

The WTO Agreement on Fisheries Subsidies: An Assessment and Prospects¹

Y.S. Lee

West Virginia University College of Law

yslee@lawanddevelopment.net

Kenneth A. Reinert

Schar School of Policy and Government

kreinert@gmu.edu

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Abstract: Fisheries subsidies have been part of the negotiating history of the World Trade Organization since 2001, with an Agreement on Fisheries Subsidies being reached in 2022 and entering into force in 2025. The agreement is historic from the points of view of fisheries sustainability and the WTO as a multilateral institution governing trade, but it does contain a few significant weaknesses. This article considers the background to the agreement and its negotiation history. It then reviews the agreement itself, explores its development implications, and considers its future prospects.

Keywords: Fisheries, subsidies, World Trade Organization

1. Introduction

Fisheries subsidies have been part of the negotiating history of the World Trade Organization (WTO) since 2001, with an Agreement on Fisheries Subsidies (AFS) being reached in 2022 and entered into force in 2025. This article provides a brief assessment of the final agreement, a rare success for the WTO. Indeed, the AFS was only the second new agreement reached in the history of the WTO, the first being the 2013 Agreement on Trade Facilitation. The negotiated AFS is

¹ The authors would like to thank Esayas Berhane Gebremariam for research assistance.

therefore historic from both the points of view of fisheries sustainability and the WTO as a multilateral institution governing trade. However, the AFS contains a few significant weaknesses, faces an uncertain future as part of the WTO, and even contains the seeds of its own potential demise. This article will concisely describe each of these issues, including development impacts.

In its 2024 annual report, the Food and Agricultural Organization (FAO) reported that fish are the source of 17 percent of humanly consumed animal protein, but that this reaches as high as 50 percent in some Asian and African countries. The FAO also reported that just under 40 percent fishery stocks are overfished to unsustainable levels.² Fisheries subsidies have been major interventions in world fisheries markets with an estimate of US\$35 billion of subsidies in 2018.³ A great deal of concern has been expressed about the impact of these subsidies on the sustainability of the fisheries sector and their consequent impact on food security. For example, Sumaila *et al.* raised this issue early on in the negotiations process, noting that these subsidies enable “otherwise unprofitable fleets to continue fishing” and that they “contribute to overfishing, i.e. more fish being caught than can be sustained.” They further stated that “the WTO has an opportunity to demonstrate that it can balance global trade and the environment and help solve one of the most worrisome environmental issues of our time—the decline in global fisheries.”⁴ With the AFS, the WTO has gone some distance in addressing these concerns.

There was also the issue of fisheries subsidies within the legal provisions of the WTO. In the WTO’s Agreement on Subsidies and Countervailing Measures (ASCM), subsidies are defined as any “financial contribution by a government or any public body” or as an “income or price support” where, in both cases, “a benefit is thereby conferred” to the private sector (Article 1). Under the ASCM, there is a “specificity” requirement that the subsidy must be “specific to an enterprise or industry or groups of enterprises or industries” (Article 2). “Prohibited” subsidies include export subsidies and subsidies contingent on the use of domestic over imported goods (Article 3). “Actionable” subsidies are not prohibited per se but can be responded to if they cause “injury” or “serious prejudice” to another WTO member (Article 5). During the negotiations process, these were relevant considerations. Commentators concluded that the ASCM did indeed

² Food and Agricultural Organization, *State of the World Fisheries and Aquaculture: Blue Transformation in Action* (2024).

³ U.R. Sumaila *et al.*, *Updates Estimates and Analysis of Global Fisheries Subsidies*, 109 *Marine Policy* (2019), 1-11.

⁴ U.R. Sumaila *et al.*, *The World Trade Organization and Global Fisheries Sustainability*, 88 *Fisheries Research*, no. 1-3 (2007), 2, 4.

apply to fisheries subsidies, despite the idiosyncratic nature of some of the subsidies.⁵ If so, the WTO needed to clarify how it would apply.

The third impetus towards negotiations was illegal, unreported, and unregulated (IUU) fishing. These activities posed a serious challenge to regional fisheries management organizations (RFMOs) attempting to address fisheries sustainability under the 1995 United Nations Fish Stock Agreement (UNFSA). For example, in its 2022 annual report, the FAO stated that IUU fishing “undermines national and regional efforts to manage fisheries sustainability and conserve marine biodiversity” (p. 129).⁶ As we will see, this issue was addressed in the negotiated agreement.

The sustainability issue, considerations of the ASCM, and the IUU fishing issue pushed the overall fisheries subsidies issue onto the WTO agenda. This agenda item was given new impetus by the 2015 Sustainable Development Goals (SDGs). Under SDG targets 14.4 and 14.6, the United Nations established an implicit 2020 deadline for an agreement on IUU fishing and fisheries subsidies, respectively. While this target date was not met, an agreement was eventually reached at the 12th Ministerial Conference in June 2022 and entered into force in September 2025.⁷

2. The Negotiations

The history of the negotiations over fisheries subsidies at the WTO were described in some detail by Reinert.⁸ To summarize here, the negotiations can be traced back to the 1999 Seattle Ministerial where a “Friends of Fish” coalition (New Zealand, Norway, and the United States) proposed including fisheries subsidies in a new round of multilateral trade negotiations. More serious impetus was given by 2001 Doha Development Agenda (DDA) that committed members to phasing out export subsidies and domestic support in agriculture. It further called upon members

⁵ S.W. Chang, *WTO Disciplines on Fisheries Subsidies: A Historic Step Towards Sustainability?*, 6 Journal of International Economics Law, no. 4 (2003), 879-921 and R. Grynberg and N. Rochester, *Emerging Architecture of an Emerging World Trade Organization Fisheries Subsidies Agreement and the Interests of Developing Coastal States*, 39 Journal of World Trade, no. 3 (2005), 503-526. These authors also noted that, to the extent that the ASCM fell short of addressing the fisheries subsidies issue, these limitations also applied to other sectors, so there was nothing special in these limits.

