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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION

REPORT ON THE AGREEMENT ON FISHERIES SUBSIDIES

		NATIONAL ASSEMBLY RECEIVED
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DAY: Thursday		
TABLED BY:	<i>Hon. Kongogo Bowen, MP Chairperson</i>	SPEAKER'S OFFICE P. O. Box 41842, NAIROBI.
CLERK-AT THE-TABLE:	<i>A. Shibuka</i>	

**CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI**

APRIL 2025

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LIST OF ABBREVIATIONS AND ACCRONYMS

IUU	Illegal, Unregulated and Unreported Fishing
RFMO	Regional Fisheries Management Organization
WTO	World Trade Organizations
MDAs	Ministries, Departments and Agencies
FAO	Food and Agriculture Organization
IFAD	International Fund for Agricultural Development
LDCs	Least Developed Countries
SDG	Sustainable Development Goal
GATT	General Agreement on Tariffs and Trade
MC	Ministerial Conference
SDT	Special and Differential Treatment
UN	United Nations
NTNC	National Trade Negotiation Council

CHAIRPERSON'S FOREWORD

This report contains proceedings of the Departmental Committee on Blue Economy, Water and Irrigation on its consideration of the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies).

The Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) was tabled in the National Assembly on 19th June, 2024 and consequently referred to the Committee pursuant to the provisions of Standing Order 170A. The Committee is required to facilitate public participation and make appropriate recommendations on whether the House should approve, approve with reservations or reject ratification of the agreement. The Agreement is intended to reduce trade distortions, prevent disruptions in fish trade and promote sustainability in the fishing industry.

The Agreement was adopted during the WTO's Twelfth Ministerial Conference in June 2022. It seeks to discipline harmful fisheries subsidies that contribute to overfishing, illegal, unregulated and unreported fishing (IUU fishing), and unsustainable fishing practices, thereby promoting trade fairness and environmental conservation.

An invitation for submission memoranda from the public was issued through advertisements in the print media on Friday, 15th November 2024. The Committee did not receive any memoranda from the public. However, vide a letter REF: NA/DDC/BEW&I/2025/004 dated Tuesday, 18th March 2025, the Committee invited the following stakeholders for engagement on the agreement:

- i. The State Department for Trade;
- ii. The State Department for Blue Economy and Fisheries;
- iii. The Office of the Attorney- General;
- iv. The State Department for Foreign Affairs; and
- v. The National Treasury.

The Committee held six (6) meetings, both in-house and stakeholder engagements and recommends that the House **approves** the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies).

The Committee is grateful to the office of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it in the execution of its mandate.

Finally, I express my appreciation to Members of the Committee and the Committee Secretariat for their patience, sacrifice, endurance and commitment to the assignment, which enabled the Committee to complete the task within the stipulated period.

It is therefore my pleasant duty and privilege, on behalf of the Departmental Committee on Blue Economy, Water and Irrigation to table its Report on the consideration Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) for consideration and adoption by the House.

Hon. Bowen Kangogo, M.P., C.B.S

Chairperson, Departmental Committee on Blue Economy, Water and Irrigation

PART I

I.0 PREFACE

I.1 Establishment of the Committee

- I. The Departmental Committee on Blue Economy, Water and Irrigation is one of the twenty Departmental Committees of the National Assembly established under Standing Order 216 whose mandates pursuant to the Standing Order 216 (5) are as follows:
 - i. **To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;**
 - ii. *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
 - iii. *On a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
 - iv. *To study and review all legislation referred to it;*
 - v. *To study, assess and analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
 - vi. *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
 - vii. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
 - viii. *To examine treaties, agreements and conventions;*
 - ix. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
 - x. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
 - xi. *To examine any questions raised by Members on a matter within its mandate.*

I.2 Subjects of the Committee

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider matters of: use and regulation of water resources, irrigation, fisheries development including promotion of aquaculture, fish farming, marine fisheries, the sustainable use of ocean resources for economic growth and improved livelihoods, except seaports and marine transport.
3. In executing its mandate, the Committee oversees the following government ministries and departments and agencies (MDAs), namely:
 - i. The State Department for Water and Sanitation
 - ii. The State Department for Irrigation
 - iii. The State Department for Blue Economy and Fisheries

1.3 Committee Membership

4. The Committee was constituted by the House on 27th October, 2022 and comprises of the following Members:

Chairperson

Hon. Bowen Kangogo, MP., CBS
Marakwet East Constituency

United Democratic Alliance Party

Vice- Chairperson

Hon. Kemero Maisori Marwa, MP
Kuria East Constituency

United Democratic Alliance Party

Hon. Mohamed Abdikadir Hussein, MP
Lagdera Constituency

Orange Democratic Movement

Hon. Tandaza Kassim Sawa, MP
Matuga Constituency

Amani National Congress

Hon. Chepkwony Charity Kathambi, MP
Njoro Constituency

United Democratic Alliance Party

Hon. William Kamket, MP
Tiaty Constituency

KANU

Hon. Buyu Rozaah Akinyi, MP
Kisumu West Constituency

Orange Democratic Party

Hon. Eng. Paul Nzengu, MP
Mwingi North Constituency

Wiper Democratic Party

Hon. Were Charles Ong'ondo, MP
Kasipul Constituency

Orange Democratic Party

Hon. Dorothy Muthoni Ikiara, MP
Nominated

United Democratic Alliance Party

Hon. Nebart Bernard Muriuki, MP
Mbeere South Constituency

Independent Member

Hon. Mnyazi Amina Laura, MP
Malindi Constituency

Orange Democratic Movement

Hon. Adow Mohamed Aden, MP
Wajir South Constituency

Orange Democratic Party

Hon. Eric Wamumbi, MP
Mathira Constituency

United Democratic Alliance Party

Hon. George Gachagua, MP
Ndaragwa Constituency

United Democratic Alliance Party

1.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

Mr. Nicodemus K. Maluki
Clerk Assistant I/Head of Secretariat

Ms. Ivy Kageha
Clerk Assistant III

Dr. Benjamin Ngimor
Principal Fiscal Analyst

Ms. Lynette A. Otieno
Senior Legal Counsel

Ms. Veron D. Aluoch
Research Officer III

Ms. Joyce Wachera
Hansard Officer

Mr. Allan Gituku
Sergeant-At-Arms

Ms. Fridah Ngari
Media Relations Officer

Mr. Eugene Luteshi
Audio Officer

PART II

2.0 CONSIDERATION OF THE PROTOCOL

2.1 Background information

6. The Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) was tabled in the National Assembly on 19th June, 2024 and consequently referred to the Committee. The Agreement is intended to reduce trade distortions, prevent disruptions in fish trade, and promote sustainability in the fishing industry. Pursuant to Standing Order 170A, the Committee is required to facilitate public participation and make appropriate recommendations on whether the House should approve, approve with reservations or reject ratification of the Agreement.

2.2 Legal and Institutional Framework

2.1.1 Constitutional and Legal Basis

7. Article 2(6) of the Constitution read together with the Treaty Making and Ratification Act (Cap.4D) provides the foundation for incorporating international treaties into domestic law. The National Assembly plays a critical role in ratification, ensuring conformity with constitutional values and public interest.
8. Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the law of Kenya while Article 2(6) of the Constitution provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.
9. The Treaty Making and Ratification Act, Cap.4D that governs the making and ratification of treaties in Kenya, gives effect to Article 2(6) of the Constitution. Section 2 of the Act defines a treaty as an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention.
10. Under section 7 Cap.4D, where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State Department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—
 - a) the objects and subject matter of the treaty;
 - b) any constitutional implications including—
 - i. any proposed amendment to the Constitution; and
 - ii. that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
 - c) the national interests which may be affected by the ratification of the treaty;
 - d) obligations imposed on Kenya by the treaty;
 - e) requirements for implementation of the treaty;
 - f) policy and legislative considerations;
 - g) financial implications;

- h) ministerial responsibility;
- i) implications on matters relating to counties;
- j) the summary of the process leading to the adoption of the treaty;
- k) the date of signature;
- l) the number of states that are party to the treaty;
- m) the views of the public on the ratification of the treaty;
- n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

2.1.2 Role of the National Assembly

11. Section 8(1) of the Treaty Making and Ratification Act provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.
12. Standing Order (170A) further outline procedures for public participation and reporting by Parliamentary Committees as follows-
 - 170A.** (1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration.
 - (2) The Committee shall undertake public participation before submitting its report to the House.
 - (3) In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—
 - (a) the social and environmental impact of the treaty in the short-term, medium-term and long-term; and,
 - (b) the nature and evidence of any public participation conducted on the treaty.
 - (4) The report of the committee to the House shall include—
 - (a) information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;
 - (b) the findings of the committee on the treaty and any other information the committee may deem necessary; and
 - (c) a recommendation that the House—
 - (i) approves the ratification of the treaty, or
 - (ii) approves the ratification of the treaty with reservations, or
 - (iii) rejects the ratification of the treaty.
 - (5) In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each

reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the Treaty.

(6) Upon decision of the House on a treaty the Clerk shall, within seven days, notify the relevant Cabinet Secretary and enter the information in the register of treaties.

2.2 Overview of the Agreement on Fisheries Subsidies

13. The Agreement was adopted during the WTO's 12th Ministerial Conference in June 2022. It seeks to discipline harmful fisheries subsidies that contribute to overfishing, IUU fishing (illegal, unregulated and unreported fishing), and unsustainable fishing practices, thereby promoting trade fairness and environmental conservation.

