts between China and other major powers such as the US and the EU. The substantially different negotiation preferences and approaches among the BRICS further compounded these differences and undermined the group's ability to pursue a common negotiation agenda.

(i) Divergences among the Major Players

Progress toward WTO negotiations over e-commerce has been impeded by significant differences in the negotiation approaches among the US, the EU, and China over highly contentious issues such as data flows, data location, and "privacy invasion by data collectors." Notably, the US position focused on eliminating cross-border restrictions on data, promoting the competitiveness of US digital networks, minimizing regulatory divergences across countries, and reducing the burden of regulatory compliance (US Mission in Geneva, 2019). In line with this goal, the US approach sought to limit the extent to which considerations about consumer protection or privacy regulations may influence the design of global e-commerce rules (Kilic, 2021).

In contrast to the United States and some other developed country governments which place greater emphasis on reining in Big Tech, the EU, with its stronger oversight of the industry and a less developed digital economy (UNCTAD, 2019), puts a stronger emphasis on the protection of data privacy and favors strong disciplines on algorithms and/or source code. In addition, the EU has strong concerns about the lack of coherent rules regarding internet taxation that could effectively tackle tax avoidance by multinational corporations, proposing both a digital services tax and a digital profits tax targeting large technology firms' revenue and profits associated with activities in EU member states in 2018. The US strongly opposes such unilateral proposals on the grounds that they potentially violate tax treaties and other agreements.

China's approach toward e-commerce negotiations diverges from those of the US and EU in a few important respects. While many of China's proposals favor measures that would facilitate digital trade and protect consumer interests, its proposals have also emphasized security exception and content review, raising concerns about whether it would be willing to accept the main demands of the US and other Western countries regarding the free flow of information across borders, prohibition on localization requirements, the protection of privacy and personal data, and the forced transfer of source code (Gao, 2020; Hufbauer and Lu, 2019).

Overall, while the US and other industrialized countries aim to reach an ambitious high-standard WTO agreement, China has placed considerable emphasis on the development dimension of e-commerce, insisting that developing countries should receive SDT in WTO negotiations, including e-commerce negotiations. Not surprisingly, the US strongly opposed China's self-identified developing county status on the ground that it can be invoked by Beijing to exempt itself from certain obligations, potentially leading to the abuse of SDT for developing countries in the WTO system.

(ii) Dissension among the BRICS Countries

The divide between developed and developing countries was further compounded by the divergent negotiation preferences and approaches among the latter, notably among the BRICS countries. India, for example, was highly critical of moves to craft rules on e-commerce before the conclusion of the DDA trade negotiations. Along with many least developed and developing countries, India emphasized that in view of its nascent e-commerce policy and ongoing "digital transformation," the promulgation of data regulation laws and digital industrialization plans should take precedence over the negotiation of rules governing digital trade. India additionally "highlighted the importance of policy space in terms of ownership, use, and flows of data in rapidly growing sectors such as cloud computing and data storage" (UNCTAD, 2020: 15). Due to such concerns, India and South Africa have chosen to stay outside of WTO e-commerce negotiations.

In contrast to India and South Africa which have taken an uncompromising stance on the issue, Brazil and Russia have adopted a more proactive approach toward the joint statement initiative (JSI) negotiations. As both countries have relatively large e-commerce markets and relatively well-developed regulatory frameworks for e-commerce (Thorstensen et al., 2019), they are less concerned about the potential adverse developmental impact of e-commerce negotiations and have been actively involved in efforts to submit proposals and to create small working groups to encourage regulatory cooperation and facilitate the free flow of data. The BRICS countries' divergent interests in e-commerce therefore have accentuated the heterogeneity of WTO members' negotiation positions and exacerbated the difficulties of reaching an agreement among the participating members.

(iii) The Run-Up to the 2017 11th Ministerial Conference (MC 11)

While earlier e-commerce negotiations have generated some positive results (Ismail, 2020), it was not until 2016 that negotiations once again gained momentum. According to Gao (2020: 6), China was initially reluctant to support the launch of the negotiations, insisting that it was not ready for the negotiation of new rules on e-commerce and that the negotiations should, at least initially, focus on trade facilitation and transparency measures and exclude new market access commitments (WTO, 2017a). Unlike either developed countries which sought to make digital commerce a high priority in the WTO agenda or LDCs and most developing countries calling for the negotiation of the unresolved DDA issues, China took a middle approach that supports more focused negotiations on e-commerce, while at the same time prioritizing developing country issues. While generally favoring the development of new rules to facilitate e-commerce, China simultaneously opposed those prohibiting data controls (Macleod, 2017). Together with countries such as Argentina, Chile, Colombia, Costa Rica, Kenya, Mexico, Nigeria, Pakistan, Sri Lanka, and Uruguay, China formed the group of the Friends of E-commerce for Development to emphasize the development dimension of e-commerce issues (Darsinouei, 2017).