⁶ Food and Agricultural Organization, *State of the World Fisheries and Aquaculture: Towards Blue Transformation* (2022), p. 129.

⁷ WTO, *WTO Agreement on Fisheries Subsidies enters into force* (September 15, 2025), available online at: <https://www.wto.org/english/news_e/news25_e/fish_15sep25_e.htm?utm_source=chatgpt.com>.

⁸ K.A. Reinert, *Fisheries Subsidies and the World Trade Organization: A Concise History*, 29 International Negotiation, no. 2 (2024), 193-217.

to “clarify and improve WTO disciplines on fisheries subsidies, taking into account the importance of this sector to developing countries.”⁹

In 2003, the United States made an important submission that provided specificity regarding potential negotiation paths forward. This submission introduced a traffic light analogy, familiar to trade policy analysts, with “red light” subsidies that “are deemed to result in overcapacity or overfishing” and “amber light” subsidies that would be presumed to be harmful unless shown otherwise and would include subsidies that exceeded a certain value.¹⁰ This analogy proved to be important in moving the negotiations forward.

The fishing subsidies issue also received support from the 2005 Hong Kong Ministerial Declaration with an entreaty for negotiations to begin in earnest.¹¹ In the interpretation of Campling and Havice, this Ministerial Declaration was “historic.” These authors stated that “for the first time, WTO Members committed to introducing disciplines to limit explicitly those subsidies that cause environmental harm.” They also stated that the Declaration “moved the WTO directly into the realm of making legally binding judgements on environmental outcomes of trade relations,” correctly noting that such a commitment had not taken place previously.¹²

In 2007, the Chair of the WTO’s Negotiating Group on Rules (NGR) set out a draft text on fisheries subsidies disciplines. Using a “bottom-up” approach, Article I of the draft text defined eight categories of prohibited subsidies, Article II presented a list of general exceptions, and Article III considered special and differential treatment (SDT). Importantly, Article I of this draft text prohibited all subsidies “the benefits of which are conferred on any fishing vessel or fishing activity affecting fish stocks that are in an unequivocally overfished condition.”¹³ (p. 88). This was a notable and explicit link between the trade and sustainability realms.

At this point, negotiations on fisheries subsidies stalled, but were given new impetus in 2015 by the above-mentioned SDGs. In 2016, and in preparation for the 2017 Ministerial

⁹ World Trade Organization, *Ministerial Declaration*, WT/MIN(01)/DEC/1 (2001), p. 6.

¹⁰ World Trade Organization, *Possible Approaches to Improved Disciplines on Fisheries Subsidies*, TN/RL/W/77 (2003), p. 2.

¹¹ World Trade Organization, *Ministerial Declaration*, WT/MIN(05)/DEC (2005).

¹² L. Campling and E. Havice, *Mainstreaming Environment and Development at the World Trade Organization? Fisheries Subsidies, the Politics of Rulemaking, and the Elusive ‘Triple Win’*, 45 *Environment and Planning A*, no. 4 (2013), 842.

¹³ World Trade Organization, *Draft Consolidate Chair Texts of the AD and ASCM Agreements*, TN/RL/W/213 (2007), Annex VIII, p. 88.

Conference, the WTO's NGR announced member interest in a rules agenda that featured fisheries subsidies.¹⁴ This Ministerial produced a working document of a proposed text,¹⁵ as well as a Ministerial Decision regarding fisheries subsidies that provided further forward momentum.¹⁶

In May 2021, the Chairman of the fisheries subsidies negotiations introduced a new draft text, a previous text having been considered in December 2020. This 2021 draft was in preparation for a meeting of Ministers in July 2021 on the specific topic of fisheries subsidies.¹⁷ The July 2021 meeting did not result in an agreement, but seems to have included some forward progress, with the next deadline pushed to December 2021 and the Geneva Ministerial Meeting. In November 2021, a subsequent draft was prepared by the Chair of the NGR for the meeting.¹⁸ Unfortunately, the Geneva Ministerial Meeting was cancelled due to emerging travel restrictions in response to COVID-19 concerns.¹⁹

The WTO Ministerial was rescheduled to June 2022, and among other things, produced a negotiated AFS.²⁰ This AFS was the product of over two decades of efforts and was a significant “win” for the WTO. As noted by Lennan and Switzer, “the WTO’s AFS joins the framework of international fisheries law, a suite of multilateral agreements, stemming from the 1982 United Nations Convention on the Law of the Sea.”²¹ The AFS entered into force in September 2025.

