POLICY BRIEF

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Reeling Towards Termination: Assessing the WTO Agreement on Fisheries Subsidies and the Future of Fisheries Disciplines

*By Vahini Naidu **

ABSTRACT

The WTO Agreement on Fisheries Subsidies (AFS, "Fish 1") entered into force on 15 September 2025, introducing new disciplines on subsidies linked to illegal, unreported and unregulated fishing, overfished stocks, and certain high seas activities. While celebrated as a landmark achievement, the Agreement is partial in scope, omitting the broader category of capacity-enhancing subsidies that drive overcapacity and fish stock depletion. Its obligations rely on national determinations and extensive notifications that may prove burdensome for developing Members while allowing major subsidisers to retain flexibility. The unprecedented termination clause in Article 12 ties the Agreement's survival to the adoption of additional "comprehensive disciplines," underscoring both the fragility of the current outcome and the need for continued negotiations. The experience of Fish 1 reveals significant lessons for the proposed WTO reform, including the importance of reviewable and time-bound rules, the risks of imbalanced sustainability provisions, and the institutional weaknesses of restricted negotiating processes.

KEYWORDS: World Trade Organization (WTO) Agreement on Fisheries Subsidies (AFS, "Fish 1"), "Fish 2", Article 12 Termination Clause, WTO Fish Fund, Marrakesh Agreement, WTO Reform, Special and Differential Treatment (S&DT), Sustainable Development Goal (SDG) 14.6

L'Accord de l'OMC sur les subventions à la pêche (AFS, "Fish 1") est entré en vigueur le 15 septembre 2025, introduisant de nouvelles disciplines concernant les subventions liées à la pêche illicite, non déclarée et non réglementée, les stocks de poissons surexploités et à certaines activités en haute mer. Bien que salué comme une avancée historique, l'Accord présente un champ d'application partiel, car il n'inclut pas la catégorie plus large des subventions favorisant le renforcement des capacités de pêche, qui contribuent à la surcapacité et à l'épuisement des stocks halieutiques. Ses obligations reposent sur des décisions nationales et des notifications détaillées qui peuvent s'avérer lourdes pour les Membres en développement, tout en permettant aux principaux pourvoyeurs de subventions de conserver une certaine flexibilité. La clause de résiliation sans précédent prévue à l'article 12 lie la survie de l'Accord à l'adoption de "disciplines globales" supplémentaires, soulignant à la fois la fragilité du résultat actuel et la nécessité de poursuivre les négociations. L'expérience de Fish 1 offre des enseignements importants pour la réforme proposée de l'OMC, notamment en ce qui concerne l'importance de règles révisables et limitées dans le temps, les risques liés à des dispositions déséquilibrées en matière de durabilité et les faiblesses institutionnelles des processus de négociation restreints.

* Vahini Naidu is the Coordinator of the Trade for Development Programme (TDP) at the South Centre.

KEY MESSAGES

- Partial delivery on SDG 14.6: Fish 1 addresses IUU fishing, overfished stocks, and some high seas activities, but does not prohibit subsidies contributing to overcapacity and overfishing, nor does it deliver the level of special and differential treatment envisaged in the SDG mandate.
- Fragile legal design: Article 12 creates an automatic termination mechanism unprecedented in WTO law. The Agreement's continued validity depends on the adoption of further disciplines or a discretionary decision of the General Council.
- Structural imbalances: Sustainability tests and notification burdens legitimise continued subsidisation by major subsidisers while imposing disproportionate obligations on developing countries with limited monitoring capacity.
- Weak enforcement and transparency: Reliance on national determinations, discretionary penalties, and opaque fisheries management systems creates loopholes that undermine effective discipline of harmful subsidies.
- Insufficient support and flexibility: Temporary S&DT provisions provide little structural relief, while the voluntary Fisheries Fund has attracted modest pledges (CHF 11.5 million by June 2025), far below the scale of reform needed to comply.
- Lessons for WTO reform: The AFS exposes the dangers of codifying partial rules and underscores the importance of embedding review and termination safeguards in multilateral agreements.
- Process matters: The restricted and politically pressured process used in Fish 1 weakened confidence in the outcome. Future negotiations must prioritise inclusivity and transparency; in some cases, no deal may be fairer than an imbalanced one.

MOTS-CLÉS: *L'Accord de l'Organisation mondiale du commerce (OMC) sur les subventions à la pêche ("Fish 1"), "Fish 2", l'Article 12 Clause de résiliation, Le Fonds pour la pêche de l'OMC, l'Accord de Marrakech, la Réforme de l'OMC, le Traitement spécial et différencié (TSD), l'Objectif de développement durable (ODD) 14.6*

El Acuerdo sobre Subvenciones a la Pesca de la OMC (AFS, "Fish 1") entró en vigor el 15 de septiembre de 2025, introduciendo nuevas disciplinas sobre las subvenciones vinculadas a la pesca ilegal, no declarada y no reglamentada, las poblaciones de peces sobreexplotadas y determinadas actividades en alta mar. Aunque se celebró como un logro histórico, el Acuerdo tiene un alcance parcial, ya que omite la categoría más amplia de subvenciones que aumentan la capacidad pesquera, las cuales fomentan la sobrecapacidad y el agotamiento de las poblaciones de peces. Sus obligaciones se basan en determinaciones nacionales y notificaciones exhaustivas que pueden resultar onerosas para los Miembros en desarrollo, al tiempo que permiten a los principales otorgantes de subvenciones mantener cierta flexibilidad. La cláusula de terminación sin precedentes del Artículo 12 vincula la vigencia del Acuerdo a la adopción de "disciplinas integrales" adicionales, lo que subraya tanto la fragilidad del resultado actual como la necesidad de continuar las negociaciones. La experiencia del Fish 1 revela importantes lecciones para la reforma propuesta de la OMC, entre ellas la importancia de las normas revisables y con plazos determinados, los riesgos de las disposiciones desequilibradas en materia de sostenibilidad y las debilidades institucionales de los procesos de negociación restringidos.

PALABRAS CLAVES: *El Acuerdo sobre Subvenciones a la Pesca de la Organización Mundial del Comercio (OMC) ("Fish 1"), "Fish 2", el Artículo 12 Cláusula de terminación, El Fondo para la Pesca de la OMC, el Acuerdo de Marrakech, la Reforma de la OMC, el Trato especial y diferenciado, el Objetivo de Desarrollo Sostenible (ODS) 14.6*

I. Background

The World Trade Organization (WTO) Agreement on Fisheries Subsidies (AFS, "Fish 1") was adopted at the Twelfth WTO Ministerial Conference (MC12) in June 2022.[1] The Protocol of Amendment inserted the AFS into Annex 1A of the Marrakesh Agreement Establishing the WTO,[2] alongside other Multilateral Trade Agreements.[3] The Agreement entered into force on 15 September 2025, following receipt of the required number of instruments of acceptance in accordance with Article X:3 and pursuant to Article XIV of the Marrakesh Agreement.