In the run-up to MC 11, a group of countries sought to pursue multilateral negotiations by converting the work program into negotiation mode with a new ministerial declaration. BRICS countries such as Russia, along with other proponents of the proposal, called for the establishment of a "Working Party" at the Buenos Aires meeting to engage in preparatory work for future international rule-making on e-commerce issues (WTO, 2017d). They further supported "the continuation of the current practice of not imposing customs duties on electronic transmissions" until the next sessions which would be held in 2019 (UNCTAD, 2020). This group of countries issued statements and proposals on potential issues for discussion, including data flows, data protection, market access, infrastructure development, and trade facilitation.

Brazil has also been actively making submissions, putting forward a proposal with Argentina and Paraguay on electronic signatures in December 2016 (JOB/GC/115) and another one with Argentina on e-commerce and copyright in March 2017 (JOB/GC/113/Rev.1) (WTO, 2016, 2017e). The

2016 submission on e-signature details the definition, legal effects, and liability associated with electronic documents and electronic signatures (WTO, 2016). The 2017 submission in turn underscores the importance of the principle of transparency as it relates to digital trade. It further highlights the need to uphold the principle that "exceptions and limitations available in physical formats should also be made available in the digital environment" (WTO, 2017e).

However, the proposal to create a new working group encountered strong resistance from many developing and least-developed countries. For example, along with the African Group, Uganda, which represented the interests of LDCs, and several other members, India raised serious concerns about the underlying motives of the negotiations, arguing that the proposals may potentially undermine the 1998 work program and jeopardize the "development space" for industrialization provided by the DDA (Lemma, 2017). India argued that it would like to see the continuation of the 1998 e-commerce work program that provided an exploratory and non-negotiating mandate, criticizing proposals to establish a Working Group at Buenos Aires as efforts aimed at imposing a "top-down" instead of a "bottom-up" approach (Kanth, 2017). India further linked the extension of the two-year moratorium for not imposing customs duties on e-commerce transactions with the moratorium on TRIPS non-violation and situation complaints.

South Africa joined India in this effort, promising to fight ferociously against the proposals. Along with the African group, it strongly resisted efforts to change the current structure of institutional arrangements of the Work Program, raising questions about whether the commitments negotiated under the Uruguay Round should be applied post hoc to emerging technologies, services, and business models (Kanth, 2017). Viewing e-commerce negotiations as reflecting divergent views among members regarding the technological neutrality of the General Agreement on Trade in Services and whether products delivered electronically should be considered as goods or services or both, the African Group pointed out that the negotiation of new multilateral e-commerce rules would be unlikely to deliver concrete results before these issues could be resolved. Rwanda echoed this view, suggesting that the establishment of a Working Group would not undo these divergences and that more time should be given to put the Work Programme to work before changes are made to its underlying structure (Kanth, 2017).

In short, India and South Africa, along with other developing countries and LDCs, were strongly concerned about the digital divide that prevents them from fully participating in e-commerce activities, focusing instead on "enabling issues" that will allow them to overcome the barriers they face in relation to their better participation in e-commerce. They therefore opposed e-commerce negotiations and called for focusing the negotiations on the unresolved DDA issues and continuing the discussions about e-commerce within the current mandate of the Electronic Commerce Work Programme.

As a result of divergent negotiation approaches, Member countries dropped the idea of beginning multilateral negotiations on e-commerce early into MC11 (WTO, 2017c). Instead, 43 WTO member countries issued the JSI 2017 indicating an intention to undertake "exploratory work" in preparation for future plurilateral negotiations on the issue (WTO, 2017b). The JSI 2017 received a mixed reception among WTO members. In particular, there remained concerns that it might run counter to some core WTO principles, that the new issues lacked specific negotiating mandates, and that they were not prepared to take on commitments in these new areas (Kanth, 2017).

(iv) The Second E-Commerce Joint Statement Initiative and the Road to MC12

While key players in the first JSI have continued negotiations following MC11 and issued three trilateral statements after 2018, the divergent negotiation approaches among member states were again reflected in the negotiations leading up to the conclusion of the second Joint Statement of January 25, 2019, in Davos and afterward. While the number of co-sponsors had increased to 76 members by the time of the second JSI talks and more members have been invited to join the process, there existed widespread recognition among negotiation parties of the different challenges faced by developing countries and LDCs (WTO, 2019a, 2019b).

As one of the first parties to submit an initial discussion paper, the US position represented an extension and, in some respects, enhancement of the commitments it made in the Trans-Pacific Partnership, which subsequently have been refined in the Digital Trade chapter in the US-Mexico-Canada Agreement. As such, it included strong commitments to the protection of cross-border data flows and prohibitions on data localization mandates and signaled a strong commitment to the protection of proprietary information (Fefer, 2020: 19–20).