3. The Agreement on Fisheries Subsidies

In announcing the AFS, the WTO stated: “The WTO Agreement on Fisheries Subsidies, adopted at the 12th Ministerial Conference (MC12) on 17 June 2022, marks a major step forward for ocean sustainability by prohibiting harmful fisheries subsidies, which are a key factor in the widespread

¹⁴ World Trade Organization, “Clear Interest” in Securing Outcomes in Rules Negotiations for 2017 Ministerial, available at: <https://www.wto.org/english/news_e/news16_e/rule_25may16_e.htm>.

¹⁵ World Trade Organization, *Fisheries Subsidies: Working Documents*, TN/RL/W/274/Rev.2 (2017a).

¹⁶ World Trade Organization, *Fisheries Subsidies: Ministerial Decision of 13 December 2017*, WT/MIN(17)/64 (2017b).

¹⁷ World Trade Organization, *Fisheries Subsidies: Draft Consolidated Chair Text*, TN/RL/W/276 (2021a).

¹⁸ World Trade Organization, *Agreement on Fisheries Subsidies: Draft Text*, WT/MIN(21)/W/5 (2021b).

¹⁹ At this point in the negotiations, Cisneros-Montemayor *et al.* observed that “the WTO and its member nations have an opportunity to benefit fishers and seafood production for generations to come.” A.M. Cisneros-Montemayor *et al.*, *A Constructive Critique of the World Trade Organization Draft Agreement on Harmful Fisheries Subsidies*, 135 Marine Policy (2022), 2. For an analysis of the draft text, see Reinert (2024) *supra* note 8.

²⁰ World Trade Organization, *Agreement on Fisheries Subsidies*, WT/MIN(22)/33 (2022).

²¹ M. Lennan and S. Switzer, *Agreement on Fisheries Subsidies*, 38 International Journal of Marine and Coastal Law, no. 1 (2023), 164.

depletion of the world's fish stocks.”²² A WTO brief on the AFS summarized its content as follows: “The Agreement prohibits support for illegal, unreported and unregulated (IUU) fishing. It bans support for fishing overfished stocks. And it takes a first but significant step forward to curb subsidies for overcapacity and overfishing by ending subsidies for fishing on the unregulated high seas.”²³

The 2022 AFS, however, is not necessarily the last word on the subject nor the end of negotiations on fisheries subsidies. The Ministerial Decision accompanying the AFS stated: “The Negotiating Group on Rules shall continue negotiations based on the outstanding issues... with a view to making recommendations... for additional provisions that would achieve a comprehensive agreement on fisheries subsidies.”²⁴ This statement suggests that the AFS is not yet “comprehensive” and that there are further issues that were not fully resolved. As we will see, this is indeed the case.

The details of the AFS are presented in Table 1. As seen there, Article 1 sets out the scope of the agreement, explicitly linking it to Article 1.1 of the ASCM, as well as the “specific” definition of ASCM Article 2 (see above), applying these to “marine wild capture fishing and fishing related activities at sea.”²⁵ What was left out of Article 1 was bracketed text in the draft agreement applying this same ASCM language to fuel subsidies. This draft text had stated: “also applies to fuel subsidies to fishing and fishing related activities at sea that are not specific within the meaning of 2 of the ASCM Agreement.”²⁶ Consequently, the relevant issue of fuel subsidies was left out of the scope of the AFS because they did not qualify as “specific” under ASCM Article 2.

Article 2 of the AFS provides definitions for the terms “fish,” “fishing,” “fishing related activities,” “vessel,” and “operator.” Importantly, “fishing related activities” is given a relatively broad scope that spans the fishing value chain. This language is in keeping with the draft text. While it is easy to overlook the significance of AFS Articles 1 and 2, the fact is that they explicitly

²² World Trade Organization, *Agreement on Fisheries Subsidies*, available at: <https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/fish_e.htm>.

²³ World Trade Organization, *Introduction: Agreement on Fisheries Subsidies*, available at: <https://www.wto.org/english/thewto_e/minist_e/mc12_e/briefing_notes_e/bffish_e.htm>.

²⁴ World Trade Organization (2022), *supra* note 20, p. 1.

²⁵ Lennan and Switzer (2023) noted that “to ensure coherence in the application of WTO law, the definition of a subsidy under the AFS draws directly from the ASCM,” *supra* note 21, p. 168.

²⁶ World Trade Organization (2021a,b), *supra* notes 17 and 18.

extend WTO-related matters to environmental issues, something that at one time was considered rather controversial.²⁷ This is a big step.