2.3 Key Provisions of the Agreement

Article	Key Focus	Summary
1–2	Scope & Definitions	Applies to marine wild capture fishing. Excludes aquaculture and inland fisheries. Definitions include fish, fishing, operator and vessel.
3	IUU Fishing	Prohibits subsidies to operators engaged in Illegal, Unreported, and Unregulated fishing. Includes procedural safeguards and a 2-year grace period for developing countries.
4	Overfished Stocks	Prohibits subsidies on overfished stocks unless tied to sustainability programs.
5	Other Subsidies	Bans subsidies for unregulated high seas fishing. Cautions against subsidies to foreign-flagged vessels or for unassessed stocks.
6	Special Provisions for LDCs	Promotes due restraint in enforcement against Least Developed Countries (LDCs).
7	Technical Assistance	Provides for capacity building and voluntary funding through WTO, FAO, and IFAD.
8	Transparency & Notification	Requires regular reporting of subsidies, stock status, management practices, and catch data.
9	Institutional Arrangements	Establishes a Committee on Fisheries Subsidies for monitoring, review, and implementation oversight.
10–11	Dispute Settlement	Applies WTO dispute mechanisms. No unilateral actions allowed.
12	Termination Clause	Agreement lapses if comprehensive disciplines are not adopted within four years.

PART III

3 PUBLIC PARTICIPATION/ STAKEHOLDER ENGAGEMENT

3.1 Call for submission of memoranda from public

14. The Committee placed an advertisement in two national dailies on Friday, 15th November 2024, pursuant to provisions of article 118(1) (b) of the Constitution on public participation and Section 8(3) of Treaty Making and Ratification Act, 2012 calling for submission of memoranda on the subject matter. By close of the deadline, the Committee had not received any memoranda on the Agreement. Further, vide a letter REF: NA/DDC/BEW&I/2025/004 dated Tuesday, 18th March, 2025 inviting stakeholders for a meeting, the Committee met with relevant stakeholders;
- i. The State Department for Trade;
 - ii. The State Department for Blue Economy and Fisheries;
 - iii. The Office of the Attorney-General;
 - iv. The State Department for Foreign Affairs; and
 - v. The National Treasury.

3.2 State Department for Blue Economy and Fisheries

A delegation from the State Department for Blue Economy and Fisheries led by Dr. Daniel Makilla, Director Blue Economy and Fisheries appeared before the Committee on Monday, 24th March 2025 and submitted as follows:

15. The objective was to apprise Members of Parliament on the significance of the Agreement and to seek approval for Kenya's ratification, in accordance with Section 8 of the Treaty Making and Ratification Act, Cap. 4D.
16. The Agreement on Fisheries Subsidies was concluded and adopted on Friday, 17th June 2022 during the twelfth (12th) WTO Ministerial Conference (MC12) in Geneva, Switzerland. The Committee was informed that the Agreement fulfills commitments made under the eleventh (11th) Ministerial Conference (MC11) and is in line with Sustainable Development Goal (SDG) 14.6. The Committee was informed that the Agreement applies to marine wild capture fishing and fishing-related activities in oceans and seas, and that aquaculture and inland fisheries were excluded from the scope of the Agreement.
17. The State Department reported that the Agreement was as a result of intensive negotiations and consensus building among WTO members, with Kenya actively participating in the process. It was noted that for the Agreement to come into force, it required ratification by two-thirds of the one hundred and sixty four (164) WTO

member states, equivalent to one hundred and eleven (111) members. As of March 20, 2025, ninety (90) member states had accepted and signed, and eighty six (86) had already ratified the Agreement. It was further noted that the Agreement does not permit reservations in respect to any of its provisions.

18. The Committee was informed that the objectives of the Agreement were to promote sustainable and responsible fishing, prevent overfishing and overcapacity, and protect global marine resources. It was emphasized that the Agreement seeks to balance the livelihoods of fishing communities with the need to maintain healthy marine ecosystems. Furthermore, it was reported that the Agreement aims to ensure a level playing field in international fisheries trade by addressing distortive subsidies.
19. The Committee was further briefed on data from the Food and Agriculture Organization (FAO), which showed that global fish stocks were at risk due to overexploitation, with implications for poverty and food security. It was noted that all UN Member States, including Kenya, had adopted the 2030 Agenda for Sustainable Development, and the Agreement was directly aligned with SDG 14, focused on marine sustainability.
20. The Committee was informed of the following salient features of the Agreement;
 - i. A ban on subsidies for vessels or operators engaged in IUU (Illegal, Unreported, and Unregulated) fishing;
 - ii. A ban on subsidies for fishing related to overfished stocks;
 - iii. Special and Differential Treatment (SDT) provisions for developing countries and Least Developed Countries (LDCs);
 - iv. Provision of targeted technical assistance and capacity building to support implementation.
21. Further, the Committee was informed that upon ratification, Kenya would be obligated to;
 - i. Enact or align laws and administrative procedures to ensure harmful subsidies are not granted or maintained;
 - ii. Prohibit subsidies to vessels or operators involved in IUU fishing;
 - iii. Prohibit subsidies targeting overfished stocks;
 - iv. Report regularly to the WTO on fisheries subsidies and submit a description of the national fisheries regime, referencing relevant legal and administrative frameworks.
22. In addition, the state Department noted that Kenya stood to gain various benefits, including;
 - i. Sustainable fisheries management for food security, biodiversity, and poverty reduction;

- ii. Reduction of trade distortion by eliminating unfair subsidies;
 - iii. Avoidance of trade disruptions by curbing overfishing and overcapacity;
 - iv. Long-term sustainability of the fishing industry;
 - v. Flexibility in implementation for developing countries;
 - vi. Access to technical assistance and capacity building;
 - vii. Promotion of constitutional objectives under Articles 60(1) (e) and 69(1) (a) of the Constitution of Kenya concerning sustainable resource use and equitable benefit sharing.
23. The Committee was informed that there were no financial implications, as implementation would be covered under existing annual budgets of relevant Ministries and Departments. Additionally, there were no legal implications, since the Agreement is consistent with the Constitution and did not require new legislation or amendments.
24. In conclusion, the State Department emphasized the need for Kenya to ratify the Agreement to enjoy the anticipated benefits. The Committee was therefore requested to:
- i. Note the contents of the memorandum;
 - ii. Approve Kenya's ratification of the WTO Agreement on Fisheries Subsidies in its entirety, without reservations, in line with the Treaty Making and Ratification Act (Cap 4D).

3.3 State Department for Trade

Ms. Rose Masita, the Deputy Director, State Department for Trade appeared before the Committee on behalf of the Department on Monday, 24th March 2025 and briefed on the Agreement on Fisheries Subsidies as follows:

25. The World Trade Organization (WTO) is the international body responsible for setting rules governing trade between nations. She reported that the WTO, established on 1st January 1995 as the successor to the General Agreement on Tariffs and Trade (GATT), aims to improve living standards, promote sustainable development, and create employment opportunities through trade. By 30th August 2024, the WTO had one hundred and sixty six (166) members, accounting for 98% of global trade.
26. The WTO performs several functions, including administering trade agreements, facilitating trade negotiations, resolving disputes, monitoring trade policies, providing technical assistance to developing countries, and cooperating with other international organizations. Kenya had been a WTO member since 1st January, 1995 and had previously joined GATT in 1964.
27. In regards to the problem analysis, the Committee was further informed that overexploitation of fish stocks, as reported by the Food and Agriculture Organization

- (FAO), posed a global threat to food security, poverty reduction, and marine sustainability. Sustainable Development Goal (SDG) 14, emphasizes conservation and sustainable use of oceans and marine resources. It was noted that the 11th WTO Ministerial Conference in 2017 had tasked members with eliminating fisheries subsidies contributing to overfishing, overcapacity, and illegal, unreported, and unregulated (IUU) fishing.
28. The Agreement on Fisheries Subsidies was adopted at the 12th WTO Ministerial Conference in June 2022. The Agreement's main goal is to promote sustainable fishing by curbing harmful subsidies, protecting marine resources, and ensuring fairness in global fisheries trade. The Agreement focuses on marine wild capture fishing and excluded aquaculture and inland fisheries.
 29. Further, it was noted that the Agreement aims to balance the livelihoods of fishing communities with the need to maintain ocean health. The Agreement seeks to prevent market distortions by prohibiting subsidies that provide unfair advantages. The Agreement includes specific provisions banning subsidies for vessels involved in IUU fishing and for fishing activities targeting overfished stocks. Special and Differential Treatment (SDT) provisions are highlighted, offering flexibility and extended timelines for implementation by developing and least-developed countries (LDCs). The Agreement also promises technical assistance and capacity building for these nations.
 30. Upon ratification, Kenya will be required to implement laws and procedures to eliminate harmful subsidies, report regularly on subsidy practices, and provide descriptions of its fisheries regime. Kenya viewed the Agreement as aligned with its Blue Economy agenda, given the sector's contribution to employment and potential impact on GDP. Currently, over 15,000 anglers and over 45,000 individuals across the value chain were engaged in the sector.
 31. It was emphasized that ratifying the Agreement would help Kenya enhance food security, reduce poverty, conserve biodiversity, and promote sustainable fisheries. The Agreement would also help reduce trade distortions, avoid disruptions in fish trade, and support long-term sustainability of the fishing industry. The Agreement is seen as supportive of economic development and inclusive of the needs of developing nations.
 32. The Agreement is aligned with the Kenyan Constitution, particularly Articles 60 and 69, which promotes environmental sustainability and equitable resource sharing. Additionally, it was noted that no constitutional or legislative amendments would be necessary for implementation.
 33. It was clarified that the obligations under the Agreement would fall under the purview of the National Government. It was noted that the implementation would not require additional funding beyond existing budget allocations. It was explained that Kenya would benefit from technical and capacity building assistance provided under the Agreement.