At this time, China had come around and made a "last-minute" decision to join the second JSI in order to revitalize the rules-based multilateral trading system, promote developing country interests in global value chain integration, and influence the process of rule-making for e-commerce and cyberspace (Gao, 2020; WTO, 2019b). However, despite its participation, China insisted that the negotiations should "set a reasonable level of ambition" and "uphold the development dimension" considering "the difficulties and challenges faced by developing Members" (WTO, 2019b: 1–2). It has also sought to maintain a delicate "balance between international rule-making and the sovereign right to regulate" and continued to insist on "cyber sovereignty," as reflected in its adoption of a series of cybersecurity laws, internet censorship, and data localization requirements.

The EU took a somewhat different approach from both the US and China in its proposal. While the EU position was similar to that of the US on issues such as the protection of cross-border data flows and the prohibition of localization requirements, it also put a stronger emphasis on the protection of data privacy in a way that reflects the EU's domestic policy priorities, potentially undercutting its commitment to cross-border data flows (Fefer, 2020).

The proposals submitted by other countries sought to bridge the differences between the US and Chinese proposals. However, progress toward the conclusion of an agreement continued to be stymied by the heterogenous negotiation positions of the participating parties on issues such as the implications of e-commerce negotiations for domestic regulatory sovereignty, the continuation of the moratorium on duties on electronic transmissions, and consumer protection and security.

In its submission, Russia emphasized that "future discussions should cover all aspects of e-commerce without splitting topics on e-commerce for separate discussions" and proposed a work structure to examine gaps in existing WTO agreements as they pertain to e-commerce "as a first step to understanding the potential gains of a future agreement" (ICTSD, 2018). The Brazilian communication in turn emphasized the importance of development as a core dimension in e-commerce negotiations and called on participating countries to adopt a flexible approach and engage in a closer examination of the opportunities and challenges faced by developing countries as well as their specific needs regarding e-commerce development (WTO, 2018). Other issues that have gained some prominence in the Brazilian submission included improved market access commitments for e-commerce trade in goods and services and electronic authentication methods and access to online payment solutions (WTO, 2018).

Notably, India and South Africa have continued to remain outside of the negotiations of an e-commerce agreement. Both countries have reiterated their position that plurilateral negotiations on e-commerce trade may limit their ability to protect or promote domestic industrial development or to raise tariffs on digital products, preferring instead to preserve their policy autonomy and flexibility. In contrast to the position of most of the negotiation parties, both have also been pushing for the discontinuation of the e-commerce moratorium which they fear may constrain their ability to generate the much-needed revenue and produce globally competitive internet companies.

On June 4, 2019, the two countries issued a communique requesting that the WTO revisit the moratorium renewal ("India, SA ask WTO to Review Moratorium on E-Commerce Custom Duties," 2019). In March 2020, India and South Africa tabled a joint submission regarding the moratorium, once again highlighting developing countries' concerns about the importance of retaining the necessary space for digital development ("India Not Participating in Plurilateral Discussions on E-Commerce at WTO," 2021). In December 2020, they circulated a communication (WT/GC/W/812) cautioning against the narrow focus on the "development of legally binding rules" which could risk the "further marginalization of developing countries in global trade" (WTO, 2020b). The communication additionally encouraged the members to structure the discussions on the moratorium around the themes outlined in a proposal (WT/GC/W/747) that the two countries submitted in 2018.[2]

A group of members composed of both developed and developing countries, including Australia, China, Colombia, and Switzerland, subsequently carried out the structured discussions and circulated a communication calling for a "more holistic approach" towards the negotiations that would take into consideration their impact on consumers and the competitiveness of different sectors of the economy (WTO, 2020c). At a General Council meeting in March 2021, India and South Africa further submitted a communication for discussion challenging the "legal status of Joint Statement Initiatives and their negotiated outcomes" (WTO, 2021a, 2021b, 2021c). The paper raised questions not only about current WTO practices for modifying existing agreements and for including plurilateral agreements but also about whether discussions of digital trade rules should take place within or outside of the WTO institutional structure (Stewart, 2021).

Overall, while the number of participants in the JSI has grown to include 86 WTO members (WTO, 2020a), progress remained slow due to

[2] The proposal was circulated at the request of India and South Africa on July 13, 2018, and was titled "Moratorium on Customs Duties on Electronic Transmissions: Need for a Re-think."

opposition and the lack of participation from India, South Africa, LDCs, and members from Africa, the Caribbean, and the Pacific regions. While a draft consolidated text was circulated among participants in December 2020 and negotiations have subsequently proceeded under the leadership of Australia, Japan, and Singapore, no agreement has yet been reached on key issues of concern to the participants. With MC12 being postponed to November 2021 due to the ongoing pandemic, it remains unclear whether any negotiation breakthroughs could be achieved at the conference.