Article 3 of the AFS addresses IUU fishing, known to be of serious consequence, outlining the cases in which an “affirmative determination” of IUU can be made. This article uses established FAO language to define IUU fishing and has become known as the first of three AFS “pillars.” IUU determinations can be made in response to information provided by another WTO member or an RFMO. This information is to be forwarded to the Committee of Fisheries Subsidies formed under Article 9. Article 3.7 requires that Members put in place “laws, regulations and/or administrative procedures” to ensure that subsidies to vessels engaged in IUU “are not granted or maintained.” Given the critical nature of the IUU issue from both sustainability and organized crime perspectives, progress on this issue alone is noteworthy.²⁸

Article 4 addresses the sustainability issue of overfished stocks (the second AFS pillar) in four sub-articles. Articles 4.1 to 4.3 had been unbracketed in the draft agreement, so this is perhaps no surprise. The articles deal with the overfishing issue in a reasoned fashion, bringing environmental considerations into WTO deliberations in a real way and involving RFMOs and scientific evidence. In this sense, it is a landmark article long envisioned by those advocating that the WTO address fishing subsidies and could potentially serve as a reference point for future efforts to address “non-trade” issues within the organization. However, Article 4.2 states that “a fish stock is overfished if it is recognized as overfished by the coastal Member under whose jurisdiction the fishing is taking place or by a relevant RFMO/A in areas and for species under its competence, based on best scientific evidence available to it.” Some observers have suggested that, despite the nod to “best scientific evidence,” the Article is limited by self-determination of

²⁷ On the general environmental issue, see A. Cosbey and P.C. Mavroidis, *Heavy Fuel: Trade and the Environment in the GATT/WTO Case Law*, 23 *Review of European, Comparative and International Environmental Law*, no. 3 (2014), 288-301. On the fisheries subsidies issue per se, see Chang (2003), *supra* note 5. Grynberg and Rochester (2005) argued quite strongly *against* any environmental considerations. In their words, in such arrangements, “the WTO will venture beyond its traditional competencies,” *supra* note 5, p. 525.

²⁸ For an example of recent research on the IUU issue and its deleterious impacts, see A.E. Stefanus and J.A.E. Vervaele, *Fishy Business: Regulatory and Enforcement Challenges of Transnational and Organized IUU Fishing Crimes*, 24 *Trends in Organized Crime* (2021), 581-604.

overfishing.²⁹ Other observers have pointed out complications that can arise when there are disagreements regarding this evidence.³⁰

Article 5 concerns “other subsidies” related to overcapacity and overfishing (pillar three). This article, unfortunately, differs significantly from the draft text. This appears to have been the result of objections on the part of some “developing” countries and their concerns with special and differential treatment (SDT). The draft version of Article 5.1 stated: “No Member shall grant or maintain subsidies to fishing or fishing related activities that contribute to overcapacity or overfishing.” Draft Article 5.1 also defined nine types of subsidies that were to be covered by the agreement.³¹ The AFS falls far short of this. Article 5.1 of the AFS states: “No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member outside the competence of a relevant RFMO.” In the draft agreement, this AFS Article 5.1 was Article 5.2. So, in essence, Article 5.1 of the draft agreement was *removed*, and any curbing of subsidies contributing to overcapacity or overfishing are limited to the high seas. Consequently, as stated by Bangura and Kromah, the AFS “does not give effect to the mandate on subsidies contributing to overcapacity and overfishing.”³² Commentators have considered this pillar-three failure represents a significant weakness of the FSA, but its practical relevance might be limited.³³

There are other important, related issues here. Recall that the Ministerial Decision accompanying the AFS called for continued negotiations regarding outstanding issues. These outstanding issues arguably include Article 5. Further, Article 12 states: “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*” (emphasis added). It therefore appears that there is a threat mechanism in the AFS that would end

²⁹ See, for example, Lennan and Switzer (2023), *supra* note 21, p. 170.

³⁰ B.M. Hoekman, P. Mavroidis and S. Sasmal, *Managing Externalities in the WTO: The Agreement on Fisheries Subsidies*, 26 Journal of International Economic Law, no. 2 (2023), 271.

³¹ See Reinert (2024), *supra* note 8, Table 2. The combination of a “list approach” and an “effects approach” in the draft Article 5.1 is known as the “hybrid approach” and represented a compromise between advocates of the list and effects approaches.

³² K.Z. Bangura and A.Z. Kromah, *The WTO’s Fisheries Subsidies Agreement: What’s New and What’s Next?*, 14 Global Trade and Customs Journal, no. 10 (2022), 435.

³³ Hoekman, Mavroidis and Sasmal (2023) also noted that, because so little of the annual fisheries catch takes place on the high seas, “Article 5.1 has limited practical relevance,” *supra* note 30, p. 272.

progress made if agreement cannot be reached on what had been draft Article 5.1. There is thus a potential tragedy written into the AFS.

Article 6 addresses specific provisions for least developed country (LDC) members, using much simpler language than the draft agreement and invoking “due restraint.” Lurking behind Article 6, however, was the role of China as a major subsidizer but also (until September 2025) a “developing country” within the WTO system.³⁴ The AFS’s impact on developing countries are further discussed in the next section. Article 7 considers technical assistance and capacity building, and this involves the creation of a voluntary funding mechanism.