34. Responsibilities for implementation were said to be distributed among several ministries and offices. The Ministry of Investments, Trade and Industry would coordinate implementation and communicate with the WTO, while the Ministry of Mining, Blue Economy and Maritime Affairs would oversee execution. The Office of the Prime Cabinet Secretary and Ministry of Foreign and Diaspora Affairs would handle ratification procedures, and the National Treasury would allocate funds. The State Law Office would provide legal guidance.
35. The Agreement would only come into force once two-thirds of WTO members i.e. one hundred and eleven (111) members had submitted instruments of acceptance. As of 20th March 2025, ninety-four (94) members had done so, with seventeen (17) more still required. It was noted that Kenya had initiated its ratification process, having received Cabinet approval on April 2024. The Agreement and accompanying memorandum were submitted to the National Assembly on 18th June, 2024 for approval.
36. As regards public participation on the Agreement, the State Department informed the Committee that it being an international Agreement, this was undertaken at the Ministerial Conference level and subsequent negotiations between countries. Ministerial Conference (MC) is the highest decision-making organ in the World Trade Organization (WTO) and it meets biennially. Since, its establishment in 1995, WTO has held eleven (11) Ministerial Conferences and taken decisions on specific multilateral trade issues, as well as provided direction on outstanding/protracted issues.
37. Before the 12th Conference that adopted the Fisheries Subsidies Agreement, the last Ministerial Conference (MC11) was held in Buenos Aires in 2017. The 12th Ministerial Conference was held in Switzerland, Geneva from 12th June to 15th June, 2022 and was co-chaired by Kazakhstan Minister of Trade and Integration. The Conference was postponed twice owing to the outbreak of the COVID 19 Pandemic.
38. In preparation for the 12th Conference, the Kenya National Trade Negotiations Council (NTNC) held a preparatory workshop at the Lake Naivasha Resort from 3rd to 6th June 2022 with a view to develop Kenya's position for use during MC12. The State Department for Trade and Enterprise Development organized the workshop with support from Trademark East Africa (TMEA), incorporated various stakeholders. The purpose of the Workshop was to bring together Kenya's Geneva-based Economic Counsellors and Kenya's trade negotiators under the NTNC with a view to; review the Kenyan Position for the MC12 & General Statement, Thematic Statements; align the country Position Paper with the WTO negotiations state of play; and review of MC12 outcome document and update Kenya's positions in thematic areas including on the Fisheries Subsidies

3.4 State Department for Foreign and Diaspora Affairs

Ambassador Elphas M. Barire representing the State Department for Foreign and Diaspora Affairs appeared before the Committee on behalf of the Department on

Monday, 24th March 2025 and briefed on the Agreement on Fisheries Subsidies as follows:

39. The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organization (WTO) Ministerial Conference (MC12), which took place in Geneva, Switzerland, on 17th June, 2022. It was stated that the Agreement delivered on the mandate given to Members during the 11th Ministerial Conference (MC11) and aligned with Sustainable Development Goal (SDG) 14.
40. The Agreement applies to marine wild capture fishing and related activities at sea or in the ocean, while aquaculture and inland fisheries are said to be excluded from its scope. Reports indicated that all one hundred and sixty four (164) WTO Members were party to the Agreement and that it would enter into force upon ratification by two-thirds of the members. However, at present, only sixty eight (68) WTO Members had ratified the Agreement. The Agreement does not permit reservations on any of its provisions.
41. The main objective of the Agreement is to safeguard the world's seas, oceans, and marine resources for future generations by promoting sustainable and responsible fishing practices. This is achievable by preventing overfishing and overcapacity. Furthermore, the Agreement aims to balance support for the livelihoods of fishing communities with the long-term health and capacity of marine ecosystems. The Agreement is designed to create a level playing field in international fisheries trade by ensuring that subsidies did not distort competition or create an unfair advantage to some countries or fishing fleets.
42. Further, as part of the ratification process, a Cabinet Memorandum was submitted to the Cabinet for approval, in line with section 7 of the Treaty Making and Ratification Act, CAP 4D. It was noted that, on 23rd April, 2024, the Cabinet approved the ratification of the WTO Agreement on Fisheries Subsidies.
43. Following the Cabinet's approval, the Prime Cabinet Secretary and the Cabinet Secretary for Foreign & Diaspora Affairs submitted a Parliamentary Memorandum, along with a copy of the Agreement, to the National Assembly.
44. Upon ratification, Kenya would be required to:
 - i. Establish laws, regulations or administrative procedures to ensure that fisheries subsidies, including those existing at the time of the Agreement's entry into force, were neither granted nor maintained.
 - ii. Refrain from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing-related activities that supported IUU fishing.
 - iii. Avoid granting or maintaining subsidies for fishing or fishing-related activities concerning an overfished stock.

- iv. Provide a description of its fisheries regime, referencing Kenyan laws, regulations, and administrative procedures relevant to the Agreement within one year of the Agreement's entry into force, and promptly inform the WTO of any modifications thereafter.
 - v. Regularly notify the WTO about fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidy commitments.
45. In addition, it was noted that Kenya would benefit from the ratification of the Agreement in the following ways:
- i. Promotion of sustainable fisheries to support food security, poverty alleviation, and the preservation of marine biodiversity.
 - ii. Reduction of trade distortion by eliminating harmful fisheries subsidies that created unfair advantages for subsidized fishing operations, thereby distorting trade in fish and fishery products.
 - iii. Establishment of a level playing field for fishers and fishery-related industries.
 - iv. Ensuring the sustainability of the fishing industry through responsible management of fishery resources, which was critical for its long-term viability. It was noted that reduced overfishing would lead to more stable and reliable sources of fish for both domestic and international trade.
 - v. Ensuring that trade and economic development were not hindered, as the Agreement was said to recognize the special needs and circumstances of developing countries and least developed countries (LDCs), providing them with more flexibility in implementing subsidy reduction measures.
 - vi. Granting access to targeted technical assistance and capacity-building support for developing country Members and LDCs.
46. It was noted that the ratification of the WTO Agreement would strengthen national efforts to achieve Kenya's constitutional objectives and values, as stated in Articles 60(1)(e) and 69(1)(a) of the Constitution of Kenya. These Articles provide for the productive, sustainable exploitation, utilization, management, and conservation of the environment and natural resources, as well as the equitable sharing of accruing benefits.
47. Additionally, it was stated that Kenya's ratification of the WTO Agreement on Fisheries Subsidies would not necessitate any amendments to the Constitution, as it was consistent with constitutional provisions, particularly Articles 60 and 69 of the Constitution of Kenya (2010).
48. It was emphasized that Kenya's ratification of the Agreement would not result in additional public expenditure, as its implementation would be carried out under the normal budget of the relevant Ministries, Departments, and Agencies (MDAs).

49. The implementation of the Agreement would be the joint responsibility of the Ministry of Investments, Trade and Industry, and the Ministry of Mining, Blue Economy, and Maritime Affairs.

3.5 The National Treasury

Mr. Albert K. Mwenda, Director General, Budget and Fiscal and Economic Affairs representing the National Treasury appeared before the Committee on Monday, 24th March 2025 and briefed on the Agreement on Fisheries Subsidies as follows:

50. WTO is an inter-governmental organization that deals with global rules of trade between member states. WTO's primary function is to ensure that trade flows smoothly, predictably, and freely. WTO was established on January 1, 1995, under the Marrakech Agreement, which had been signed by one hundred and twenty three (123) nations on April 15, 1994.
51. The Agreement explained that its functions include administering WTO trade agreements, serving as a forum for trade negotiations, handling trade disputes, monitoring national trade policies, providing technical assistance and training for developing countries, and cooperating with other international organizations
52. Regarding the Protocol Amending the Marrakesh Agreement Establishing the WTO (Agreement on Fisheries Subsidies), the State Department noted that since the WTO's establishment, several multilateral negotiations had taken place during Ministerial Conferences, with the fishery sector being one of the focal areas. The Agreement reported that during the 11th WTO Ministerial Conference (MC) held in Buenos Aires, Argentina, in 2017, members had agreed that the 12th WTO MC should adopt comprehensive and effective disciplines to prohibit certain fisheries subsidies contributing to overcapacity and overfishing and to eliminate subsidies that support illegal, unregulated, and unreported (IUU) fishing.
53. During the 12th WTO MC held in Geneva, Switzerland, in 2022, the Agreement on Fisheries Subsidies was adopted on 17th June, 2022. The Agreement delivered on the mandate given during the 11th Ministerial Conference and on Sustainable Development Goal (SDG) 14.
54. The main objectives of the Agreement included safeguarding the world's seas, oceans, and marine resources by promoting sustainable fishing practices, balancing support for fishing communities with ensuring the long-term health of marine resources, and creating a level playing field in international fisheries trade by preventing subsidies from distorting competition.
55. The Agreement bans the granting or maintenance of subsidies to vessels or operators engaged in IUU fishing, prohibits subsidies for fishing overfished stocks, and provides special and differential treatment for developing and least-developed countries (LDCs) by granting them additional time and flexibility in implementing subsidy reductions.