The AFS introduces new binding prohibitions on specific categories of subsidies. These include subsidies to vessels or operators engaged in illegal, unreported and unregulated (IUU) fishing (Article 3), subsidies to fishing of overfished stocks where no rebuilding measures are in place (Article 4), and subsidies to fishing in areas of the high seas not under the competence of a Regional Fisheries Management Organization or Arrangement (RFMO/A) (Article 5). The scope of the Agreement, set out in Article 1, covers subsidies to marine wild capture fishing and fishing-related activities at sea, excluding aquaculture and inland fisheries.

Although the AFS is frequently described as "the first WTO agreement with environmental sustainability at its core", it does not contain an express sustainability objective in its text.[4] Its sustainability orientation is inferred from its targeted prohibitions and, most directly, from Article 4.3, which allows subsidies only if they are implemented to rebuild stocks to a "biologically sustainable level." The WTO Director-General has reinforced this framing by presenting the AFS as both a landmark for sustainability and as evidence that the WTO has delivered on Sustainable Development Goal (SDG) 14.6,[5] notwithstanding the fact that the Agreement addresses only part of the mandate set out in the SDG target.

Paragraph 4 of the Ministerial Decision recognised that the AFS was a partial outcome.[6] It mandated continued negotiations to achieve "comprehensive disciplines" on fisheries subsidies, including prohibitions on subsidies that contribute to overcapacity and overfishing, and with "appropriate and effective special and differential treatment" for developing and least-developed country Members. This language mirrored the mandate from the Eleventh WTO Ministerial Conference[7] and was intended to bring WTO outcomes into alignment with SDG Target 14.6, which committed Members to:

"By 2020, prohibit certain forms of fisheries subsidies which contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported, and unregulated fishing and refrain from introducing new such subsidies, recognizing that appropriate and effective special and differential treatment for developing and least developed countries should be an integral part of the World Trade Organization fisheries subsidies negotiations."[8]

The adoption of Fish 1 marked a political milestone, and it was explicitly linked to the subsequent negotiation of Fish 2. The conditional structure of the Agreement, culminating in the termination clause of Article 12, confirms that the AFS was never intended as a comprehensive or final settlement of the fisheries' subsidies negotiations.

1 World Trade Organization, "Agreement on Fisheries Subsidies", Attachment to Ministerial Decision WT/MIN(22)/33, WT/L/1144, Twelfth Ministerial Conference, Geneva, 12–15 June 2022.

2 Marrakesh Agreement Establishing the World Trade Organization, Apr. 15, 1994, 1867 U.N.T.S. 154, 33 I.L.M. 1144 (1994).

3 World Trade Organization, "Protocol Amending the Marrakesh Agreement Establishing the WTO: Agreement on Fisheries Subsidies", Attachment to WT/MIN(22)/33, WT/L/1144, Geneva, 17 June 2022.

4 World Trade Organization, "The WTO and the Sustainable Development Goals". Available from https://www.wto.org/english/thewto_e/coher_e/sdgs_e/sdgs_e.htm.

5 World Trade Organization, Remarks by Director General Ngozi Okonjo-Iweala at the UN Ocean Conference 2025, June 10, 2025. Available from https://www.wto.org/english/news_e/spno_e/spno60_e.htm.

6 World Trade Organization, "Ministerial Decision of 17 June 2022", WT/MIN(22)/33, WT/L/1144, Twelfth Ministerial Conference, Geneva, 12–15 June 2022. Issued 22 June 2022. Available from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN22/33.pdf&Open=True.

7 World Trade Organization, "Fisheries Subsidies: Ministerial Decision of 13 December 2017", WT/MIN(17)/64, WT/L/1031, Ministerial Conference, Eleventh Session, Buenos Aires, 10-13 December 2017. Issued 18 December 2017. Available from https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=q:/WT/MIN17/64.pdf&Open=True.

8 United Nations, Transforming Our World: The 2030 Agenda for Sustainable Development, A/RES/70/1, September 25, 2015.

II. Relationship between Fish 1 and Fish 2

Fish 1 and Fish 2 were designed as complementary instruments. Fish 1 created a narrow set of binding disciplines on subsidies to IUU fishing, fishing of overfished stocks without rebuilding measures, and unregulated high seas fishing. Fish 2 was envisaged as the mechanism to deliver the comprehensive prohibitions required by SDG 14.6, including subsidies that contribute to overcapacity and overfishing.

The decision to split the outcome was the product of both political and substantive considerations. By 2022, negotiations had become increasingly divisive, and the 2020 SDG deadline had already been missed. There was also significant pressure to demonstrate that the WTO remained capable of delivering consensus results. Against this backdrop, Ministers considered it politically important to secure a partial outcome. Fish 1 was therefore adopted as a limited framework, with the more difficult issues deferred to the Fish 2 process.

Many developing countries and small-scale fishing communities regarded Fish 1 as an inequitable compromise. Civil society organisations and fisher representatives across the Global South contended that the Agreement fell short of the SDG 14.6 mandate, observing that it prohibited subsidies linked to IUU fishing but failed to deliver meaningful special and differential treatment (S&DT) for developing and least-developed countries.[9] The Agreement was widely perceived to safeguard the interests of large industrial fleets and distant-water fishing nations, while imposing a disproportionate compliance and administrative burden on the majority of developing countries.[10] The efficacy of sanctions was also called into question, as the suspension or withdrawal of subsidies to vessels and operators found in breach of the rules ultimately depends on legal frameworks and enforcement parameters that remain only partially addressed within the instrument. These concerns reinforced the perception that, in isolation, Fish 1 instituted a structurally imbalanced regime. At the same time, its adoption did signal a shared commitment to address subsidies contributing to IUU fishing, even if the Agreement's disciplines necessarily operate ex post, following the formal determination of illegality (Article 3.3(a)).[11]

Draft texts circulated in 2024[12] illustrate the scope of the intended comprehensive disciplines for Fish 2. They sought to prohibit a wide range of capacity-enhancing subsidies, including fuel subsidies, vessel construction and modernisation, input subsidies, at-sea support, income support and coverage of operating losses. They introduced a sustainability test, under which Members could maintain certain subsidies if they demonstrated that stocks were managed at biologically sustainable levels. They also proposed differentiated obligations, imposing stricter requirements on major subsidisers and distant water fleets, and lighter obligations on smaller developing countries.