III WTO Fisheries Subsidies Negotiations

This section turns to an analysis of the fisheries subsidies negotiations, showing how this set of negotiations demonstrates a somewhat similar, though not entirely identical, pattern to that observed for e-commerce negotiations.

Sustainable and equitable fisheries are essential for alleviating poverty, providing nutrition, and protecting marine biodiversity. The WTO is in the final stages of negotiating an agreement to prohibit harmful fisheries subsidies, which is the United Nations Sustainable Development Goal (SDG) 14.6 (UN, 2015). The prolonged fisheries subsidies negotiation represents a top priority on the WTO agenda today and is crucial for keeping the WTO relevant as the global trade governance organization. As stated by the WTO Director General (DG) Okonjo-Iweala (2021), "I think everyone agrees with me that if there is anything that would demonstrate that the WTO is back and capable of having positive results, it is a good outcome early enough this year to these fisheries subsidies negotiations." However, despite their presumed importance, the negotiations have missed a few scheduled deadlines, from June 2020 to July 2021, due to the logjam of several contentious issues that have set key negotiation parties apart.

Subsidies refer to financial transfers from public entities to benefit private actors (WTO SCM agreement). The WTO provides general disciplines on categorizing and addressing trade-distorting subsidies through the Agreement on Subsidies and Countervailing Measures (SCM agreement). Fisheries subsidies are broadly classified as beneficial (e.g., management), ambiguous (e.g., infrastructure), and "harmful" (e.g., fuel and vessels subsidies). Fisheries subsidies have expanded significantly in recent decades among many WTO member states. Public entities around the world have provided $35.4 billion in fisheries subsidies in 2018. Among them, capacity-enhancing subsidies constituted 52.7 percent of

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total subsidies, at over $22.2 billion (Sumaila et al., 2019), followed by beneficial and ambiguous subsidies, each accounting for about 29.9 percent and 7.1 percent of total subsidies, respectively (Wong, 2021). The effects of harmful fisheries subsidies are well-publicized and widely agreed upon. When subsidies are tied either directly or indirectly to capacity enhancement, they will cause overcapacity (i.e., the existence of more fishing power than needed to take the maximum sustainable yield), which will further lead to overfishing with growing economic waste and declining fish stocks.

Harmful fisheries subsidies have put developing countries in a more disadvantaged position in global trade. The top-five subsidizing nations, China, the EU, the US, South Korea, and Japan, provide four times as much subsidies as all the low-income countries combined (Sumaila et al., 2019). Countries high on the UN Human Development Index (HDI) provide roughly 87 percent of total subsidies and China, the EU, and the US are the top three on the list. Among the low HDI countries, Indonesia, Vietnam, Morocco, Senegal, and India are the main subsidizers. Fisheries subsidies have further caused inequity between large- and small-scale fisheries (SSF) within nations. SSF constitutes 90 percent of global fisheries employment yet only received 16 percent of total fisheries subsidies (Schuhbauer et al., 2020). Concluding the fisheries subsidies negotiations will therefore offer a unique opportunity for the WTO to effectively address development and environmental challenges through trade liberalization.

(i) Overview of Negotiation Preferences and Approaches

This section provides an overview of the divergent positions of the main parties participating in the fisheries subsidy negotiations, highlighting the distinct interests of China vis-à-vis both developed and developing countries.

1 Can Fish Save the WTO?

International organizations and global environmental non-governmental organizations started to raise concerns about the economic and environmental impact of fisheries subsidies in the 1990s. The UN Food and Agriculture Organization has sought to raise concerns and issued reports documenting the detrimental effects of overfishing motivated by fisheries subsidies provided by countries around the world (Schrank, 2003). During the agenda-setting discussions leading up to the DDA, a small group of countries, including the US, Australia, Chile, Ecuador, Iceland, New Zealand, Peru, and the Philippines, known as the "Friends of Fish," pressed for the inclusion of fisheries subsidies reduction into the DDA agenda as the existing SCM did not adequately cover the additional negative impact of fisheries subsidies on environmental concerns (Jones, 2010). This group of WTO Members initially pursued the issue of fisheries subsidies in the WTO Committee on Trade and Environment which has the power only to make recommendations. At the Doha Ministerial Conference, they were able to put forth a mandate highlighted in the Doha Ministerial Declaration to clarify and strengthen WTO disciplines on fisheries subsidies. Since then, negotiations on fisheries subsidies have been taking place in the WTO Negotiating Group on Rules, which is under the authority of the WTO Trade Negotiations Committee. The goal of the negotiation was clarified in the 2005 Hong Kong Declaration, which called for both the prohibition of harmful subsidies and the granting of appropriate and effective SDT to developing members as an integral part of the negotiations taking into account the importance of the fisheries sector for development, poverty reduction, and concerns over livelihoods and food security. A first set of rules was subsequently drafted in November 2007, but member states could not agree upon the specific terms of SDT and the scope of prohibited subsidies (Wong, 2021). The 2008 draft text of a WTO agreement on fisheries agreement, prepared by the chair of the Negotiating Group on Rules, proposed prohibiting a wide range of "harmful subsidies" while recognizing the need for flexibility in the application of subsidies disciplines to small-scale, labor-intensive fishing in developing countries (Hoekman et al., 2009). But the fisheries subsidies negotiations have been deadlocked since the failure of the last major push to conclude the Doha round in July 2008. The chairman of the rules negotiations group, in particular, wrote in his report that "there is too little convergence on even the technical issues, and indeed virtually none on the core substantive issues" in fisheries subsidies (WTO, 2011). While the fisheries subsidies negotiations have regained momentum since 2015, this was partly due to the adoption of the UN sustainable development goals, with goal 14.6 specifically aiming to prohibit subsidies contributing to overfishing and illegal, unreported, and unregulated (IUU) fishing, and partly because of the member states' drive to conduct sectoral negotiations to continue some of the Doha trade liberalization agenda.

