

論跨太平洋夥伴協定

作為落實國際漁業管理機制之途徑

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摘要

在近年之國際貿易談判中，透過貿易規範，涵蓋環境標準，已成趨勢。透過此等方式，處理漁業面對之困境，更是國際漁業管理機制不可忽視的發展。「跨太平洋夥伴協定 (Trans-Pacific Partnership Agreement, 簡稱 TPP 協定)」即為一例。「TPP 協定」涵蓋環境專章，嘗試處理貿易與環境相關問題，對於瀕臨絕種野生動植物貿易、氣候變遷、生物多樣性，乃至於海洋漁業等項目進行規範。其中涉及海洋漁業者，締約方意識到國際社會面臨海洋漁業資源枯竭問題，對於貿易、發展與環境造成嚴重威脅，其中主要原因包含有三：不足的漁業管理、造成「過漁 (overfishing)」與「過度漁撈能力 (overcapacity)」的「漁業補貼 (fisheries subsidies)」，以及「非法、未報告和未受規範之漁業 (illegal, unreported and unregulated fishing, 簡稱 IUU fishing 或非法捕魚)」，而有必要採取漁業保育與管理措施，加以防範。因此，締約方必須採行以規範海洋漁業，避免過漁與過度漁撈能力為目標之漁業管理機制，對於漁具與漁區進行規範，減少對非目標魚種之「混獲 (by-catch)」，並對於已過漁之魚種進行復育。締約方亦意識到此種漁業管理機制必須建立在國際公認最佳實踐之漁業管理與保育標準上，亦即反映在追求海洋漁業資源之永續利用與保育之相關國際文件中所建立之標準。此等文件亦即國際漁業管理規範體系：包含 1982 年「聯合國海洋法公約」、1995 年「聯合國魚類種群協定」、1993 年「促進公海漁船遵守國際養護與管理措施協定」、1995 年「負責任漁業行為準則」以及其他在聯合國糧農組織架構下通過之相關宣言與技術性標準與規範。

基於此等認識，締約方對於海洋漁業所採取之措施主要有二：管制相關補貼，以及支持打擊「非法捕魚」之相關措施。關於前者，締約方認為依據 WTO「補貼暨平衡措施協定」第 1 條第 1 款之定義，在符合第 2 條「特定性 (specificity)」要求之狀況下，兩類補貼必須被完全禁止，包含（一）對於已過漁魚種之捕魚行為進行之補貼；（二）對於被船旗國或相關區域性漁業管理組織認定為「非法捕魚」之漁船進行之補貼。除此之外之其他補貼，若會造成過漁或過度漁撈能力，

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亦必須避免。相關補貼措施亦必須於「TPP 協定」通過生效後一定期間內通知其他締約方。關於後者，各締約方必須合作支持打擊「非法捕魚」，並防止來自「非法捕魚」之魚產品進入貿易。在「TPP 協定」談判過程中，雖可見馬來西亞、紐西蘭、澳洲與日本對於國際公認最佳實踐之漁業管理與保育標準之內容文字的歧見；智利、越南與馬來西亞要求對於小規模漁業之補貼必須提供較具彈性之過渡期間；以及智利與美國對於第一類禁止補貼之些微意見，大致上來說，透過「TPP 協定」之途徑，處理海洋漁業面對之挑戰已成定案。「TPP 協定」締約方之間對於此一趨勢，並未有太多掙扎，或許來自於在「世界貿易組織 (World Trade Organization, 簡稱 WTO)」的「杜哈回合談判 (Doha Round Negotiations)」中，對於漁業補貼議題已多所著墨，透過關於漁業補貼之貿易規範落實漁業管理機制，亦可見於 WTO「貿易規則談判小組 (Negotiating Group on Rules)」主席於 2007 年 11 月公佈「修訂反傾銷與平衡措施」之「主席版草案」。

本文主要在於以漁業補貼為核心，論述此等以貿易協定作為落實國際漁業管理機制之途徑。從 WTO 之杜哈回合談判出發，進而著重在「TPP 協定」之因應與未來發展。透過兩者之比較，分析「TPP 協定」第 20.16 條關於「海洋漁業捕撈 (marine capture fisheries)」條款，亦將從目前 12 個締約方之角度出發，尤其其中不乏傳統捕魚大國，檢視其前後立場與未來因應。我國若致力於參與「TPP 協定」，作為一個捕魚大國與補貼大國，對於此等趨勢自應有所認識與因應。

Abstract

In recent international trade negotiations, the trend has been to incorporate environmental standards into trade regulations. Given the oceans' current overfished conditions, relevant trade negotiations and regulations have taken into consideration the standards established in the international fisheries regime. The prime example is the Trans-Pacific Partnership Agreement (TPP). The TPP's Chapter of the Environment focuses on environmental issues, such as endangered species trade, climate change, biodiversity as well as marine capture fisheries. Regarding marine capture fisheries, the contracting parties acknowledged that the overfishing condition results from: (1) inadequate fisheries management, (2) fisheries subsidies that contribute to overfishing and overcapacity, along with (3) illegal, unreported and unregulated fishing (IUU fishing). Therefore, the contracting parties shall take fisheries conservation and management measures based on "internationally acknowledged best practice of fisheries management and conservation". This mantra is reflected in the international fisheries management mechanism, including the 1982 UN Convention on the Law of the Sea, 1995 UN Fish Stocks Agreement, 1993 UNFAO Compliance Agreement, 1995 UNFAO Code of Conduct for Responsible Fisheries along with other UNFAO developed declarations and technical guidelines.

According to the TPP, contracting parties shall eventually eliminate subsidies that contribute to overfishing and overcapacity, as well as support measures that combat IUU fishing. During the TPP negotiations, the final draft was still adopted despite different voices raised from different negotiating parties. These rather smooth developments are perhaps resulted from the previous negotiations in the WTO Doha Round Negotiations since 2001 that have experienced different positions of negotiating parties regarding the fisheries subsidies disciplines. In 2007, the Chairman of the WTO Negotiating Group on Rules finally adopted a draft on fisheries subsidies disciplines. Based on the development of applying the trade agreements as means to enforce international fisheries management mechanism, along with the comparisons between the TPP and the WTO Doha Round Negotiations, this paper investigates provisions on marine capture fisheries in the TPP. Also analyzed is how Taiwan, which is expected to join the TPP, responded to these developments via Taiwan's domestic rules and policies.