Negotiations on these texts exposed persistent divisions. There was no agreement on the threshold for identifying significant engagement in distant water fishing, which some Members proposed at 2 per cent of global capture and others at 4 per cent. There were disagreements on whether developing countries producing less than 0.8 per cent of global capture should be exempted. There was no convergence on the length of transition periods for least developed countries after graduation. There were unresolved differences on the treatment of artisanal fishing. Many developing countries and groupings argued that the sustainability test legitimised continued subsidisation by historical major subsidisers while imposing onerous notification and reporting obligations on developing countries. The implementation burdens and associated costs would therefore be disproportionately higher for developing and least-developed Members, who have not historically been the major subsidisers. This mirrors similar implementation challenges encountered in other WTO agreements and may be regarded as creating barriers to trade, since regulatory and compliance obligations imposed on countries with limited capacity can constrain their effective market participation and reduce their ability to benefit from trade opportunities. The unresolved institutional questions under discussion served to confirm perceptions among developing countries that Fish 1 on its own created an imbalanced framework.

III. Legal Effect of Fish 1

The AFS entered into force on 15 September 2025 after the required number of instruments of acceptance had been deposited, pursuant to Article X:3 and Article XIV of the Marrakesh Agreement. From that date, the AFS became legally binding on those Members that ratified it through the deposit of their instruments of acceptance.

For those ratifying Members, Fish 1 creates immediate and distinct legal obligations enforceable under the WTO's dispute settlement system. Its provisions operate alongside existing disciplines in the Agreement on Subsidies and Countervailing Measures (SCM Agreement). Members' fisheries subsidy programmes must therefore comply with both the SCM Agreement and the specific prohibitions in the AFS. **Table 1** below categorises the Agreement's provisions according to their binding nature, distinguishing between mandatory prohibitions, best-endeavour commitments, conditional allowances, and procedural requirements, alongside their respective implementation deadlines.

9 Civil Society Group, "Open Letter Regarding Fisheries Subsidy Negotiations in WTO", Indonesia for Global Justice, June 12, 2022. Available from https://igj.or.id/2022/06/12/civil-society-group-open-letter-regarding-fisheries-subsidy-negotiations-in-wto/?lang=en.

10 Pacific Network on Globalisation (PANG), "Off the Hook: How the Big Subsidisers are Avoiding Responsibility in the WTO Fisheries Subsidies Negotiations", Our World Is Not for Sale, 2022. Available from https://owinfs.org/2022/PANG_Fisheries_Subsidies.pdf.

11 "An affirmative determination under Article 3.2 refers to the final finding by a Member and/or the final listing by an RFMO/A that a vessel or operator has engaged in IUU fishing."

12 World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", WT/MIN(24)/W/10, Ministerial Conference, Thirteenth Session, Abu Dhabi, 26–29 February 2024; World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", TN/RL/W/278, Negotiating Group on Rules, 12 April 2024; World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", TN/RL/W/279, Negotiating Group on Rules, 10 July 2024; World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", TN/RL/W/280, Negotiating Group on Rules, 31 July 2024; World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", TN/RL/W/281, Negotiating Group on Rules, 13 August 2024.

Table 1: Implementation Timeline and Legal Obligations under WTO AFS

Obligation/Provision	Nature of commitment	AFS Article/Timing
Scope and Coverage		
Applies to subsidies under SCM Art. 1.1 that are specific under SCM Art. 2, for marine wild capture fishing and fishing-related activities at sea	Binding	Art. 1; Art. 2(a)–(e)
Aquaculture and inland fisheries excluded. Gov-to-gov fisheries access payments are not deemed subsidies	Binding clarification	Art. 1 fn.1–2
Subsidy attributable to the conferring Member regardless of vessel flag/registry or recipient nationality	Binding	Art. 1 fn.3
Substantive Prohibitions		
No subsidies to vessels/operators engaged in IUU fishing or related activities	Binding prohibition	Art. 3.1
IUU determination 'triggers' by coastal state, flag state, or RFMO/A	Binding trigger	Art. 3.2–3.3(a)
No subsidies for fishing/fishing-related activities regarding an overfished stock	Binding prohibition	Art. 4.1–4.2
Subsidies may continue if part of stock rebuilding measures	Conditional allowance	Art. 4.3
No subsidies outside coastal jurisdiction and outside RFMO competence	Binding prohibition	Art. 5.1
Special care and due restraint when subsidising vessels not flying Member's flag	Best-endeavour	Art. 5.2
Special care and due restraint when subsidising for stocks of unknown status	Best-endeavour	Art. 5.3
Disaster relief subsidies allowed if limited, targeted, time-bound, and only to restore pre-disaster level (not economic/financial crises)	Conditional allowance	Art. 11.1 & fn.19
S&DT		
Developing/least developed country (LDC) Members exempt from Art. 3.1 and 10 actions for subsidies in exclusive economic zone (EEZ) for 2 years	Time-bound S&DT	15 Sep 2025–14 Sep 2027 (Art. 3.8)
Developing/LDC Members exempt from Art. 4.1 and 10 actions for subsidies in EEZ for 2 years	Time-bound S&DT	15 Sep 2025–14 Sep 2027 (Art. 4.4)
Exercise due restraint when raising matters involving an LDC Member; take into account that LDC Member's specific situation when exploring solutions	Best-endeavour tempered by 'shall'	Art. 6
Targeted technical assistance and capacity building (TACB) to be provided; voluntary WTO fund with Food and Agriculture Organization (FAO)/International Fund for Agricultural Development (IFAD)	Commitment with voluntary funding	Art. 7