Additionally, the Agreement provides targeted technical assistance and capacity building for developing members and LDCs.

56. The Agreement applies to marine wild capture fishing and related activities at sea but excludes aquaculture and inland fisheries. Additionally, Kenya has several obligations under the Agreement, including not granting subsidies to IUU fishing, ensuring appropriate laws and administrative procedures were in place, and providing the WTO with descriptions of fisheries regimes and subsidy notifications.
57. The financial implications of the Agreement were noted, that commitments such as monitoring against IUU fishing, providing technical assistance, ensuring timely notifications, establishing a Committee on Fisheries Subsidies, settling disputes, and enacting relevant domestic laws might require additional financing from the Exchequer.
58. The Committee was informed that the National Treasury is a member of the National Trade Negotiations Council (NTNC), which coordinates trade matters at different levels according to the Marrakesh Agreement. The National Treasury has actively participated in WTO Ministerial Conference Meetings, providing technical input into the country's position papers and participating in the 12th WTO Ministerial Conference, where the Agreement on Fisheries Subsidies had been unanimously adopted.
59. The State Department stated that it had no objections to ratifying the Protocol amending the Marrakesh Agreement. It also recommended that upon ratification, the Ministry of Mining, Blue Economy, and Fisheries should include resource requirements for implementing the Agreement in their annual budget allocation processes for consideration during budget-making processes.

3.6 Office of the Attorney-General and Department of Justice

Mr. Allan Githaiga, Deputy Chief State Counsel, Office of Attorney- General accompanied by other officers appeared before the Committee on Tuesday, 25th March 2025 and submitted as follows:

60. The Agreement was said to apply to subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, specifically to marine wild capture fishing, related activities at sea, while aquaculture and inland fisheries were excluded from its scope.
61. The Agreement had originated from the recommendations made at the 11th WTO Ministerial Conference in 2017, where members had been mandated to prohibit fisheries subsidies that contributed to overcapacity and overfishing, eliminate subsidies that supported illegal, unreported, and unregulated (IUU) fishing, and refrain from introducing new such subsidies.
62. The main objectives of the Agreement were outlined as safeguarding the world's seas, oceans, and maritime resources by promoting sustainable and responsible fishing practices to prevent overfishing and overcapacity. The Agreement aims to create a level

- playing field in international fisheries trade by ensuring that subsidies did not distort competition or create unfair advantages for certain countries or fishing fleets. Additionally, the Agreement seeks to balance support for the livelihoods of fishing communities while ensuring the long-term health of the world's seas, oceans, and marine resources.
63. The Agreement laid out rules for prohibiting certain harmful subsidies and emphasized transparency and accountability in how governments supported their fishing sectors. The Agreement specifically prohibits subsidies that enables IUU fishing, fishing of overfished stocks, or fishing of unmanaged stocks in the high seas.
 64. The Agreement bans the granting or maintenance of any subsidy to vessels or operators engaged in IUU fishing or fishing-related activities in support of IUU fishing. It also prohibits the granting or maintenance of subsidies for fishing or fishing-related activities concerning overfished stock. Additionally, the Agreement requires members to exercise restraint when granting subsidies to vessels not flying the member's flag or when subsidizing fishing of stocks whose status was unknown.
 65. The Agreement includes provisions for SDT for developing and LDCs, allowing them more time and flexibility in implementing subsidy reductions. The Agreement provides for targeted technical assistance and capacity building to help developing members and LDCs implement its provisions. Additionally, members are required to provide descriptions of their fisheries regimes within one year of the Agreement's entry into force, along with relevant legal and administrative procedures.
 66. The Agreement would not be interpreted or applied in a way that would prejudice the jurisdiction, rights, and obligations of members under international law, including the law of the sea. It was also stated that any findings, recommendations, or awards under the Agreement would not have legal implications regarding territorial claims or maritime boundary delimitations.
 67. The office of the Attorney- General highlighted the benefits of the Agreement to the Republic of Kenya and reported that the Agreement promotes the sustainable use of marine fisheries resources, leading to enhanced food security, poverty alleviation, and marine biodiversity preservation. Additionally, it was stated that reducing overfishing would contribute to a stable and reliable fish supply for domestic and international trade and would support the blue economy.
 68. Further, the Agreement ensures access to targeted technical assistance and capacity building for developing and least-developed countries. It was also pointed out that the Agreement aligns with Articles 60(1) and 69(1) (a) of the Constitution, which requires productive and sustainable management, conservation, and equitable sharing of environmental resources.
 69. The Agreement would enter into force once ratified by two-thirds of WTO members, with 56 members having already ratified it. It was further stated that ratifying the

Agreement would not require enacting new legislation or amending existing laws. However, it was noted that there was a need to ensure that future agreements negotiated by Kenya with other countries or development partners should not be inconsistent with the Agreement. It was also emphasized that Kenya must provide the required information under Article 8.4 of the Agreement, including descriptions of its fisheries regime and related legal and administrative procedures, in a timely manner.

PART IV

4.0 COMMITTEE OBSERVATIONS

Having engaged and considered submissions from the relevant stakeholders the Committee made the following observations on the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies)-

70. Upon ratification Kenya would need to align its laws, regulations and administrative procedures with the Agreement. This included providing a description of its fisheries regime, referencing Kenyan laws, regulations, and administrative procedures relevant to the Agreement within one year of the Agreement's entry into force, and promptly inform the WTO of any modifications thereafter.
71. The Agreement requires Kenya to refrain from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing-related activities that support IUU fishing.
72. The Agreement requires Kenya to avoid granting or maintaining subsidies for fishing or fishing-related activities concerning overfished stock.
73. The Agreement further requires Kenya to notify regularly the WTO about fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidy commitments. In this regard, stock assessment and related programmes are important for the effective implementation of the Agreement.
74. The Agreement provides for technical assistance and capacity building (TACB). The agreement includes an obligation to provide TACB for the implementation of the instrument and provides for the creation of a specific voluntary funding mechanism under the WTO in cooperation with the FAO and the International Fund for Agricultural Development to support the implementation of agreement. In this regard, there is need for transparency from the relevant Ministry in the manner and mode in which the country benefits from technical assistance and capacity building under such agreements.
75. The Agreement does not enable State Parties to enter reservations. However, Article 9(4) of the Agreement provides for a review to be undertaken five (5) years after the treaty's entry into force, and then every three (3) years. This exercise could lead to proposals to amend the Agreement based on the experience gained in implementing its provisions.
76. Article 10 of the Agreement provides that the existing rules under the WTO's dispute settlement mechanism will apply to this new instrument. In this regard, State Parties to the agreement will not be able to use unilateral trade policy remedies with respect to the obligations under the new fisheries subsidies agreement. Rather, they must use the multilateral dispute settlement process under the Agreement.

PART V

COMMITTEE RECOMMENDATIONS


The Committee having received written and oral submissions and after its deliberations recommends THAT -

- (i) the House **approves** the Protocol Amending the Marrakesh. Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies), pursuant to Standing Order 170 A.

- (ii) the Ministry of Mining, Blue Economy and Fisheries and other relevant Ministries and state agencies should on quarterly basis apprise the Committee on the subsidies and technical assistance and capacity building assistance that accrue or benefit Kenya under the Agreement.

SIGNED.....  DATE..... 16.4.2025

HON. BOWEN KANGOGO, M.P., C.B.S.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON BLUE ECONOMY,
WATER AND IRRIGATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 17 APR 2025	
DAY: Thursday	
TABLED BY:	Hon. Kangogo Bowen, MP
CLERK-AT THE-TABLE:	Chairperson A. Shituko

LIST OF ANNEXURES

Adoption list

Minutes

Advertisement

Legal brief on the Agreement on Fisheries Subsidies

Research brief on the Agreement on Fisheries Subsidies

Submissions from Stakeholders



THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION - 2025
DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION
MEMBERS ATTENDANCE SCHEDULE

DATE: 15TH APRIL 2025 START: 10:33 AM END: 12:00 NOON

VENUE: COMMITTEE RM. 18/19, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS
AGENDA: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORTS ON SESSIONAL PAPER NO. 7 OF 2024 ON NATIONAL SANITATION MANAGEMENT POLICY AND PROTOCOL AMENDING MARRAKESH AGREEMENT (AGREEMENT ON FISHERIES SUBSIDIES)

NO.	NAME	SIGNATURE
1.	Hon. Bowen Kangogo, MP - Chairperson	
2.	Hon. Kemero Maisori Marwa Kitayama, MP - Vice- Chairperson	
3.	Hon. Chepkwony Charity Kathambi, MP	
4.	Hon. William Kamket, MP	
5.	Hon. Buyu Rozaah Akinyi, MP	
6.	Hon. Eng. Nzengu Paul Musyimi, MP	
7.	Hon. Eng. Tandaza Kassim Sawa, MP	VIRTUAL ATTENDANCE
8.	Hon. Were Charles Ong'ondo, MP	
9.	Hon. Mohamed Abdikadir Hussein, MP	VIRTUAL ATTENDANCE
10.	Hon. Gachagua George, MP	VIRTUAL ATTENDANCE
11.	Hon. Eric Wamumbi, MP	
12.	Hon. Dorothy Muthoni Ikiara, MP	
13.	Hon. Eng. Nebart Bernard Muriuki, MP	
14.	Hon. Mnyazi Amina Laura, MP	
15.	Hon. Adow Mohamed Aden, MP	