Article 8 concerns notification and transparency and is directly related to Article 25 of the ASCM, integrating these two agreements. Article 8 is relatively detailed, requesting information on the kind of fishing activities subsidized, status of fish stocks, conservation and management measures, fleet capacity, fishing vessel identification numbers, and catch data. Article 8 is important. As stated by Hoekman, Mavroidis and Sasmal, “Attaining the objectives of the AFS depend importantly on the domestic regulatory regimes put in place by WTO members and action to identify IUU and overfishing. Transparency obligations, therefore, assume great significance.”³⁵ Relatedly, Article 9 establishes a new Committee on Fisheries Subsidies (CFS) with special responsibilities regarding IUU fishing (under Article 3), notification, and transparency (under Article 8). Article 9.5 links the CFS to the FAO and RFMOs, thereby establishing several relevant inter-organizational relationships anticipated by Young.³⁶

Article 10 concerns dispute settlement, aligning the AFS with the dispute settlement language of WTO law (GATT Articles XXII and XXIII, the Dispute Settlement Understanding, and Article 4 of the ACSM) and using the same language as the draft agreement. As we will discuss below, there are issues with the WTO’s Dispute Settlement Mechanism (DSM) that render Article 10 less than effective. It will also be important to establish inter-organizational relationships for

³⁴ K. Hopewell, *Clash of Powers: US-China Rivalry in Global Trade Governance* (Cambridge University Press, 2020), Chapter 3.

³⁵ Hoekman, Mavroidis and Sasmal (2023), *supra* note 30, p. 273.

³⁶ M.A. Young, *Fragmentation or Interaction: The WTO, Fisheries Subsidies, and International Law*, 8 World Trade Review, no. 4 (2009), 477-515. FAO (2022) also reported that the FSA involves “a specific role for FAO to contribute with technical expertise,” *supra* note 6, p. 129.

any disputes to be resolved, particularly regarding scientific evidence on fisheries sustainability. The logical partner here is the FAO, whose staff has such expertise.

Article 11 differs slightly from the draft agreement and sets out final provisions in the areas of disaster relief, territorial claims, the Law of the Sea, RFMOs, and the ASCM. As previously mentioned, Article 12 represents a threat mechanism related to Article 5 on “other subsidies” (pillar three on overcapacity and overfishing). Failure to address pillar-three issues in the form of “comprehensive disciplines” could result in the complete failure of the AFS in the form of termination, a loss of progress on the first two pillars, and a complete failure to meet SDG fisheries subsidies targets. Consequently, even if the AFS does come into force, it faces an uncertain future.

4. Development Impacts

As discussed in the preceding sections, the AFS represents the first WTO multilateral trade agreement with an explicit environmental focus. For developing countries, however, its implications are complex and contested. On the one hand, the AFS advances the global goal of sustainable fisheries management by prohibiting subsidies that fuel overfishing and IUU fishing. On the other, its incomplete coverage, limited SDT mechanisms, and reliance on dispute settlement procedures raise concerns about its compatibility with the development priorities of developing countries.

Developing countries have long emphasized the significance of fisheries for poverty reduction, food security, and livelihoods. Grynberg and Rochester, writing in the early stages of the negotiations, warned that new disciplines could impose “unnecessary and burdensome” obligations on small coastal states if their interests were not adequately taken into account.³⁷ They argued that, while enhanced subsidy rules were supported by powerful “Friends of Fish” countries and environmental groups, the inadequate articulation of developing country concerns risked undermining their economic development.³⁸ The article underscored the importance of securing

³⁷ Grynberg and Rochester (2005), *supra* note 5, at 503.

³⁸ *Ibid.*

de minimis provisions and carefully designed SDT to safeguard the interests of small and vulnerable economies.³⁹

The de minimis provisions are found in the ASF. Article 3.8 of the AFS exempt subsidies granted within the Exclusive Economic Zone (EEZ) and up to 12 nautical miles from the baseline by developing country members. This de minimis rule appears to be insufficient, as many developing countries rely on distant-water fleets or extended activities outside the EEZ, where the exemption no longer applies. While it is meaningful to incorporate sustainability considerations into trade law, such incorporation indeed risks marginalizing the interests of small and vulnerable developing states. While new disciplines could advance environmental goals, they have also introduced distributive consequences that could deepen existing inequalities in the global fisheries economy. Consideration should be given to potential international assistance with these countries to minimize adverse impact and improve their fishing industries.

In addition, the AFS remains partial and provisional. The significant category of subsidies—capacity-enhancing measures such as fuel support, vessel construction, and modernization—was excluded from binding prohibition. This omission undermines the effectiveness of the AFS in addressing overcapacity and leaves unresolved the most pressing concerns for small-scale fisheries in developing states. De Gama observed that “[t]he vast majority of fuel subsidies are granted to large fleets, which have a knock-on adverse effect on small-scale fisheries that provide the majority of employment in the fisheries sector.”⁴⁰ By failing to discipline the subsidies that most directly contribute to overfishing, the agreement risks producing only limited environmental and developmental benefits.⁴¹

Concerns also arise regarding enforceability. As discussed in the next section, the WTO’s dispute settlement system has been weakened by the paralysis of the Appellate Body, thus it is ill-suited for resolution of a dispute arising from the application of the AFS. Even if the system were to be functional, the high costs of litigation, the political risks of challenging major subsidizers, and the limited efficacy of authorized retaliation would make recourse to dispute settlement

³⁹ *Ibid.*

⁴⁰ M. De Gama, *Fisheries Subsidies, the WTO, and Sustainability*, 27 *Journal of International Economic Law*, no. 4 (2024), 680.

⁴¹ *Ibid.*

improbable for smaller developing countries. As commentators have observed, subsidies disputes already have among the highest rates of non-compliance in WTO history.⁴² Without credible enforcement, developing countries may find themselves complying with new rules while lacking effective remedies against major subsidizers, reinforcing asymmetries within the system.