Notifications/Implementation		
Maintain domestic laws/regulations to prevent prohibited subsidies (Art. 3)	Binding	From 15 Sep 2025 (Art. 3.7)
Take into account nature, gravity, repetition of IUU when setting subsidy ban duration	Binding	From 15 Sep 2025 (Art. 3.4)
Port state notifications: subsidising Member must give due regard and take actions as appropriate	Procedural best-endeavour	From 15 Sep 2025 (Art. 3.6)
Notify Committee of measures taken under Art. 3.1	Binding notification	From 15 Sep 2025 (Art. 3.5)
Enhanced SCM notifications: activity type; and, where possible, stock status, conservation measures, fleet capacity, vessel IDs, catch data	Binding + best-endeavour	First SCM Art. 25 notification due after 15 Sep 2025 (Art. 8.1)
Annually notify list of IUU vessels/operators	Binding periodic	By 15 Sep 2026, then annually (Art. 8.2)
Within one year, notify measures to implement and administer Agreement (Arts. 3–5 prohibitions)	Binding deadline	By 15 Sep 2026 (Art. 8.3)
Within one year, provide fisheries regime description or official web link; update changes	Binding deadline	By 15 Sep 2026 (Art. 8.4)
Notify RFMO/As to which Member is party with governing instrument, competence, stock status info, conservation measures, IUU rules, updated lists	Binding notification	By 15 Sep 2025; updates promptly (Art. 8.6)
Respond to requests for additional information on notifications quickly and comprehensively	Best-endeavour	From 15 Sep 2025 (Art. 8.5)
Confidential information not required in notifications	Safeguard	From 15 Sep 2025 (Art. 8.8)
Institutional		
Committee meets at least twice a year; examines Art. 3 and 8 info every 2 years; reviews implementation annually	Binding institutional	From 15 Sep 2025 (Arts. 9.1–9.3)
Five-year operational review, then every 3 years; may propose amendments	Binding review schedule	By 14 Sep 2030, then 2033, 2036… (Art. 9.4)
Committee maintains close contact with FAO and relevant organisations	Ongoing cooperation	From 15 Sep 2025 (Art. 9.5)
Dispute Settlement		
Dispute Settlement Understanding (DSU) applies; no non-violation complaints; DSU Art. 26 excluded	Binding procedural	From 15 Sep 2025 (Art. 10.1; fn.17)
SCM Art. 4 procedures apply to Arts. 3–5 disputes	Binding cross-reference	From 15 Sep 2025 (Art. 10.2; fn.18)
No legal implications for territorial claims or maritime boundaries; panels/arbitrators make no findings based on such claims	Jurisdictional limit	From 15 Sep 2025 (Art. 11.2)

Final Provisions		
No prejudice to rights and obligations under international law including law of the sea	Safeguard	From 15 Sep 2025 (Art. 11.3)
Nothing implies a Member is bound by measures of RFMOs of which it is not a party or cooperating non-party	Safeguard	From 15 Sep 2025 (Art. 11.4)
Agreement does not modify or nullify SCM rights and obligations	Safeguard	From 15 Sep 2025 (Art. 11.5)
If no comprehensive disciplines adopted within 4 years of Enhanced Integrated Framework (EIF), Agreement terminates unless General Council (GC) decides otherwise	Time-bound condition	By 14 Sep 2029 (Art. 12)
Note: Articles 11.3 to 11.5 operate as savings clauses i.e., legal safeguards preserving Members' rights and obligations under other international agreements, including the SCM Agreement and the law of the sea, and ensuring that non-parties to RFMOs are not bound by their measures.		

Disputes concerning these provisions fall within the scope of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), as the AFS is part of Annex 1A. The AFS is therefore legally operational for ratifying Members. Its obligations are enforceable and remain in force unless and until the Agreement is terminated under Article 12.

Although Article 7 establishes a voluntary funding mechanism, its practical value remains uncertain. Access is conditional on meeting additional financial requirements, which may impose further burdens on developing Members, and it is unclear whether infrastructure development will be prioritised.

IV. Article 12 Termination Clause

Article 12 of the Agreement on Fisheries Subsidies provides:

"If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated."

This clause is unprecedented in WTO law. No other multilateral trade agreement in Annex 1A of the Marrakesh Agreement contains an automatic termination provision. It creates a conditional regime in which the continued validity of Fish 1 depends on the adoption of additional disciplines or a discretionary decision of the General Council to preserve the Agreement.

The clause operates on a default-expiry model. If Members adopt comprehensive disciplines within the four-year period, Fish 1 remains in force and is complemented by those new rules. If no such disciplines are adopted, the Agreement lapses automatically without further action, unless the General Council acts to override the termination. The phrase "and unless otherwise decided by the General Council" establishes a contingency. The default is termination, but Members acting through the General Council may agree by consensus to continue Fish 1. The General Council is not required to act; its role is discretionary and depends on Member consensus.

Legally, this makes Article 12 a form of automatic sunset clause that extinguishes obligations unless proactive steps are taken to sustain them. Members that have ratified Fish 1 are therefore bound only if the negotiation mandate is fulfilled within the prescribed period or if the General Council intervenes.

The negotiating history shows that the "Additional Provisions" texts circulated in 2024 were intended to serve as the "comprehensive disciplines" required under Article 12.[13] The failure to conclude these texts underscores the fragility of the Agreement's legal foundation.

A further ambiguity lies in the omission of the word "effective" from Article 12. The negotiating mandate adopted at the 11th Ministerial Conference (MC11) and reaffirmed at MC12 called for "comprehensive and effective" disciplines. By limiting the text of Article 12 to "comprehensive disciplines," the threshold was arguably lowered. This creates legal uncertainty about whether the mere adoption of a broad but politically compromised package would be sufficient to prevent termination, even if the rules do not in practice curb harmful subsidies. The absence of the word "effective" therefore weakens the safeguard originally envisaged by Ministers and creates scope for divergent interpretations.

At the July 2025 General Council meeting, a proposal was made to revise Article 12 to decouple Fish 1 from Fish 2.[14] The proponent argued that tying the survival of Fish 1 to the conclusion of Fish 2 risks paralysing the membership in the event of continued deadlock. The proposal sought to preserve the Committee on

13 *Ibid.*
14 World Trade Organization, "Minutes of the Meeting Held in the Centre William Rappard and in Virtual Format on 22-23 July 2025", WT/GC/M/218, General Council, 25 August 2025.

Fish Subsidies and the Fisheries Fund while relieving Members of the obligation to resolve entrenched political divisions before ensuring the survival of Fish 1. Informal exchanges among Members since then suggest that while the idea has been noted, many consider it an issue that could be taken up at the 15th Ministerial Conference (MC15) and beyond rather than in the present context.

Any modification of Article 12 must comply with the Marrakesh Agreement. The General Council has authority under Article IX:2 to adopt authoritative interpretations, but this authority cannot be used to alter Members' rights and obligations. A substantive change to Article 12, such as deleting or modifying the termination clause, would require an amendment under Article X of the Marrakesh Agreement. Article X:1 requires consensus or a two-thirds majority for adoption, and acceptance by two-thirds of the Membership for entry into force. Article X:2 requires acceptance by all Members if rights and obligations are altered.