With the hope to revive WTO negotiations and to pull the organization out of the crisis, member states instilled a new sense of urgency during the 11th Ministerial Conference in 2017 to set a timetable to conclude the negotiations by the end of 2020. That deadline, and a later deadline of July 2021 and December 2021, have all been missed due to persistent disagreements over several contentious issues. Member states have been negotiating on the basis of a draft consolidated text introduced in June 2020 and later updated in May 2021 and November 2021 by the chair of the negotiations (WTO, 2021a, 2021b, 2021c). Another deadline was set to finish the negotiations before the 12th Ministerial Conference, which was scheduled to be held on November 30, 2021, but had to be rescheduled due to the Covid-19 pandemic. Finally, the WTO Agreement on Fisheries Subsidies was adopted at the 12th Ministerial Conference (MC12) on 17 June 17, 2022. It marks the successful conclusion of this marathon talk. This agreement is the first broad, binding, multilateral agreement on ocean sustainability and the second agreement reached since the inception of the WTO. In the meantime, the WTO members also recognize that they failed to agree on some of the most contentious issues such as developing disciplines on subsidies contributing to overcapacity and overfishing, and the provision of special and differential treatment associated to them. Therefore, they committed to continue the second wave of fisheries subsidies negotiation and set a new target to complete negotiations by the 13th Ministerial Conference (MC13) in February 2024.

(ii) Divergences among the Major Players in the Fisheries Subsidies Negotiations

The agenda-setting of the fisheries subsidies negotiations has evolved over time. It began with a vague and broad goal to create disciplines to negotiate the subsidies issue in the area of fisheries and later developed more concrete agenda issues agreed upon by WTO members. By 2021, the main agenda items included the following (WTO, 2021a, 2021b, 2021c):

- prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing (e.g., subsidies for building or upgrading vessels, fuel subsidies, price support for fish caught);
- eliminate subsidies that contribute to IUU fishing;
- curb subsidies to fishing where stocks are overfished; and
- recognize the need for appropriate and effective special and differential treatment for developing and least-developed countries (delayed implementation of provisions and aid for technical assistance/capacity building)

While much progress has been made in the negotiations leading to the latest version of the November 8, 2021, revised text, there still exist key areas of disagreement. First, although WTO members have a consensus that SDT as an important WTO principle should apply to the fisheries subsidies negotiations, developed and developing countries have disagreed on what flexibility should be granted. Developing countries, especially China, prefer to have broader SDT provisions and keep some permanent exceptions. In contrast, developed countries argue that flexibilities should not only be more limited and targeted to the specific needs of the developing countries but should also be phased out over time (Wong, 2021). Second, developing countries are concerned that the draft text, which includes provisions exempting the cut of fisheries subsidies that aim to maintain or promote sustainability, will disproportionately benefit large and developed subsidizers such as the EU and the US.

In addition to differences in commercial interests, the norm of environmental protection and sustainability has become another major concern that has set many member states apart. In the early years of the negotiations, the "Friends of Fish" group led by the US emphasized the importance of prohibiting harmful fisheries subsidies (WTO, 2002a), while the "Friends of Fishers" group that relied heavily on fishing, such as Korea, Taiwan, and Japan, argued against discussing fishing subsidies separately from the general SCM agreement. In the early years of the negotiations, they argued that fisheries subsidies were not significant and did not have any negative impact on stock depletion (WTO, 2002b). In addition, developing countries tended to hold a very defensive position in the early stages of the negotiations, calling for SDT and broad exemptions given to the small-scale "artisanal" nature of their fisheries sector (WTO, 2004).