The question of SDT lies at the heart of these concerns. The AFS provides some transitional flexibilities, calls for “due restraint” in initiating disputes against LDCs, and offers technical assistance. Yet, Fenghua Li and Haibin Zhu argue that the traditional binary approach to SDT—separating members into “developed” and “developing” categories—is increasingly untenable.⁴³ Many of the largest subsidizers, including China (until September 2025), India, and Mexico, are self-declared developing countries responsible for the majority of global harmful subsidies.⁴⁴ In such a context, unconditional SDT risks perpetuating overfishing rather than promoting sustainability. Li and Zhu propose instead a system of conditional SDT, linking flexibilities to objectively verifiable criteria such as the scale of subsidization, the degree of management capacity, and the contribution to global overcapacity.

Indeed, such an approach would more effectively align development needs with sustainability objectives.⁴⁵ While developing countries legitimately may seek policy space to exploit marine resources for development, unqualified exemptions may create precisely the “tragedy of the commons” which the AFS seeks to avoid.⁴⁶ Without carefully designed conditionality, the AFS may fail to advance either sustainability or development. Unconditional SDT has long been a source of controversy not only in the fisheries context under the AFS but also more broadly across the multilateral trading system. Granting automatic and indefinite flexibilities to all self-declared developing countries risks undermining both the credibility and the effectiveness of WTO disciplines. To address this problem, Yong-Shik Lee has advanced the

⁴² K. Auld, L. Del Savio and L. Feris, *An Environmental Agreement in a Trade Court – Is the WTO's Agreement on Fisheries Subsidies Enforceable?*, 24 *World Trade Review*, no. 1 (2025), 27.

⁴³ F. Li and H. Zhu, *Embedding Conditionality in the Special and Differential Treatment in WTO Disciplines on Fisheries Subsidies to Achieve Fishery Sustainability*, *World Trade Review* (First View, 2025), 2.

⁴⁴ According to an estimate, the harmful subsidies to fisheries provided by developing countries account for 72 percent of global fisheries subsidies. *Ibid.*, at 5.

⁴⁵ *Ibid.*, at 17.

⁴⁶ *Ibid.*, at 6.

concept of the “development-facilitation subsidy” (DFS) and proposed that SDT be applied on a “sliding scale,” calibrated to objectively measurable indicators such as per capita income.⁴⁷

The AFS’s developmental stakes are considerable. Fisheries provide essential nutrition and income for millions in Asia and Africa, often in small-scale and artisanal settings. Commentators emphasize that the SDT mandate in the 2005 Hong Kong Ministerial Declaration recognized that subsidy disciplines must be “integral” to development concerns such as poverty reduction, livelihood protection, and food security.⁴⁸ Unless such concerns are built into the structure of the AFS, the agreement indeed risks constraining policy space without addressing the asymmetries between major subsidizers and vulnerable economies. Yet, the current agreement leaves intact the most distortive subsidies by large subsidizers. By prohibiting certain categories without addressing the most harmful forms of support, the AFS risks deepening global inequalities in fisheries governance. Small developing states may face restrictions on policy tools for supporting their fisheries sectors, while industrial fleets from larger economies continue to benefit from substantial subsidies. This asymmetry undermines both fairness and sustainability.

The sunset clause in Article 12, as discussed in the preceding section, further compounds these uncertainties for developing countries. Unless comprehensive disciplines on capacity-enhancing subsidies are adopted within four years of entry into force, the AFS will automatically terminate. This provision is both an incentive and a risk: while it creates urgency for further negotiations, it also embeds instability into the agreement. For developing countries, this uncertainty undermines long-term planning, discourages investment in monitoring and management, and weakens the credibility of international commitments. It also risks eroding trust in the multilateral trading system, as the very countries most reliant on predictable rules for their development strategies are left vulnerable to shifting outcomes. The instability created by a potential automatic termination may also embolden major subsidizers to delay concessions, knowing that the agreement could collapse in the absence of consensus.

⁴⁷ Y.S. Lee, *Facilitating Development in the World Trading System: A Proposal for Development Facilitation Tariff and Development Facilitation Subsidy*, 38 *Journal of World Trade*, no. 2 (2004), 948-953. See also Y.S. Lee, *Reclaiming Development in the World Trading System* (3rd ed., Cambridge: Cambridge University Press, 2016), pp. 96-101.

⁴⁸ Lennan and Switzer (2023), *supra* note 21, at 167.

In sum, the AFS is a landmark achievement in bringing environmental sustainability into the WTO framework, but its impact on developing countries remains ambivalent. It addresses urgent concerns such as IUU fishing and overfished stocks, yet it fails to discipline the most harmful subsidies, provides only limited and ill-defined SDT, and relies on a dispute settlement system inaccessible to most small states. Unless future negotiations embed conditional SDT, strengthen technical and financial assistance, and ensure effective enforcement, the AFS may constrain policy space for developing countries while leaving intact the subsidies of the most powerful.