In retrospect, any adjustment to Article 12 would have been legally and procedurally easier before the first instrument of acceptance was deposited. Once the Agreement entered into force and became part of Annex 1A, formal amendment procedures under Article X of the Marrakesh Agreement became the only available path for modification. This situation may have been avoided had Members agreed to a legal scrubbing process, as requested by developing countries soon after MC12, to clarify and refine the text before ratification (as explained further in Section VII). That standard technical exercise was denied, and the resulting ambiguities continue to shape how the termination clause and other loopholes in the AFS are interpreted and applied.

Politically, Article 12 was adopted at MC12 to deliver a result after years of delay and a missed SDG 14.6 deadline. This allowed the WTO to declare a success by adopting Fish 1, while deferring more contentious issues. However, this approach introduced legal uncertainty, as the Agreement's continued existence now depends on further multilateral outcomes.

V. Expiry of Fish 2 Deadline

The MC12 decision mandated continued negotiations toward additional disciplines on fisheries subsidies, with the submission of recommendations to the 13th Ministerial Conference (MC13). In practice, however, what was transmitted to Ministers in the Abu Dhabi Package was not a negotiated set of recommendations reflecting convergence among Members. Instead, it consisted of a Chair's text[15] and an explanatory note,[16] with major provisions, including those on overcapacity and overfishing, still bracketed and unresolved. These were deliberately left for political decision-making at the ministerial level.

On 30 September 2025, at the Trade Negotiations Committee, the United States stated it would not consider the current draft text as a basis for advancing negotiations and called for a pause and different approach, effectively removing the prospect of a Fish 2 deal by the 14th Ministerial Conference (MC14).[17]

At MC13, small group and Green Room processes were convened in an effort to secure compromises on Fish 2, but momentum was limited. Many delegations regarded the Chair's draft as structurally imbalanced, particularly on special and differential treatment, the two-tier differentiation of obligations, and transparency requirements. With agriculture negotiations also deadlocked, there was little leverage to advance fisheries disciplines, leaving the core issues in abeyance.

MC13 ultimately adopted the Abu Dhabi Ministerial Declaration, which referred only in general terms to the work of negotiating bodies and contained no specific mandate to extend the deadline for adoption of Fish 2.[18] The absence of a new negotiating deadline at MC13 does not legally or procedurally nullify the expectation that Members will continue efforts to conclude comprehensive disciplines. The more serious issue lies in the operation of Article 12, which is tied to entry into force.

In WTO treaty practice, "adoption" signifies Members' approval of a negotiated text and their intention to create legal obligations. Binding force arises only once Members ratify through the deposit of instruments of acceptance, in accordance with Articles X and XIV of the Marrakesh Agreement. For purposes of Article 12, however, the adoption of comprehensive disciplines within the four-year period is sufficient to preserve Fish 1. Ratification is required for such disciplines to become binding WTO law, but it is not a condition for avoiding termination.

A special meeting of the General Council on 15 September 2025 marked the entry into force of the AFS and the formal commencement of the four-year period. Fish 1 will remain in force throughout this period. Termination will occur in September 2029 if comprehensive disciplines are not adopted by then, unless the General Council decides otherwise under Articles IV and IX of the Marrakesh Agreement.

VI. Scope and Limits of Fish 1

Fish 1 addresses, as mentioned, only a limited set of subsidy categories. Article 3 prohibits subsidies to vessels or operators engaged in IUU fishing. Article 4 prohibits subsidies to fishing of overfished stocks, unless measures are implemented to rebuild such stocks to biologically sustainable levels. Article 5 prohibits subsidies to fishing in areas of the high seas not under the competence of a RFMO/A.

The Agreement does not discipline the main categories of capacity-enhancing subsidies that drive overcapacity and depletion. Without these disciplines, the broader problem of unsustainab-

15 World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text", WT/MIN(24)/W/10, Ministerial Conference, Thirteenth Session, Abu Dhabi, 26–29 February 2024.

16 World Trade Organization, "Additional Provisions on Fisheries Subsidies: Draft Text. Addendum", WT/MIN(24)/W/10/Add.1, Ministerial Conference, Thirteenth Session, Abu Dhabi, 26–29 February 2024.

17 Margaret Spiegelman, "Calling for a Different Approach on 'Fish 2,' U.S. Rules Out Deal by MC14", Inside U.S. Trade, September 30, 2025. Available from https://insidetrade.com/daily-news/calling-different-approach-fish-2-us-rules-out-deal-mc14.

18 World Trade Organization, "Abu Dhabi Ministerial Declaration: Adopted on 2 March 2024", WT/MIN(24)/DEC, Ministerial Conference, Thirteenth Session, Abu Dhabi, 26 February–2 March 2024.

le fisheries subsidies remains unresolved.[19] The texts proposed in the Additional Provisions recognised these gaps but the negotiations remained divisive and no agreement could be concluded.

In the course of the Fish 1 negotiations, draft texts contained a dedicated provision, then Article 5, addressing "subsidies contributing to overcapacity and overfishing."[20] In order to secure consensus at MC12, this provision was removed. It was replaced by a new Article 5 entitled "other subsidies," which establishes a narrower prohibition limited to fishing activities in areas of the high seas not under the competence of an RFMO/A. The removal of the earlier text marked a significant dilution of the original negotiating mandate under SDG 14.6, which explicitly called for the prohibition of subsidies contributing to overcapacity and overfishing.

The table of obligations in Section III above further illustrates this imbalance. A substantial share of the AFS consists of notification, reporting, and procedural obligations, many of which are framed as best-endeavour commitments rather than binding disciplines. By contrast, the core prohibitions on IUU fishing, overfished stocks, and certain high seas activities are narrowly defined. This allocation of obligations reinforces the perception that the Agreement emphasises transparency mechanisms over substantive reform, leaving the bulk of harmful subsidies untouched and falling short of the comprehensive mandate under SDG 14.6.

Beyond substantive omissions, the AFS also faces enforcement and implementation challenges. Its reliance on national determinations under Article 3 means that outcomes will vary widely depending on Members' methodologies for monitoring and surveillance capacity. For many developing countries, limited technical infrastructure risks capturing small-scale fishers while leaving industrial fleets less constrained.[21] For major subsidisers, domestic political pressures may discourage robust determinations that would require withdrawal of support. The dispute settlement system is formally available, but the technical complexity of fisheries data and evidentiary burdens make it an imperfect vehicle for addressing these cases. Transparency obligations under Article 8 are similarly comprehensive in design but difficult to monitor in practice, as the Committee on Fisheries Subsidies depends on Member notifications that may be incomplete or delayed. In this context, there is a risk that the Agreement functions more as a reporting framework than as a mechanism that disciplines harmful subsidies.