After receiving multiple proposals from the member states between 2002 and 2007, the chair of the WTO rules negotiation put together the first-ever chair's draft text on introducing disciplines in fisheries subsidies (TN/RL/W/213). The November 2007 draft text on fisheries subsidies largely reflected the growing consensus that fisheries subsidies should not be continued. To ensure that SDT was included in the text, Article III contained provisions that proposed exempting developing country members from most of the prohibited subsidies in Article I, provided that all fisheries activities receiving these subsidies are conducted within the territorial waters of the member *and* with non-mechanized net retrieval.

In contrast to most other GATT/WTO negotiations, the divergent interests of the member states cannot simply be categorized as a North-South divide. With different views on the commercial, environmental, and developmental dimensions of global fishing, developed member states were highly divided on the approaches, structure, and scope of the fisheries subsidies rules-making. As illustrated above, the "Friends of Fish" Group members led by the US have urged for an extensive prohibition of fisheries subsidies. The “Friends of Fisher” group members, including Japan, South Korea, Taiwan, the EU, and Norway, in contrast, have a strong interest in keeping some types of fisheries subsidies. Insisting that not all fisheries subsidies cause overfishing and overcapacity, they have argued that prohibition should be limited to those “harmful subsidies.”

The lack of leadership from the EU and the US and coordination among the traditional Quad countries were obvious in the last few years’ WTO negotiations. Although the WTO DG has placed great confidence in the revised text of the agreement as the basis to conclude the negotiations, the recent remark made by USTR Tai suggests that the US does not consider it “enough meaningful” as it does not yet contain the elements required for reaching conclusion (Wong, 2021). Specifically, the US advocates for adding or revising additional issues. First, in May 2021, driven by the explicit emphasis of the Biden administration on pursuing a “worker-centric” trade policy, the United States submitted a proposal urging WTO Members to address the global problem of the use of forced labor on fishing vessels. The proposal came in too late to be included in the June 30 draft text of the agreement. Second, the US has highlighted the importance of addressing some members’ self-identified developing country status and, in particular, China’s entitlement to continue to enjoy the SDT granted to developing countries (Wong, 2021). Furthermore, the internal divisions among the developed countries camp have not only made the convergence of existing proposals difficult but have also made it more difficult for them to collectively pressure China and other large developing countries to commit to more “meaningful and impactful” subsidies reduction concessions.

(iii) BRICS in WTO Fisheries Subsidies Negotiations

On July 21, 2021, the Chair of the Negotiation Group on Rules, Ambassador Santiago Wills of Colombia, introduced a revised draft text which recognized that Article 5.5 (SDT) in the overcapacity and overfishing pillar is the “most commonly identified area of concern for many delegations” and reflects fundamental differences in views on the purpose and the applications of SDT (IISD, 2021a). On this most thorny issue in the fisheries subsidies negotiation (Hopewell, 2021), the BRICS countries’ positions have subtly evolved. It should be noted that the Chinese central government did not subsidize the fisheries sector until 2006 because China’s distance water fisheries were very limited due to the lack of capital and technology to build, manage and operate the large-size fishing fleet. Consequently,

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during the early stage of the negotiations, China shared similar interests with other large developing countries, especially India, Brazil, Indonesia, and South Africa in defending the preferences enjoyed by developing countries through SDT and in creating a mandate for developed countries to cut subsidies due to their historical responsibilities. In emphasizing the right to development, the need to support subsistence fishing, and the historical impact of developed countries' enduring subsidies on overfishing, they strongly promoted SDT in a way that would leave developing countries with virtually no obligations to cut subsidies other than not subsidizing illegal fishing (Hopewell, 2021). As a marginal player, China chose to present its proposal with other large emerging economies, such as India, Brazil, Mexico, and Indonesia. For instance, in a joint 2008 submission, India, Indonesia, and China advocated for SDT provision expansion to allow developing countries to continue their fisheries subsidies beyond subsistence fishing to address livelihood and employment issues (Submission by India, Indonesia and China, 2008). In another joint submission with Brazil, Mexico, Ecuador, and Venezuela, China insisted on developing countries' right to continue to subsidize fishing activities in the high sea (Communication from Brazil, China, Ecuador, Mexico and Venezuela, 2009).

Since the 2010s, China's fisheries sector has achieved extraordinary expansion in terms of output, size, and level of sophistication. The country has emerged as a fisheries superpower, with the largest capture amount, as well as the largest aquaculture producer and largest exporter (Hu, 2019). However, while some slow changes have been taking place domestically, both in terms of the norms on sustainability, and the policy rationale to better support fishers through less trade-distorting and environmentally detrimental subsidies, China was still not ready to sharply reduce its fisheries subsidies, especially on fuel subsidies of the distant-water fisheries. There are two domestic reasons that have prevented China from adopting needed policy changes. First, China has a growing demand for fish that simply cannot be met by fisheries in its Exclusive Economic Zones (EEZs). Second, high-sea fishing is an integral part of China's maritime Silk Road initiative to expand its commercial footprint beyond the Pacific Ocean.