5. Systemic Issues

As is clear to any observer of international affairs, the rules-based, multilateral trading system is under sustained assault.⁴⁹ This issue is beyond the scope of this article but nonetheless deserves mention due to its implications for the AFS, as well as fisheries sustainability more generally. Beginning in the first US Trump administration and continuing through the subsequent US Biden administration, the US government rendered the Appellate Body stage of the WTO's DSM inoperable.⁵⁰ This allowed any WTO member unsatisfied with the outcome of WTO Panels to "appeal into the void" of a missing Appellate Body. This has significant implications for the WTO as a whole but also for AFS Article 10, rendering it ineffective. As stated by Lennan and Switzer, "part of the attraction in using the WTO to address fisheries subsidies stemmed from the Organization's dispute settlement mechanism, which possesses stronger powers of enforcement than other multilateral fora."⁵¹ This hope has dimmed.

Beginning in the second US Trump administration, the US government began to take an even more hostile posture towards the WTO. As noted by Horn and Mavroidis, the United States has violated its negotiated tariff bindings, violated the most-favored nation (MFN) principle, abandoned multilateral negotiations in favor of bilateral "deals," stopped paying its dues, and

⁴⁹ K. Hopewell, *Unravelling of the Trade Legal Order: Enforcement, Defection and the Crisis of the WTO Dispute Settlement System*, 10 *International Affairs*, no. 3 (2025), 1103-1117.

⁵⁰ B.M. Hoekman and P.C. Mavroidis, *To AB or Not to AB? Dispute Settlement in WTO Reform*, 23 *Journal of International Economic Law*, no. 3 (2020), 703-722.

⁵¹ Lennan and Switzer (2023), *supra* note 21, p. 166.

continued to block appointments to the Appellate Body.⁵² The hostility of such a main player (no less one who helped to design the system) will have implications for the effective functioning of the organization, including the AFS.

As reported in Sumaila *et al.*, fisheries subsidies are highly concentrated among relatively few countries.⁵³ At the top of the list in order of importance are China, the European Union, the United States, South Korea, Japan and Russia. Of these six, China is by far the biggest user of subsidies. While Hoekman, Mavroidis and Sasmal interpreted the concentration of fisheries subsidies among a small number of countries as an opportunity for plurilateral agreements to complement the AFS given, the countries involved and the lack of overlapping interests in multiple arenas, this possibility seems unlikely.⁵⁴

6. Conclusion

Bangura and Kromah stated that the AFS “represents a victory for the WTO, especially at a time in which the organization’s vitality was being called into question.”⁵⁵ That is indeed the case. The AFS has addressed IUU fishing, overfished stocks, and overcapacity and overfishing on the high seas. This has important implications for the sustainability of the world’s fisheries. For example, in its 2024 annual report, the FAO called for “ensuring that countries comply with the World Trade Organization Agreement on Fisheries Subsidies, particularly its provisions prohibiting subsidies linked to overfished stocks and illegal, unreported and unregulated fishing.”⁵⁶

Nonetheless, as noted by Hoekman, Mavroidis and Sasmal, the AFS was an “early harvest” where agreements could be reached.⁵⁷ This early harvest involves a number of weaknesses. The threat mechanism of Article 12 points to a significant limitation of the AFS. The failure of Article 5 to address overcapacity and overfishing within countries’ jurisdictions remains a serious issue. In this regard, it is worth recalling that SDG 14.6 gave a mandate to conclude the AFS explicitly

⁵² H. Horn and P. Mavroidis, “Why the US and the WTO Should Part Ways,” CEPR/VoxEU, June 25 (2025). These authors stated: “The US was a driving force behind the creation of the GATT/WTO. However, it has long since abandoned its leadership role in the WTO.... In the choice of whether the US should or should not be a member, the burden of proof should fall on those who argue in favour of retaining the US as a member.”

⁵³ Sumaila *et al.* (2019), *supra* note 3.

⁵⁴ Hoekman, Mavroidis, and Sasmal (2023), *supra* note 30, p. 282.

⁵⁵ Bangura and Kromah (2022), *supra* note 32, p. 435.

⁵⁶ FAO (2024), *supra* note 2, p. xxv.

⁵⁷ Hoekman, Mavroidis, and Sasmal (2023), *supra* note 30, p. 267.

mentioned “prohibiting certain forms of fisheries subsidies that contribute to overcapacity and overfishing.” While the first two pillars have been addressed, this third pillar in the form of overcapacity and overfishing not only on the high seas but within countries’ jurisdictions remains incomplete. This is a challenge that needs to be met, and the durability of the whole AFS depends on the WTO’s ability to do so. As stated by Hoekman, Mavroidis and Sasmal:⁵⁸

The restricted focus on subsidies for IUU activities means that the AFS can only improve matter to a limited extent, given that most subsidized fishing activity is not illegal, unregulated, or unreported. From both an environmental and competitiveness perspective, much therefore depends on the willingness of negotiators to agree to meaningful disciplines in the coming years on capacity-enhancing subsidies that generate competitive distortions and overfishing.

Unfortunately, as previously stated, the WTO is struggling to survive a number of significant pressures that will impinge on the success of the AFS. The future of sustainable fisheries might be less than was hoped for in 2022 with the success of the AFS negotiation process. Much remains to be done on the subsidy front to ensure sustainable fisheries.

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⁵⁸ *Ibid.*, p. 276.