Forwarded by:

Signed:
Mr. Nicodemus K. Maluki
First Clerk Assistant - Committee Clerk

Date: 15/4/2025

Approved by:

Signed: Date:
Ms. Rose M. Wanjohi,
Principal Clerk Assistant II/ Head of Department- Productive Sector
Directorate of Departmental Committees



**PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION – 2025**

**MINUTES OF THE 25TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON TUESDAY 15TH
APRIL, 2025 IN THE COMMITTEE ROOM 18/19, THIRD (3RD) FLOOR, BUNGE
TOWER, PARLIAMENT BUILDINGS AT 10.00 AM**

PRESENT

1. Hon. Kemero Maisori Marwa Kitayama, MP - **Vice- Chairperson**
2. Hon. Chepkwony Charity Kathambi, MP
3. Hon. Buyu Rozaah Akinyi, MP
4. Hon. Eng. Tandaza Kassim Sawa, MP
5. Hon. Eng. Nzengu Paul Musyimi, MP
6. Hon. Were Charles Ong'ondo, MP
7. Hon. Mohamed Abdikadir Hussein, MP
8. Hon. Gachagua George, MP
9. Hon. Eric Wamumbi, MP
10. Hon. Dorothy Muthoni Ikiara, MP
11. Hon. Eng. Nebart Bernard Muriuki, MP
12. Hon. Mnyazi Amina Laura, MP

APOLOGIES

1. Hon. Bowen David Kangogo, MP - **Chairperson**
2. Hon. William Kamket, MP
3. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

1. Mr. Nicodemus Maluki First Clerk Assistant
2. Ms. Ivy Kageha Third Clerk Assistant
3. Ms. Lynette Otieno Senior Legal Counsel
4. Ms. Joyce Wachera Hansard Reporter II
5. Mr. Eugene Luteshi Audio Assistant Officer
6. Mr. Allan Gituku Sergeant- At- Arms

MIN.NO.DC/ BEW&I/131/2025:

PRELIMINARIES

The Chairperson called the meeting to order at thirty three minutes past ten o'clock and prayed. He thereafter requested all present to make a self- introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda: Consideration and Adoption of the following Draft Committee Reports:**
 - i. **Sessional Paper No. 7 of 2024 on the National Sanitation Management Policy from Ministry of Water, Sanitation and Irrigation**
 - ii. **Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies)**
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/132/2025:

ADOPTION OF THE AGENDA

The agenda of the day was adopted having been proposed and seconded by Hon. Eric Wamumbi, MP and Hon. Mnyazi Amina Laura, MP respectively.

MIN.NO.DC/ BEW&I/133/2025:

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

This agenda item was deferred to the next sitting

MIN.NO.DC/ BEW&I/134/2025:

CONSIDERATION AND ADOPTION OF THE DRAFT COMMITTEE REPORT ON SESSIONAL PAPER NO. 7 OF 2024 ON THE NATIONAL SANITATION MANAGEMENT POLICY FROM MINISTRY OF WATER, SANITATION AND IRRIGATION

The Committee unanimously adopted its report with the following recommendations having been proposed and seconded by hon. Eric Wamumbi, MP and Hon. Chepkwony Charity Kathambi, MP respectively.

1. **THAT**, the House **approves** the Sessional Paper No. 7 of 2024 on National Sanitation Management Policy **subject to the following revisions—**

NO.	AREA/SECTION	REVISION

i.	General Structure of the National Sanitation Management Policy	Align the Policy with current and revised laws, including the Water Act, Cap. 372, the Sustainable Waste Management Act, Cap.387C, the Environmental Management and Coordination Act, Cap.387. Revise definitions and terms in entire policy and align with the Constitution and relevant laws.
ii.	Section 1.3 of the National Sanitation Management Policy (Scope of the National Sanitation Management Policy)	Revise policy target and application to include County Governments.
	Section 3.2.3 of the National Sanitation Management Policy (Key Legal Framework)	Revise to incorporate the provisions of the Sustainable Waste Management Act, Cap.387C.
iii.	Section 4.6.2 of the National Sanitation Management Policy (Guiding principles for sanitation management policy)	Revise to include principle of integration of climate considerations. The principles of climate change adaptation solutions should be mainstreamed both in severed and non-severed investments in line with national and county climate change action plans obligations.
iv.	Section 4.8 of the National Sanitation Management Policy (Theory of change and policy intervention framework)	Revise terminology to the Constitution; delete reference to the local government authorities and replace with county governments

2. **THAT**, the Cabinet secretary, Ministry of Water publishes the National Sanitation Management Policy and revisions set herein above in the appropriate medium including Ministry of Water's website for public dissemination and also submit a copy to the National Assembly within ninety (90) days.

3. **THAT**, the National Treasury should allocate adequate resources towards implementation of the Policy and matters related to sanitation in Kenya;

MIN.NO.DC/ BEW&I/135/2025:

**CONSIDERATION AND ADOPTION OF
THE DRAFT COMMITTEE REPORT ON
THE PROTOCOL AMENDING THE
MARRAKESH AGREEMENT
ESTABLISHING THE WORLD TRADE
ORGANIZATION (AGREEMENT ON
FISHERIES SUBSIDIES)**

The Committee unanimously adopted its report with the following recommendations having been proposed and seconded by hon. Eric Wamumbi, MP and Hon. Eng. Nebart Bernard Muriuki, MP respectively.

- (i) **THAT**, Pursuant to Standing Order 170 A, the House **approves** the Protocol Amending the Marrakesh. Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies).
- (ii) **THAT**, the Ministry of Mining, Blue Economy and Fisheries and other relevant Ministries and state agencies should on quarterly basis apprise the Committee on the subsidies and technical assistance and capacity building assistance that accrue or benefit Kenya under the agreement.

MIN.NO.DC/ BEW&I/136/2025:

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at twelve o'clock. The next meeting will be held on notice.

Signed.....


**HON. BOWEN KANGOGO, MP, CBS
(CHAIRPERSON)**

Date.....
16.4.2025



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION – 2025

MINUTES OF THE 19TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON THURSDAY 27TH
MARCH, 2025 IN THE 6TH FLOOR BOARD ROOM, HILTON GARDEN INN AT
10.00 AM

PRESENT

- | | | |
|---|---|-------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. Chepkwony Charity Kathambi, MP | | |
| 4. Hon. William Kamket, MP | | |
| 5. Hon. Buyu Rozaah Akinyi, MP | | |
| 6. Hon. Eng. Nzengu Paul Musyimi, MP | | |
| 7. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 8. Hon. Were Charles Ong'ondo, MP | | |
| 9. Hon. Gachagua George, MP | | |
| 10. Hon. Eric Wamumbi, MP | | |
| 11. Hon. Dorothy Muthoni Ikiara, MP | | |
| 12. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 13. Hon. Adow Mohamed Aden, MP | | |

APOLOGIES

1. Hon. Mohamed Abdikadir Hussein, MP
2. Hon. Mnyazi Amina Laura, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|--------------------------|--------------------------|
| 1. Ms. Rose Wanjohi | Senior Clerk Assistant |
| 2. Mr. Nicodemus Maluki | First Clerk Assistant |
| 3. Ms. Ivy Kageha | Third Clerk Assistant |
| 4. Dr. Benjamin Ng'imor | Principal Fiscal Analyst |
| 5. Ms. Lynette Otieno | Senior Legal Counsel |
| 6. Ms. Veron D. Aluoch | Research Officer III |
| 7. Ms. Fridah Ngari | Media Relations Officer |
| 8. Mr. Moses Luvisi | Accountant |
| 9. Mr. Eugene Luteshi | Audio Assistant Officer |
| 10. Mr. Allan Gituku | Sergeant- At- Arms |
| 11. Ms. Christine Sabdio | Office Assistant |

MIN.NO.DC/ BEW&I/100/2025: PRELIMINARIES

The Chairperson called the meeting to order at thirty- two minutes past ten o'clock and prayed. He thereafter requested all present to make a self- introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda:**
Consideration of the draft Committee report on the Protocol amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies)
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/101/2025: ADOPTION OF THE AGENDA

The agenda of the day was unanimously adopted by the Committee.

MIN.NO.DC/ BEW&I/102/2025: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/103/2025: CONSIDERATION OF THE DRAFT COMMITTEE REPORT ON PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

1. Having engaged and considered submissions from the relevant stakeholders the Committee made the following observations on the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies)-
2. Upon ratification Kenya would need to align its laws, regulations and administrative procedures with the agreement. Provide a description of its fisheries regime, referencing Kenyan laws, regulations, and administrative procedures relevant to the Agreement within one year of the Agreement's entry into force, and promptly inform the WTO of any modifications thereafter.
3. The Agreements requires Kenya to refrain from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing-related activities that supported IUU fishing.