China's growing prominence as a fisheries producer and subsidizer and its continued reluctance to scale back its subsidies has increasingly set its negotiation preferences apart from those of other large developing countries. Noticeably, many developing countries, including emerging powers like India and Brazil, have begun to realize that keeping China within the coalition no longer provided them with greater leverage and might instead potentially weaken their negotiation position, especially on the issue of SDT. Consequently, the focus of the rest of the BRIC countries has shifted from working together to defend the rights of developing countries to singling out China in order to ensure the SDT enjoyed by themselves. For example, India and Brazil have tacitly distanced themselves from China even though they have tried to maintain solidarity on the surface. They collectively issued a statement after the BRICS summit held in India early in 2021 to vaguely support the conclusion of the fisheries subsidies negotiations before MC12 but did not present any concrete steps to do so (BRICS, 2021).

Furthermore, while the BRICS all seemed to support granting SDT treatment to developing and least-developed countries, they held conflicting views about how to ensure that SDT would be honored. As repeatedly argued by India's Commerce and Industry Minister Piyush Goyal, India's concerns were that irrational subsidies and overfishing by many countries were hurting Indian fishermen and their livelihoods (Financial Express, 2021). To bring the right balance to the draft text, it is therefore essential that big subsidies providers who offer massive state funding for distant-water fishing that lower the cost of fuel and vessel construction – such as Japan, Spain, China, South Korea the US, among others – assume greater responsibility for reducing their subsidies and fishing capacities in accordance with the principles of "polluter pays." India's emphasis on seeking SDT flexibility is driven by the fact that its subsidies to fishers are mostly in the form of support for the motorization of fishing boats, fuel rebates, and infrastructure support, all falling under the targeted subsidies included in the Chair's draft text (Sen, 2018). To circumvent the broad prohibition, India proposed that developing countries with gross annual national incomes below $5,000 should be exempted from the need to take on commitments for fisheries subsidies cuts. India's matrix to define the eligibility criteria has *de facto* excluded China from the rank of developing countries.

India further suggested that nations engaged in fishing in areas beyond their EEZs should end subsidies for 25 years to control overfishing. These subsidies to distant-water fishing fleets have contributed to overfishing according to an open letter to the WTO written by scientists in Marine Science (Bruder, 2021). India also proposed to ensure the transparency of subsidies reporting, which again targeted China due to its history of the lack of transparency and repeated refusals to report fully and accurately its domestic subsidies to the WTO in a timely manner. For example, on domestic support for fisheries during 2015–2017, the type of support that

China submitted to the WTO only concerned transfer payments, while there were indications that the fuel subsidies provided for the world's largest fishing fleet constituted the biggest fisheries subsidies program (Mallory, 2016). On this particular issue of subsidy notification, China lost a dispute brought by the US against China's agricultural subsidies in 2019.

Brazil introduced its revised proposal on October 20, 2020, to reduce and limit WTO members' fisheries subsidies based on the size of its fisheries subsidies. The proposal would increase the amount of a subsidy program shielded from cuts from $15 million to $25 million. Members falling under the smallest subsidies bracket, who can also demonstrate small catch volumes and short fishing distances, would have the possibility to add an additional $5 million, increasing their total cap to $30 million. Similarly, this proposal excluded China from enjoying the SDT given the size of its subsidies and its focus on high-sea fishing. Brazil's proposal stated that big subsidizers who delay their notification would receive a penalty (IISD, 2020). Leivas Leite of the Brazilian mission to the WTO specifically indicated that Brazil is not in favor of "blanket" exemptions for all developing country members, especially because some of the world's largest fishing fleets are from developing countries. "We cannot have overly broad exemptions. We want something that is time-bound, geographically-bound, and needs-based" (WTO Public Forum, 2021).

In contrast to its high-profile role in the e-commerce negotiations, China has been largely quiet in the fisheries subsidies negotiations. During the negotiations spanning 20 years, it has largely held an ambiguous stance. China submitted its first WTO proposal on fisheries subsidies on June 20, 2002 (TN/RL/W/9) and its latest proposal on June 4, 2019 (TN/RL/GEN/199). China supports disciplines that would prohibit fisheries subsidies that contribute to overcapacity and overfishing and eliminate subsidies that contribute to IUU fishing, while "recognizing that appropriate and effective SDT for developing country Members and least developed country Members should be an integral part of the negotiations" (WTO, 2019). Throughout the negotiations, China has persistently called for SDT flexibilities for developing and least-developed countries. In the 2019 proposal, China urged member states to call for a cap-based approach to reduce rather than prohibit subsidies that contribute to overfishing and overcapacity. China sought a limited phase-out of subsidies to IUU fishing, instead of a total phase-out of subsidies.