In addition, several structural loopholes identified in a commentary by Soule and McDaniel weaken the effectiveness of these obligations. First, Article 3.2 explicitly notes that nothing obligates Members to initiate investigations or make IUU determinations. This allows governments to avoid subsidy withdrawal altogether by not launching investigations, leaving enforcement discretionary. Second, penalties are weakly framed under Article 3.4, which merely requires Members to "take into account" the nature, gravity and repetition of IUU fishing when setting the duration of subsidy withdrawal. The absence of minimum standards creates a wide scope for political discretion and for continued subsidisation despite proven IUU activity. Third, the limitation of Article 4.1 to "overfished stocks" rather than "overfishing" means subsidies may continue even where unsustainable levels of fishing effort are evident. Scientific assessments are often opaque or subject to manipulation, and without transparent and standardised methodologies, governments can avoid triggering subsidy prohibitions. Fourth, Article 8.1 requires extensive notifications, but non-compliance, confidentiality claims, or incomplete reporting may undermine the transparency system. Without robust and public reporting, the Agreement risks opacity rather than accountability. These loopholes mean that the effectiveness of the prohibitions will depend less on WTO disciplines than on national political will and the role of civil society in pressing for transparency and enforcement.[22]

The choice of a management-based approach to address overfishing and overcapacity through sustainability tests added further complexity and ambiguity. Many Members had initially called for a straightforward list-based prohibition of harmful subsidies. Instead, the final text allows Members with strong monitoring capacity to justify continued subsidisation while imposing burdens on those with weaker systems. Developing country coalitions warned that this risks legitimising the continued practices of historical major subsidisers while creating disproportionate notification and reporting obligations for the majority of developing countries.

The relevance of fisheries management to WTO subsidy negotiations requires careful consideration. Fisheries management is important, but the competence of the WTO in this area was disputed during the negotiations. The prohibition of harmful subsidies is not synonymous with fisheries management. Although many Members have implemented management measures in the past decade through national systems and regional fisheries bodies, the continued depletion of marine resources demonstrates that management alone is insufficient to reduce catches or restore stocks. This experience substantiates the original mandate of the negotiations, which was focused on the prohibition of harmful subsidies. Many developing countries stressed that the inclusion of sustainability parameters in the AFS should not be understood as altering this mandate, and that the three dimensions of sustainability should not be the organising principle around the Fish 2 negotiations, which were about the prohibition of subsidies that contribute to overcapacity and overfishing.

The AFS's S&DT provisions have also been criticised for their limited design and effectiveness. The two-year exclusive econo-

19 WWF International, "WWF Welcomes Long-Awaited WTO Agreement to Curb Harmful Fisheries Subsidies", WWF News, June 17, 2022. Available from https://wwf.panda.org/wwf_news/?5852941%2FWWF-welcomes-long-awaited-WTO-agreement-to-curb-harmful-fisheries-subsidies.

20 World Trade Organization, "Agreement on Fisheries Subsidies: Draft Text", WT/MIN(21)/W/5, Ministerial Conference, Twelfth Session, Geneva, 30 November–3 December 2021; World Trade Organization, "Agreement on Fisheries Subsidies: Draft Text. Addendum", WT/MIN(21)/W/5/Add.1, Ministerial Conference, Twelfth Session, Geneva, 30 November–3 December 2021.

21 Pacific Network on Globalisation, "WTO Fish Deal Doesn't Meet its Mandate", Press Release, 16 September 2025. Available from https://pang.org.fj/3049-2/.

22 Bradley Soule and Christine McDaniel, "Laudable Agreement to End Fisheries Subsidies Has Big Loopholes", Policy Brief, Mercatus Center at George Mason University, October 25, 2023. Available from https://www.mercatus.org/research/policy-briefs/laudable-agreement-end-fisheries-subsidies-has-big-loopholes.

mic zone (EEZ) exemptions under Articles 3.8 and 4.4 provide only temporary relief and do not address the deeper structural challenges that make compliance disproportionately burdensome for the majority of developing Members. As of June 2025, fifteen WTO Members including Japan, Canada, Germany, Australia, the Netherlands, France, Sweden, Iceland, Spain, Norway, the European Union (EU), Liechtenstein, Portugal, the Republic of Korea, the United Arab Emirates (UAE) and New Zealand have pledged a combined total of approximately CHF 11.5 million to the Fisheries Funding Mechanism.[23] While politically visible, this amount is modest relative to the scale of global fisheries subsidies.

Time-limited exemptions have historically failed to bridge capacity gaps, particularly where institutional infrastructure for monitoring and reporting is weak. More fundamentally, sustainability-based flexibilities under Article 4.3 reinforce asymmetries by legitimising continued subsidisation by developed Members with advanced fisheries management systems while constraining support for small-scale and artisanal fishers in developing countries. This conditional approach risks disadvantaging those least equipped to demonstrate formal compliance despite their limited contribution to global overcapacity.

Further gaps and ambiguities have been identified in the AFS. The high seas prohibition in Article 5 applies only to areas outside RFMO competence, which covers a very small share of global fishing activities, leaving most large industrial fleets unaffected. The Agreement also leaves broad discretion over penalties for IUU fishing, creating scope for uneven enforcement.

The South Centre's legal review with Member States soon after the AFS was adopted, identified unresolved issues such as the definition of "operator" in Article 2(e), the scope of "fishing-related activities in support of IUU" under Article 3.1, the competence of RFMO/As under Article 5.1, and ambiguous terms in Articles 6, 7, 8 and 11. For example, the phrase "if any" in Article 6 and the provisions on trust funds in Article 7 raise consistency concerns with WTO financial rules. The notification obligations in Article 8 are also particularly demanding, requiring information that many developing Members may struggle to provide.

VII. Role of the Marrakesh Agreement

The Marrakesh Agreement establishes the institutional framework of the WTO and defines its decision-making authority. Article II confirms that agreements in Annex 1A, including the AFS, are integral parts of the WTO Agreement. Article IX provides that the Ministerial Conference and the General Council exercise decision-making authority, normally by consensus, and may adopt authoritative interpretations of the WTO Agreement. Article X establishes the procedures for amending multilateral trade agreements in Annex 1A, including the AFS. Accordingly, only the Ministerial Conference or the General Council can decide to preserve the AFS if comprehensive disciplines are not adopted within the four-year period envisaged in Article 12, or to extend or amend the mandate of the negotiations. The institutional machinery of the Marrakesh Agreement is therefore central to the survival of Fish 1 and to the future of Fish 2.