4. The Agreement requires Kenya to avoid granting or maintaining subsidies for fishing or fishing-related activities concerning an overfished stock.
5. The Agreement further requires Kenya to regularly notify the WTO about fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidy commitments. In this regard, stock assessment and related programmes are important for the effective implementation of the agreement.
6. The Agreement provides for technical assistance and capacity building (TACB). The agreement includes an obligation to provide TACB for the implementation of the instrument and provides for the creation of a specific voluntary funding mechanism under the WTO in cooperation with the FAO and the International Fund for Agricultural Development to support the implementation of agreement.
7. The Committee observe there is need for transparency from the relevant Ministry in the manner and mode in which the country benefits from technical assistance and capacity building under such agreements.
8. The Agreement does not enable State Parties to enter reservations. However, Article 9(4) of the Agreement provides for a review to be undertaken 5 years after the treaty's entry into force, and then every 3 years. This exercise could lead to proposals to amend the Agreement based on the experience gained in implementing its provisions.
9. Article 10 of the Agreement establishes that, the existing rules under the WTO's dispute settlement mechanism will apply to this new instrument. The Agreement also provides that the specific procedures applicable to subsidy. In this regard, State Parties to the agreement will not be able to use unilateral trade policy remedies with respect to the obligations under the new fisheries subsidies agreement. Rather, they must use the multilateral dispute settlement process under the agreement.
10. The relevant Ministry should on quarterly basis apprise the Committee on the subsidies that accrue or benefit the country under the agreement

MIN.NO.DC/ BEW&I/104/2025: **ADJOURNMENT**

There being no other business, the Chairperson adjourned the meeting at twenty minutes past twelve o'clock. The next meeting will be held on the same day at thirty minutes past two o'clock.

Signed.....
HON. BOWEN KANGOGO, MP, CBS
(CHAIRPERSON)

Date.....
 8/4/2025.



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
19TH PARLIAMENT - FOURTH SESSION - 2025

MINUTES OF THE 14TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON MONDAY 24TH MARCH,
2025 IN PAVILLION SUITE, GROUND FLOOR, HILTON GARDEN INN AT 2.30
PM

PRESENT

- | | | |
|---|---|-------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. Chepkwony Charity Kathambi, MP | | |
| 4. Hon. William Kamket, MP | | |
| 5. Hon. Buyu Rozaah Akinyi, MP | | |
| 6. Hon. Eng. Nzengu Paul Musyimi, MP | | |
| 7. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 8. Hon. Were Charles Ong'ondo, MP | | |
| 9. Hon. Gachagua George, MP | | |
| 10. Hon. Eric Wamumbi, MP | | |
| 11. Hon. Dorothy Muthoni Ikiara, MP | | |
| 12. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 13. Hon. Adow Mohamed Aden, MP | | |

APOLOGIES

1. Hon. Mohamed Abdikadir Hussein, MP
2. Hon. Mnyazi Amina Laura, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|--------------------------|--------------------------|
| 1. Ms. Rose Wanjohi | Senior Clerk Assistant |
| 2. Mr. Nicodemus Maluki | First Clerk Assistant |
| 3. Ms. Ivy Kageha | Third Clerk Assistant |
| 4. Dr. Benjamin Ng'imor | Principal Fiscal Analyst |
| 5. Ms. Lynette Otieno | Senior Legal Counsel |
| 6. Ms. Veron D. Aluoch | Research Officer III |
| 7. Ms. Fridah Ngari | Media Relations Officer |
| 8. Mr. Moses Luvisi | Accountant |
| 9. Mr. Eugene Luteshi | Audio Assistant Officer |
| 10. Mr. Allan Gituku | Sergeant- At- Arms |
| 11. Ms. Christine Sabdio | Office Assistant |

STATE DEPARTMENT FOR FOREIGN AFFAIRS

1. Amb. Elphas M. Barire AG Political and Diplomatic Affairs- MF&DAffairs
2. Mr Nicholas K Muluku Registrar of treaties- MF&DAffairs
3. Ms. Rolyne Kendi Mworira Second Secretary- MF&DAffairs- SD Foreign Affairs

THE NATIONAL TREASURY

1. Mr. Albert K. Mwenda DG/BFEA- The National Treasury
2. Mr. Dennis Olila P.E- The National Treasury
3. Mr. Milford Bett PLO- The National Treasury

OFFICE OF THE ATTORNEY GENERAL

1. Mr Allan Githaiga Deputy Chief State Counsel- AG's Office
2. Ms. Nelly Lodian Principal State Counsel- AG's Office-Dpt Of Justice

STATE DEPARTMENT FOR BLUE ECONOMY AND FISHERIES

1. Dr. Daniel Makilla Director- SD Blue Economy and Fisheries
2. Mr. Leonard Bett Legal Officer- SD Blue Economy and Fisheries
3. Nicholus M Kagundu Ass. Director Finance- SD Blue Economy and Fisheries
4. Ms. Jennifer Nyika Record Officer- SD Blue Economy and Fisheries

STATE DEPARTMENT FOR TRADE

1. Ms. Rose Masita Deputy Director- SD Trade

MIN.NO.DC/ BEW&I/072/2025:

PRELIMINARIES

The Chairperson called the meeting to order at fifty- four minutes past two o'clock and prayed. He thereafter requested all present to make a self- introduction

AGENDA:

The agenda of the meeting was presented as follows:

- 1 Prayers
2. Preliminaries/Introductions
 - i Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
- 4 Agenda:

Meeting to consider the Protocol amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) with the following MDAs:

 - i State Department for Foreign Affairs
 - ii. The National Treasury
 - iii Office of the Attorney General
- 5 Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/073/2025:

ADOPTION OF THE AGENDA

The agenda of the day was unanimously adopted by the Committee

MIN.NO.DC/ BEW&I/074/2025:

CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING

This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/075/2025:

MEETING STATE DEPARTMENT FOR
FOREIGN AFFAIRS TO CONSIDER THE
PROTOCOL MENDING THE
MARRAKESH AGREEMENT
ESTABLISHING THE WORLD TRADE
ORGANIZATION (AGREEMENT ON
FISHERIES SUBSIDIES)

mb. Elphas M. Barire from the State Department for Foreign Affairs appeared before the Committee and briefed on the Agreement on Fisheries Subsidies as follows:

1. The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organization (WTO) Ministerial Conference (MC12), which took place in Geneva, Switzerland, on 17th June 2022. It was stated that the Agreement delivered on the mandate given to Members during the 11th Ministerial Conference (MC11) and aligned with Sustainable Development Goal (SDG) 14.
2. The Agreement applied to marine wild capture fishing and related activities at sea or in the ocean, while aquaculture and inland fisheries were said to be excluded from its scope. Reports indicated that all 164 WTO Members were party to the Agreement and that it would enter into force upon ratification by two-thirds of the members. However, it was noted that, at present, only 68 WTO Members had ratified the Agreement. It was highlighted that the Agreement did not permit reservations on any of its provisions.
3. The main objective of the Agreement is to be the safeguarding of the world's seas, oceans, and marine resources for future generations by promoting sustainable and responsible fishing practices. This was to be achieved by preventing overfishing and overcapacity. Furthermore, it was stated that the Agreement aimed to balance support for the livelihoods of fishing communities with the long-term health and capacity of marine ecosystems. It was also mentioned that the Agreement was designed to create a level playing field in international fisheries trade by ensuring that subsidies did not distort competition or create an unfair advantage for certain countries or fishing fleets.
4. Further, the Committee was informed that as part of the ratification process, a Cabinet Memorandum was submitted to the Cabinet for approval, in line with section 7 of the Treaty Making and Ratification Act, CAP 4D. It was noted that, on 23rd April 2024, the Cabinet had approved the ratification of the WTO Agreement on Fisheries Subsidies.
5. Following the Cabinet's approval, the Prime Cabinet Secretary and the Cabinet Secretary for Foreign & Diaspora Affairs were reported to have submitted a Parliamentary Memorandum, along with a copy of the Agreement, to the National Assembly.

6. Members were informed that, upon ratification, Kenya would be required to:
 - i. Establish laws, regulations, and/or administrative procedures to ensure that fisheries subsidies, including those existing at the time of the Agreement's entry into force, were neither granted nor maintained.
 - ii. Refrain from granting or maintaining any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing-related activities that supported IUU fishing.
 - iii. Avoid granting or maintaining subsidies for fishing or fishing-related activities concerning an overfished stock.
 - iv. Provide a description of its fisheries regime, referencing Kenyan laws, regulations, and administrative procedures relevant to the Agreement within one year of the Agreement's entry into force, and promptly inform the WTO of any modifications thereafter.
 - v. Regularly notify the WTO about fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidy commitments.
7. In addition, it was noted that Kenya would benefit from the ratification of the Agreement in the following ways:
 - i. Promotion of sustainable fisheries to support food security, poverty alleviation, and the preservation of marine biodiversity.
 - ii. Reduction of trade distortion by eliminating harmful fisheries subsidies that created unfair advantages for subsidized fishing operations, thereby distorting trade in fish and fishery products.
 - iii. Establishment of a level playing field for fishers and fishery-related industries.
 - iv. Ensuring the sustainability of the fishing industry through responsible management of fishery resources, which was critical for its long-term viability. It was noted that reduced overfishing would lead to more stable and reliable sources of fish for both domestic and international trade.
 - v. Ensuring that trade and economic development were not hindered, as the Agreement was said to recognize the special needs and circumstances of developing countries and least developed countries (LDCs), providing them with more flexibility in implementing subsidy reduction measures.
 - vi. Granting access to targeted technical assistance and capacity-building support for developing country Members and LDCs.
8. It was noted that the ratification of the WTO Agreement would strengthen national efforts to achieve Kenya's constitutional objectives and values, as stated in Article 60(1)(e) and 69(1)(a) of the Constitution of Kenya. These articles reportedly required the productive, sustainable exploitation, utilization, management, and conservation of the environment and natural resources, as well as the equitable sharing of accruing benefits.
9. Additionally, it was stated that Kenya's ratification of the WTO Agreement on Fisheries Subsidies would not necessitate any amendments to the Constitution, as it was consistent with constitutional provisions, particularly Articles 60 and 69 of the Constitution of Kenya (2010).