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Table 1: The Text of the Fisheries Subsidies Agreement

<i>Article</i>	<i>Topic</i>	<i>Content</i>	<i>Comments</i>
1	Scope	“Applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.”	Article 1 of the agreement ties it to the ASCM and its language regarding “specificity.” The draft agreement had extended the application to fuel subsidies in bracketed text, but this was not included in the final agreement.
2	Definitions	Definitions are provided for the terms “fish,” “fishing,” “fishing related activities,” “vessel,” and “operator.”	“Fishing related activities” is given a relatively large scope that spans the fishing value chain.
3	Subsidies Contributing to Illegal, Unreported, and Unregulated Fishing (Pillar One)	<p>3.1: “No Members shall grant or maintain any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.”</p> <p>3.2 to 3.6: Definition of IUU fishing stated in terms of “affirmative determination” and the details of such determinations and notification procedures to a newly formed Committee on Fisheries Subsidies (Article 9). This process involves RFMOs.</p> <p>3.7: “Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies... are not granted or maintained.”</p> <p>3.8: Special and differential treatment in the form of a two-year transitional period for “developing” and “least-developed” WTO members within their exclusive economic zones (EEZs).</p>	Articles 3.1 to 3.7 are the result of significant progress on what is widely regarded as a critical issue in fisheries sustainability. Article 3.8 on special and differential treatment had been bracketed in the draft agreement.

<i>Article</i>	<i>Topic</i>	<i>Content</i>	<i>Comments</i>
4	Subsidies Regarding Overfished Stocks (Pillar Two)	<p>4.1: “No member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.”</p> <p>4.2: Definition of ‘overfished’ that includes the involvement of RFMOs and “best scientific evidence.”</p> <p>4.3: “A Member may grant or maintain subsidies... if such subsidies or other measures are implemented to rebuild the of the stock to a biologically sustainable level” as determined by a Member of a RFMO and involving maximum sustainable yield (MSY) measures.</p> <p>4.4: Special and differential treatment in the form of a two-year transitional period for “developing” and “least-developed” WTO members within their exclusive economic zones (EEZs).</p>	Article 4 addresses the sustainability issue in a reasoned fashion, bringing environmental considerations into WTO deliberations in a real way and involving RFMOs and scientific evidence. In this sense, it is a landmark article long envisioned by those advocating that the WTO address fishing subsidies.
5	Other Subsidies (Pillar Three)	<p>5.1: “No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member out outside the competence of a relevant RFMO.”</p> <p>5.2: “A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member’s flag.”</p> <p>5.3: “A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.”</p>	<p>Even though Article 5.1 was not bracketed in the draft text, the final text differs from the bracketed text. The draft text had identified nine subsidy types that contribute to overcapacity and overfishing and provided definitions of overcapacity and overfishing.</p> <p>The draft text of Article 5.2 had been stated in terms of “no Member shall grant,” but this has been changed to “take special care and exercise due restraint.”</p>

<i>Article</i>	<i>Topic</i>	<i>Content</i>	<i>Comments</i>
6	Specific Provisions for LDC Members	“A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of the LDC Member involved, if any.”	The draft agreement included Articles 6.1 to 6.3, some of which were bracketed. The final text is much simpler.
7	Technical Assistance and Capacity Building	“Targeted technical assistance and capacity building assistance to developing country members, including LDC members shall be provided.... A voluntary WTO funding mechanism shall be established....”	This is standard for WTO agreements, but the entire text was bracketed in the draft agreement.
8	Notification and Transparency	8.1: Notification requirements under Article 25 of the ASCM with details. 8.2: IUU reporting requirements. 8.3: Implementation and administration of the agreement. 8.4: Description of fisheries legal regime. 8.5: Information requests from other members. 8.6: Information on RFMO membership with additional details. 8.7: Relationship to GATT94 and the ASCM. 8.8: Confidential information.	The stated purpose here in Article 8.1 is the “effective surveillance of the implementation of fisheries subsidies commitments.” Linking AFS notifications to the ASCM is notable, as it the informational link to RFMOs.
9	Institutional Arrangements	9.1: “There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members.” 9.2: “The Committee shall examine all information pursuant to Articles 3 and 8 and this Article.” 9.3: Annual review. 9.4: Review of operation of the AFS. 9.5: Relationships with other organizations.	The establishment of a committee to oversee the AFS is notable. Article 9.2 gives special importance to IUU fishing in Article 3.

<i>Article</i>	<i>Topic</i>	<i>Content</i>	<i>Comments</i>
10	Dispute Settlement	Linkage to the Dispute Settlement Mechanism under both GATT94 and the ASCM.	Standard for nearly all WTO agreements and exactly the same as the draft agreement.
11	Final Provisions	11.1: Subsidies under disaster relief. 11.2: Territorial claims. 11.3: Relationship to the Law of the Sea. 11.4: Relationship to RFMOs. 11.5: Relationship to ASCM.	Relatively close to the draft agreement and quite standard.
12	Termination of Agreement if Comprehensive Discipline Are Not Adopted	“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.”	Article 12 was not part of the draft text and appears to function as something of a threat mechanism to ward against WTO Members not taking it seriously enough and to give impetus to further negotiations.

Source: World Trade Organization (2022).