Overall, it seems that both India and Brazil have developed a strategy to "decouple" away from China to emphasize the need to continue to

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support low-income fishers' livelihood. Both countries have also made it clear that the best strategy to achieve this goal is to keep a distance from China. With China being the largest subsidizer and the main target of the fisheries subsidies negotiations, it has become unwise for them to continue to build coalitions with China on seeking SDT flexibilities.

Consequently, while many believe that fisheries subsidies negotiations represent a low-hanging fruit for WTO members – as there exists a consensus on the need to take actions to curb fisheries subsidies to liberalize trade, promote development, and protect the ocean – the agreement reached at the MC12 is a 'shallow' agreement that covers only a small subset of the issues negotiated over the past decade. The agreement was reached mainly because the WTO needs an agreement to prove its relevancy. WTO members have agreed to prohibit subsidies for fishing vessels or operators that engage in IUU fishing, as well as prohibit subsidies that support fishing of overfished. Members also agreed to ban subsidies for fishing and fishing-related activities on the high seas (international waters). Though it is an important first step, the agreement lacks the substance needed in order to effectively address the negative social, economic and environmental impacts brought by fisheries subsidies adopted by major fishing countries. Among them, the most important type of subsidies that have been omitted from this agreement include subsidies that support overcapacity and overfishing. Negotiations to expand the agreement to include more comprehensive rules will continue in the coming years.

IV Conclusion

This chapter examines the role of China, along with the rest of the BRICS countries, in the WTO e-commerce and fisheries subsidies negotiations. The analysis suggests that despite China's self-proclaimed developing country status, the fact that it is now one of the most competitive players in global e-commerce and the largest subsidizer in the fisheries sector has made it increasingly difficult for China to continue to align its negotiation position with other BRICS countries. Over time, the dynamics of WTO negotiations have been transformed. The North-South divide under the GATT, which later evolved into a three-tiered structure of developed, emerging powers and the rest of the developing countries during the early years of the Doha negotiations, has given away to a more complex matrix of interest-based and issue-specific coalition building which is no longer bound by the developed/developing division in today's WTO negotiations. Due to its sheer size and unique domestic political and economic system, China has increasingly been singled out in the negotiations due to the difficulties for it to align with either developed or developing countries.

In the e-commerce negotiations, the refusal by India and South Africa to join the talks has constrained the ability of the BRICS to form an effective coalition. While Brazil and Russia were more favorably disposed toward e-commerce negotiations, their specific concerns and approaches were also sufficiently different from those of China which placed greater emphasis on maintaining domestic regulatory sovereignty and control, further limiting the group's ability to act as a coherent bloc to advance the member countries' otherwise shared interests in promoting the development agenda. In the fisheries subsidies negotiation, China's insistence on being treated as a developing country and enjoying SDT despite it is the largest subsidizer has thwarted the willingness of the developed countries to provide flexibilities and policy spaces to developing countries as a whole. As a response, India and Brazil, together with a group of smaller developing countries, have strategically adopted negotiation positions to quietly distance themselves from China.

November 2021 marks the 20th anniversary of the BRIC acronym coined by Jim O'Neill of Goldman Sachs to capture the economic potential of the four emerging economies and the important implications of their rapid economic growth for global governance (O'Neill, 2021). Recently, Goldman Sachs released another report making the recommendation of separating China from the broader Emerging Markets indexes due to China's overweight and what the authors refer to as "idiosyncratic factors" like geopolitics (Lewis, 2021). While this recommendation pertains mostly to portfolio investment, it can inspire us to revisit the role played by China in the Doha negotiations. The two cases presented above clearly suggest that it is outdated and no longer accurately reflects today's reality if we continue to focus on emerging powers as a separate grouping in the multilateral trade negotiations, as we did a decade ago (Liang, 2013; Vickers, 2012). Rather, it might be more illuminating and helpful if we exclude China from the emerging power grouping and make it a separate category.

In recent years, scholars have analyzed the impact of China's WTO participation on the crisis the WTO is facing today (Wu, 2016). Some (e.g., Hopewell, 2019) have also identified the US-China conflict as the key obstacle to forging agreement in the WTO agricultural subsidies negotiations (Hopewell, 2019). Our paper sheds light along the same lines by emphasizing China's isolated position as an emerging trend taking place in the two ongoing negotiations detailed above. Regardless of China's preferences, it is a shared understanding among the rest of the BRICS countries and the larger group of developing countries that it is no longer in their best interests to keep China in their coalition. China indeed might do more harm than good in helping to defend its fundamental interests of securing the

SDT guarantee within the WTO framework. Additionally, it seems that developed and developing countries are reaching a consensus that the size of China's subsidies and other protectionist trade policies will hurt developing countries' interests more than ever. Taken together, these dynamics have contributed to reinforcing concerns that the rise of China may have exacerbated the difficulty of multilateral economic cooperation and deepened the crisis faced by the WTO regime, raising questions about the degree to which the multilateral trading system centered on the WTO can effectively accommodate the rise of a large non-market economy such as China.

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