10. It was emphasized that Kenya's ratification of the Agreement would not result in additional public expenditure, as its implementation would be carried out under the normal budget of the relevant Ministries, Departments, and Agencies (MDAs).
11. The Committee was informed that the implementation of the Agreement would be the joint responsibility of the Ministry of Investments, Trade and Industry, and the Ministry of Mining, Blue Economy, and Maritime Affairs.

MIN.NO.DC/ BEW&I/076/2025:

**MEETING THE NATIONAL TREASURY
TO CONSIDER THE PROTOCOL
AMENDING THE MARRAKESH
AGREEMENT ESTABLISHING THE
WORLD TRADE ORGANIZATION
(AGREEMENT ON FISHERIES
SUBSIDIES)**

Mr. Albert K. Mwenda, the Director General Budget, Fiscal and Economic Affairs at the National Treasury appeared before the Committee and briefed on the Agreement on Fisheries Subsidies as follows:

12. The WTO is an inter-governmental organization that deals with global rules of trade between member states. It was noted that the WTO's primary function is to ensure that trade flows smoothly, predictably, and freely. Further, the Committee was informed that the WTO was established on January 1, 1995, under the Marrakech Agreement, which had been signed by 123 nations on April 15, 1994.
13. The WTO currently has a membership of 164 members, representing 98 percent of world trade. The document explained that its functions include administering WTO trade agreements, serving as a forum for trade negotiations, handling trade disputes, monitoring national trade policies, providing technical assistance and training for developing countries, and cooperating with other international organizations. It was further noted that Kenya had become a member of the WTO on January 1, 1995.
14. Regarding the Protocol Amending the Marrakesh Agreement Establishing the WTO (Agreement on Fisheries Subsidies), the State Department noted that since the WTO's establishment, several multilateral negotiations had taken place during Ministerial Conferences, with the fishery sector being one of the focal areas. The document reported that during the 11th WTO Ministerial Conference (MC) held in Buenos Aires, Argentina, in 2017, members had agreed that the 12th WTO MC should adopt comprehensive and effective disciplines to prohibit certain fisheries subsidies contributing to overcapacity and overfishing and to eliminate subsidies that support illegal, unregulated, and unreported (IUU) fishing.
15. It was further mentioned that during the 12th WTO MC held in Geneva, Switzerland, in 2022, the Agreement on Fisheries Subsidies had been adopted on June 17, 2022. The Agreement delivered on the mandate given during the 11th Ministerial Conference and on Sustainable Development Goal (SDG) 14.
16. The main objectives of the Agreement included safeguarding the world's seas, oceans, and marine resources by promoting sustainable fishing practices, balancing support for

fishing communities with ensuring the long-term health of marine resources, and creating a level playing field in international fisheries trade by preventing subsidies from distorting competition.

17. Key provisions of the Agreement were also highlighted. It was stated that the Agreement banned the granting or maintenance of subsidies to vessels or operators engaged in IUU fishing, prohibited subsidies for fishing overfished stocks, and provided special and differential treatment for developing and least-developed countries (LDCs) by granting them additional time and flexibility in implementing subsidy reductions. Additionally, it was reported that the Agreement provided targeted technical assistance and capacity building for developing members and LDCs.
18. It was noted that the Agreement applied to marine wild capture fishing and related activities at sea but excluded aquaculture and inland fisheries. Additionally, Kenya had several obligations under the Agreement, including not granting subsidies to IUU fishing, ensuring appropriate laws and administrative procedures were in place, and providing the WTO with descriptions of fisheries regimes and subsidy notifications.
19. The financial implications of the Agreement were noted, mentioning that commitments such as monitoring against IUU fishing, providing technical assistance, ensuring timely notifications, establishing a Committee on Fisheries Subsidies, settling disputes, and enacting relevant domestic laws might require additional financing from the Exchequer.
20. The National Treasury was a member of the National Trade Negotiations Council (NTNC), which coordinated trade matters at different levels according to the Marrakesh Agreement. It was noted that the National Treasury had actively participated in WTO Ministerial Conference Meetings, providing technical input into the country's position papers and participating in the 12th WTO Ministerial Conference, where the Agreement on Fisheries Subsidies had been unanimously adopted.
21. The State Department stated that it had no objections to ratifying the Protocol amending the Marrakesh Agreement. It also recommended that upon ratification, the Ministry of Mining, Blue Economy, and Fisheries should include resource requirements for implementing the Agreement in their annual budget allocation processes for consideration during budget-making processes.

MIN.NO.DC/ BEW&I/077/2025:

MEETING THE OFFICE OF THE
ATTORNEY GENERAL TO CONSIDER
THE PROTOCOL MENDING THE
MARRAKESH AGREEMENT
ESTABLISHING THE WORLD TRADE
ORGANIZATION (AGREEMENT ON
FISHERIES SUBSIDIES)

Mr. Allan Githaiga, the Deputy Chief State Counsel in the office of the Attorney General and the Department of Justice appeared before the Committee and briefed on the Agreement on Fisheries Subsidies as follows:

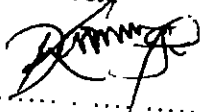
22. The Agreement was concluded and adopted during the 12th WTO Ministerial Conference on June 17, 2022, in Geneva, Switzerland. The Agreement was said to apply to subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures, specifically to marine wild capture fishing and related activities at sea, while aquaculture and inland fisheries were excluded from its scope.
23. The Agreement originated from the recommendations made at the 11th WTO Ministerial Conference in 2017, where members had been mandated to prohibit fisheries subsidies that contributed to overcapacity and overfishing, eliminate subsidies that supported illegal, unreported, and unregulated (IUU) fishing, and refrain from introducing new such subsidies.
24. The main objectives of the Agreement were outlined as safeguarding the world's seas, oceans, and maritime resources by promoting sustainable and responsible fishing practices to prevent overfishing and overcapacity. It was also noted that the Agreement aimed to create a level playing field in international fisheries trade by ensuring that subsidies did not distort competition or create unfair advantages for certain countries or fishing fleets. Additionally, it was highlighted that the Agreement sought to balance support for the livelihoods of fishing communities while ensuring the long-term health of the world's seas, oceans, and marine resources.
25. The Agreement laid out rules for prohibiting certain harmful subsidies and emphasized transparency and accountability in how governments supported their fishing sectors. It was stated that the Agreement specifically prohibited subsidies that enabled illegal, unreported, and unregulated (IUU) fishing, fishing of overfished stocks, or fishing of unmanaged stocks in the high seas.
26. The key provisions of the Agreement were also discussed. It was noted that the Agreement banned the granting or maintenance of any subsidy to vessels or operators engaged in IUU fishing or fishing-related activities in support of IUU fishing. It also prohibited the granting or maintenance of subsidies for fishing or fishing-related activities concerning overfished stock. Additionally, it was stated that the Agreement required members to exercise restraint when granting subsidies to vessels not flying the member's flag or when subsidizing fishing of stocks whose status was unknown.
27. Further, it was stated that the Agreement included provisions for special and differential treatment (SDT) for developing and least-developed countries (LDCs), allowing them more time and flexibility in implementing subsidy reductions. It was also noted that the Agreement provided for targeted technical assistance and capacity-building to help developing members and LDCs implement its provisions. Additionally, it was noted that members were required to provide descriptions of their fisheries regimes within one year of the Agreement's entry into force, along with relevant legal and administrative procedures.
28. It was emphasized that the Agreement would not be interpreted or applied in a way that would prejudice the jurisdiction, rights, and obligations of members under international law, including the law of the sea. It was also stated that any findings, recommendations, or awards under the Agreement would not have legal implications regarding territorial claims or maritime boundary delimitations.

29. The office of the AG highlighted the benefits of the Agreement to the Republic of Kenya. It was reported that the Agreement promoted the sustainable use of marine fisheries resources, leading to enhanced food security, poverty alleviation, and marine biodiversity preservation. Additionally, it was stated that reducing overfishing would contribute to a stable and reliable fish supply for domestic and international trade and would support the blue economy.
30. Furthermore, it was noted that the Agreement ensured access to targeted technical assistance and capacity-building for developing and least-developed countries. It was also pointed out that the Agreement aligned with Articles 60(1) and 69(1)(a) of the Constitution, which required productive and sustainable management, conservation, and equitable sharing of environmental resources.
31. The Committee was informed that the Agreement would enter into force once ratified by two-thirds of WTO members, and it was reported that 56 members had already ratified it. It was further stated that ratifying the Agreement would not require enacting new legislation or amending existing laws. However, it was noted that there was a need to ensure that future agreements negotiated by Kenya with other countries or development partners would not be inconsistent with the Agreement. It was also emphasized that Kenya must provide the required information under Article 8 4 of the Agreement, including descriptions of its fisheries regime and related legal and administrative procedures, in a timely manner.

MIN.NO.DC/ BEW&I/078/2025:

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at fifty- four minutes past four o'clock. The next meeting will be held on Tuesday, 25th March 2025 at thirty minutes past nine o'clock.

Signed..... 