In 2024, a draft General Council decision was submitted to consider model templates for subsidy notifications and proposals for support through the Fish Fund.[24] Although this initiative did not achieve consensus, it illustrated that WTO institutions under the Marrakesh framework can play a role beyond the adoption of agreements. They can also provide the tools and resources needed for Members, particularly developing countries, to meet demanding reporting and compliance obligations. At the same time, they highlighted the political tension between transparency requirements and the limited administrative capacity of many developing Members.

VIII. Institutional and Procedural Concerns

Beyond the formal framework of the Marrakesh Agreement, the process by which the AFS was negotiated and adopted has raised important institutional and procedural concerns. These issues are not highlighted to reopen the outcome of MC12, but rather to promote accountability and to contextualise current discussions on the future of the Agreement.

Soon after MC12, the South Centre conducted a legal review of the AFS with its Member States, as mentioned above. The lack of clarity on these issues left open questions of interpretation and enforceability.

Developing countries subsequently called for a Secretariat-led or Member-driven legal scrubbing process to resolve such inconsistencies and ensure legal certainty. Legal scrubbing is a recognised step in treaty practice, affirmed by the Vienna Convention on the Law of Treaties, and is typically conducted before authentication to ensure clarity, precision, and internal coherence. Some Members resisted this step, arguing that it could reopen substantive negotiations. However, the denial of legal scrubbing meant that the AFS entered into force with unresolved ambiguities, reinforcing the case for caution before any attempt to amend critical provisions such as the termination clause in Article 12.

A number of developing Members also proposed establishing a Preparatory Committee, drawing on precedents from the establishment of the WTO and the Trade Facilitation Agreement. The purpose of such a committee would have been to prepare the ground for the AFS's entry into force and to address tech-

23 WTO website, press releases on contributions to the Fisheries Funding Mechanism: Japan (JPY 90m ≈ CHF 763k, Feb 2023); Canada (CAD 1.4m ≈ CHF 948k, Apr 2023); Germany (EUR 2m multi-year, EUR 500k first tranche, May 2023); Australia (AUD 2m ≈ CHF 1.2m, Jun 2023); Netherlands (EUR 1m ≈ CHF 969k, Jun 2023); France (EUR 1m ≈ CHF 970k, Jun 2023); Sweden (SEK 5m ≈ CHF 500k, Jul 2023); Iceland (CHF 500k, Sep 2023; CHF 200k, Jan 2025); Spain (EUR 2m ≈ CHF 1.9m, Nov 2023); Norway (NOK 9m ≈ CHF 730k, Nov 2023); EU (EUR 1m ≈ CHF 957k, Nov 2023); Liechtenstein (CHF 40k, Nov 2023); Portugal (EUR 50k ≈ CHF 48k, Jan 2024); Korea (USD 1m ≈ CHF 860k, Feb 2024); UAE (USD 1m ≈ CHF 847k, Sep 2024); New Zealand (NZD 150k ≈ CHF 74k, Jun 2025). Total ≈ CHF 11.5m. Available from https://www.wto.org/english/res_e/webcas_e/webcas_grid_e.htm?video_type=subject&bookmark=ffm.

24 World Trade Organization, "Additional Provisions on Fisheries Subsidies: Notification of Annual Aggregate Level of Fisheries Subsidies", TN/RL/W/281, Negotiating Group on Rules, 10 July 2024.

nical and institutional questions related to implementation. This proposal was not accepted, leaving several operational matters to be managed post-entry into force.

The negotiating format at MC12 added further concerns. The final text of Fish 1 was shaped in the so-called “Room D” process, which in practice resembled the restricted Green Room format and included only a limited group of Members. Broader participation in the decisive drafting stage was minimal. In the early hours of the morning, following last-minute textual changes, the Agreement was gaveled in Room D and immediately applauded. The closing plenary was convened shortly thereafter, and printed copies of the adopted fisheries text were distributed only as Members exited the room at dawn. This sequence, which is rarely recalled in public accounts of the AFS, has been cited by many developing countries as raising questions about inclusiveness, transparency and the way consensus was operationalised, since the final text was only made available after it had been gavelled.

Following MC12, Members were also strongly encouraged to ratify the AFS rapidly. Several South Centre Member States reported significant political pressure during this period. Despite these efforts, it ultimately took three years and three months since adoption at MC12 for the Agreement to enter into force. The celebration of entry into force was presented as a major political achievement, but it also triggered the activation of Article 12 and the four-year countdown toward termination in the absence of comprehensive disciplines.

The WTO Fish Fund, established alongside the Agreement, was presented as a central incentive to secure support, particularly from developing and least developed countries. Its future viability, however, remains uncertain, as its resources may prove insufficient to sustain meaningful capacity building or compliance support. This further underlines the importance of retaining Article 12 as a safeguard, allowing Members to reassess the value of the Agreement once both its substantive disciplines and its supporting mechanisms, such as the Fund, can be judged in practice.

The negotiating process for Fish 1 illustrated how consensus, while formally codified in the Marrakesh Agreement, can in practice be operationalised through selective participation, restricted formats and political pressure rather than genuine convergence of views. This approach diminishes inclusiveness and constrains the ability of developing countries to shape outcomes. It also reinforces the structural rigidity of WTO rules, which once adopted are notoriously difficult to amend under Article X of the Marrakesh Agreement.

These two elements, the manner in which consensus is operationalised and the difficulty of revising entrenched rules, together create a system where outcomes, even if flawed or imbalanced, are difficult to adapt over time. This underscores the case for retaining Article 12 as a safeguard and for considering time-bound mechanisms such as termination or sunset clauses as part of WTO reform, to ensure that outcomes are periodically tested against their objectives and that accountability is not subordinated to political expediency.

IX. Lessons for WTO Reform

The experience of the AFS offers important lessons for the debate on WTO reform. The Agreement was celebrated as a landmark outcome, yet its substance and process reveal structural weaknesses in how multilateral rules are designed and adopted.

First, the substance of the Agreement fell short of the original mandate under SDG 14.6 because of drafting compromises. As mentioned, sustainability tests created asymmetries that legitimise continued subsidisation by major subsidisers while increasing the burden on developing Members. S&DT was narrowed to temporary exemptions that do little to address systemic disadvantages. The IUU disciplines are unlikely to be effective given their dependence on national determinations and limited monitoring capacity. Together, these choices leave the status quo largely unchanged, with many developing countries gaining little and, in some cases, incurring greater compliance costs.

Second, the process that led to adoption exposed problems of transparency and inclusiveness. The decisive drafting stages were conducted in restricted formats, legal scrubbing was denied, and developing countries had limited scope to shape the final text. These practices diminish trust in the multilateral process and weaken the legitimacy of outcomes.

Third, the termination clause in Article 12 illustrates both the risks and potential innovations of WTO rulemaking. By linking the survival of Fish 1 to the adoption of further disciplines, Members created a framework that introduced legal uncertainty but also safeguarded against permanent entrenchment of an incomplete agreement. While termination of the AFS is not the preferred outcome for many Members, and some may consider that retaining limited disciplines is preferable to having none at all, the option of termination must nonetheless remain available. Only time will reveal whether the Agreement achieves its stated objectives, and Members should not be locked into an arrangement that leaves harmful subsidies largely intact. Unless negotiations on Fish 2 deliver meaningful disciplines, Article 12 provides the only legal mechanism to prevent an inadequate agreement from becoming permanently entrenched in WTO law.

These shortcomings are not unique to fisheries. They reflect the broader tensions of sustainability-related negotiations, where historical responsibility, common but differentiated responsibilities, and polluters-pay principles are frequently marginalised. Like in other negotiating fora on climate, and plastics, the AFS outcome illustrates the difficulty of reconciling global sustainability objectives with entrenched power asymmetries.

These lessons resonate with long-standing reform proposals advanced by developing countries. For decades, they have sought to update entrenched provisions such as the external reference price in agriculture, which remains tied to the 1986–1988 base period, and to revisit rules in areas such as investment measures and intellectual property that restrict policy space. These disciplines, which have no expiry or shallow review mechanisms, have contributed to structural imbalances in the system. The AFS termination clause points to an alternative approach. Future agreements could be safeguarded by mandatory and detailed reviews, renegotiation clauses, and time-bound provisions that allow Members to evaluate whether rules are achieving their intended purposes.

Situating such innovations within the Marrakesh Agreement is both possible and necessary. The preamble of the Marrakesh Agreement establishes sustainable development as a guiding objective of the multilateral trading system. Time-bound and reviewable rules would operationalise this objective by ensuring that WTO agreements remain aligned with development priorities and capable of adapting to changing circumstances. This approach would reinforce the legitimacy of the system, provide a corrective to power asymmetries, and strengthen trust among Members that multilateral outcomes serve collective, rather than narrowly defined, interests.

X. Recommendations

The following recommendations are offered for consideration by developing country Members:

1. Retain Article 12 as a safeguard

It would be prudent not to pursue any premature changes to the termination clause. Article 12 was designed to ensure that the Agreement would not become permanent without the adoption of comprehensive disciplines. It provides important legal and institutional space both to assess whether the AFS delivers on its mandate and to allow negotiations on Fish 2 to advance. The clause should not be seen as a fait accompli that negotiations will fail, but as a safeguard that ensures the Agreement evolves in line with its mandate rather than being entrenched too early.

2. Utilise existing review mechanisms

The AFS already establishes oversight structures under Article 9. Article 9(3) requires annual reviews of implementation and operation, while Article 9(4) mandates a comprehensive review every five years, with the possibility of recommending amendments. These mechanisms provide structured opportunities for Members to monitor implementation and evaluate whether the Agreement achieves its objectives.

3. Strengthen the review process

Members should utilise the review mechanisms under Article 9 to conduct substantive and transparent assessments rather than limiting them to procedural reporting. Reviews should evaluate whether harmful subsidies are being disciplined, whether technical assistance has been delivered, and whether the Agreement contributes to sustainable development. They should also assess whether access to finance and technical assistance through the designated funding mechanism, the Fish Fund, is effective and equitable for developing and least-developed Members. The first comprehensive review under Article 9(4), scheduled for 2030, should be undertaken as a genuine evaluation of the effectiveness of the AFS.

4. Embed safeguards in WTO rulemaking

The AFS demonstrates both the risks and potential value of incorporating termination and review clauses in WTO agreements. Such provisions can serve as safeguards against ineffective or imbalanced rules, ensuring that commitments remain subject to accountability and revision. Future WTO negotiations should systematically include review, sunset, and termination clauses as standard features of rulemaking. These mechanisms would keep agreements adaptable to changing circumstances, ensure they remain consistent with development objectives, and address long-standing concerns of developing countries regarding policy space and equitable outcomes.

XI. Conclusion

The entry into force of the AFS is a political milestone but not a comprehensive resolution of the fisheries' subsidies negotiations. The Agreement's scope is narrow, its obligations unevenly distributed, and its institutional foundations fragile. Its survival depends on the adoption of further disciplines by 2029 or a discretionary decision of the General Council. For many developing countries, the AFS underlines the importance of safeguarding policy space, strengthening review mechanisms, and ensuring that Article 12 continues to serve as a safeguard. More broadly, it provides lessons for WTO reform, particularly the need for rules that are reviewable, adaptable, and aligned with development objectives.

The Agreement has been presented publicly, including by the WTO Director-General, as evidence of delivery on SDG 14.6. A closer legal reading demonstrates that this claim cannot be sustained. SDG 14.6 required the prohibition of subsidies contributing to overcapacity and overfishing, the elimination of subsidies that contribute to IUU fishing, and the integration of effective special and differential treatment for developing and least developed countries by 2020. The AFS addresses only part of this mandate: it disciplines IUU subsidies, introduces limited rules on overfished stocks and certain high seas activities, but leaves the largest categories of capacity-enhancing subsidies untouched and provides only narrow and temporary S&DT. Moreover, the 2020 target date has already passed, making any claim of "delivery" political rather than legal.

Unless Fish 2 delivers meaningful disciplines on overcapacity and overfishing, the AFS risks remaining an instrument of limited practical effect on the sustainability of global fisheries. Whether it delivers real sustainability outcomes will depend on its enforcement at the national level, the degree of transparency in reporting, and the involvement of relevant stakeholders in monitoring compliance. Only time will tell whether the political symbolism surrounding its adoption translates into substantive change.

The experience of Fish 1 also highlights the importance of negotiation processes that are inclusive and transparent. Restricted formats and political pressure weakened confidence in the outcome and risked sidelining the voices of the majority of developing countries. Process will therefore be as decisive as substance in shaping the credibility of any future agreement, and in some circumstances no outcome may be preferable to an outcome that entrenches imbalance.

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SOUTH CENTRE

The South Centre
International Environment House 2
Chemin de Balexert 7-9
1219 Geneva
Switzerland
Tel.: +41 22 791 8050
south@southcentre.int
https://www.southcentre.int

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