HON. BOWEN KANGOGO, MP., CBS
(CHAIRPERSON)

Date 8/4/2025



PARLIAMENT OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - FOURTH SESSION - 2025

MINUTES OF THE 13TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
ECONOMY, WATER AND IRRIGATION HELD ON MONDAY 24TH MARCH,
PAVILLION SUITE, GROUND FLOOR, HILTON GARDEN INN AT 9.30

NT

- | | | |
|--|---|-------------------|
| Hon. Bowen David Kangogo, MP | - | Chairperson |
| Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| Hon. Chepkwony Charity Kathambi, MP | | |
| Hon. William Kamket, MP | | |
| 5. Hon. Buyu Rozaah Akinyi, MP | | |
| 6. Hon. Eng. Nzengu Paul Musyimi, MP | | |
| 7. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 8. Hon. Were Charles Ong'ondo, MP | | |
| 9. Hon. Gachagua George, MP | | |
| 10. Hon. Eric Wamumbi, MP | | |
| 11. Hon. Dorothy Muthoni Ikiara, MP | | |
| 12. Hon. Eng. Nebart Bernard Muriuki, MP | | |
| 13. Hon. Adow Mohamed Aden, MP | | |

APOLOGIES

1. Hon. Mohamed Abdikadir Hussein, MP
2. Hon. Mnyazi Amina Laura, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|--------------------------|--------------------------|
| 1. Ms. Rose Wanjohi | Senior Clerk Assistant |
| 2. Mr. Nicodemus Maluki | First Clerk Assistant |
| 3. Ms. Ivy Kageha | Third Clerk Assistant |
| 4. Dr. Benjamin Ng'imor | Principal Fiscal Analyst |
| 5. Ms. Lynette Otieno | Senior Legal Counsel |
| 6. Ms. Veron D. Aluoch | Research Officer III |
| 7. Ms. Fridah Ngari | Media Relations Officer |
| 8. Mr. Moses Luvisi | Accountant |
| 9. Mr. Eugene Luteshi | Audio Assistant Officer |
| 10. Mr. Allan Gituku | Sergeant- At- Arms |
| 11. Ms. Christine Sabdio | Office Assistant |

STATE DEPARTMENT FOR BLUE ECONOMY AND FISHERIES

1. Dr. Daniel Makilla
2. Mr. Leonard Bett
3. Nicholus M. Kagundu
4. Ms. Jennifer Nyika

Director- SD Blue Economy and Fisheries
Legal Officer- SD Blue Economy and Fisheries
Ass. Director Finance- SD Blue Economy and Fisheries
Record Officer- SD Blue Economy and Fisheries

STATE DEPARTMENT FOR TRADE

1. Ms. Rose Masita

Deputy Director- SD Trade

MIN.NO.DC/ BEW&I/066/2025: PRELIMINARIES

The Chairperson called the meeting to order at five minutes past ten o'clock and pro thereafter requested all present to make a self- introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda
 - ii. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. Agenda:

Meeting to consider the Protocol amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies) with the following MDAs:

- i. State Department for Trade
 - ii. State Department for Blue Economy and Fisheries
5. Any other Business
 6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/067/2025: ADOPTION OF THE AGENDA
The agenda of the day was adopted unanimously by the Committee.

MIN.NO.DC/ BEW&I/068/2025: CONFIRMATION OF MINUTES OF THE PREVIOUS MEETING
This agenda item was deferred to the next meeting.

MIN.NO.DC/ BEW&I/069/2025: MEETING STATE DEPARTMENT FOR TRADE TO CONSIDER THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

Ms. Rose Masita, the Deputy Director, State Department Trade appeared before the Committee and briefed on the Agreement on Fisheries Subsidies as follows:

1. That the World Trade Organization (WTO) is the international body responsible for setting rules governing trade between nations. Members were informed that the WTO, established on 1st January 1995 as the successor to the General Agreement on Tariffs

and Trade (GATT), aimed to improve living standards, promote sustainable development, and create employment opportunities through trade. Further, the Committee was informed that by 30th August 2024, the WTO had 166 members, accounting for 98% of global trade.

2. The WTO performs several functions, including administering trade agreements, facilitating trade negotiations, resolving disputes, monitoring trade policies, providing technical assistance to developing countries, and cooperating with other international organizations. The Committee was reminded that Kenya had been a WTO member since 1st January 1995 and had previously joined GATT in 1964.

He further informed that, overexploitation of fish stocks, as reported by the Food and Agriculture Organization (FAO), posed a global threat to food security, poverty reduction, and marine sustainability. Members were reminded that Sustainable Development Goal (SDG) 14 emphasizes conservation and sustainable use of oceans and marine resources. It was noted that the 11th WTO Ministerial Conference in 2017 urged members with eliminating fisheries subsidies contributing to overfishing, overcapacity, and illegal, unreported, and unregulated (IUU) fishing.

It was reported that the Agreement on Fisheries Subsidies was adopted at the 12th WTO Ministerial Conference in June 2022. The Agreement's main goal is to promote sustainable fishing by curbing harmful subsidies, protecting marine resources, and ensuring fairness in global fisheries trade. The Committee was told that the Agreement focused on marine wild capture fishing and excluded aquaculture and inland fisheries.

Further, it was noted that the Agreement aims at balancing the livelihoods of fishing communities with the need to maintain ocean health. The Agreement seeks to prevent market distortions by prohibiting subsidies that provide unfair advantages. The Agreement included specific provisions banning subsidies for vessels involved in IUU fishing and for fishing activities targeting overfished stocks. Special and Differential Treatment (SDT) provisions were also highlighted, offering flexibility and extended timelines for implementation by developing and least-developed countries (LDCs). The Agreement also promised technical assistance and capacity building for these nations.

6. Upon ratification, Kenya would be required to implement laws and procedures to eliminate harmful subsidies, report regularly on subsidy practices, and provide descriptions of its fisheries regime. It was noted that Kenya viewed the Agreement as aligned with its Blue Economy agenda, given the sector's contribution to employment and potential impact on GDP. The Committee was informed that currently, over 15,000 fishermen and over 45,000 individuals across the value chain were engaged in the sector.
7. It was emphasized that ratifying the Agreement would help Kenya enhance food security, reduce poverty, conserve biodiversity, and promote sustainable fisheries. Members were informed that the Agreement would also help reduce trade distortions,

avoid disruptions in fish trade, and support long-term sustainability of the fishing industry. The Agreement was seen as supportive of economic development and inclusive of the needs of developing nations.

8. The Agreement is aligned with the Kenyan Constitution, particularly Articles 60 and 69, which promote environmental sustainability and equitable resource sharing. Additionally, it was noted that no constitutional or legislative amendments would be necessary for implementation.
9. It was further clarified that the obligations under the Agreement would fall under the purview of the National Government. The implementation would not require additional funding beyond existing budget allocations. It was explained that Kenya would benefit from technical and capacity building assistance provided under the Agreement.
10. Responsibilities for implementation were said to be distributed across various ministries and offices. The Ministry of Investments, Trade and Industry would coordinate implementation and communicate with the WTO, while the Ministry of Mining, Blue Economy and Maritime Affairs would oversee execution. The Prime Cabinet Secretary and Ministry of Foreign and Diaspora Affairs would handle ratification procedures; and the National Treasury would allocate funds. The State Law Office would provide legal guidance.
11. The Committee was informed that the Agreement would only come into force once two-thirds of WTO members i.e. 111 members had submitted instruments of acceptance. As of 20th March 2025, ninety-four members had done so, with seventeen more still required. It was noted that Kenya had initiated its ratification process, having received Cabinet approval in April 2024. Members were informed that the Agreement and accompanying memorandum were submitted to the National Assembly on 18th June 2024 for approval.

Members Concerns/ Clarifications

The Committee requested for the following information from the stakeholders:

- i. *What are the potential subsidies in this agreement?*
- ii. *The scientific or technical research supporting the agreement*
- iii. *The technical and capacity assistance envisaged in the agreement*
- iv. *The level of public participation done on the agreement and how it was done*

MIN.NO.DC/ BEW&I/070/2025:

MEETING STATE DEPARTMENT FOR
BLUE ECONOMY AND FISHERIES TO
CONSIDER THE PROTOCOL MENDING
THE MARRAKESH AGREEMENT
ESTABLISHING THE WORLD TRADE

ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

Dr. Daniel Makilla, the Director Blue Economy in the State Department for the Blue Economy and Fisheries appeared before the Committee and briefed on the Agreement on Fisheries Subsidies as follows:

12. The objective of the memorandum was to apprise the Committee on the significance of the Agreement and to seek approval for Kenya's ratification, in accordance with Section 8 of the Treaty Making and Ratification Act (Cap 4D).
13. The Agreement on Fisheries Subsidies was concluded and adopted on Friday, 17th June, 2022 during the 12th WTO Ministerial Conference (MC12) in Geneva, Switzerland. The Agreement fulfills commitments made under the 11th Ministerial Conference (MC11) and is in line with Sustainable Development Goal (SDG) 14.6. The Agreement applies to marine wild capture fishing and fishing-related activities in oceans and seas, and that aquaculture and inland fisheries were excluded from the scope of the Agreement.
14. The State Department reported that the Agreement was as a result of intensive negotiations and consensus-building among WTO members, with Kenya actively participating in the process. It was noted that for the Agreement to come into force, it required ratification by two-thirds of the 164 WTO member states, equivalent to 111 members. As of March 20, 2025, 90 members had accepted and signed, and 86 had already ratified the Agreement. It was further noted that the Agreement does not permit reservations in respect to any of its provisions.
15. The objectives of the Agreement is to promote sustainable and responsible fishing, prevent overfishing and overcapacity, and protect global marine resources. It was emphasized that the Agreement seeks to balance the livelihoods of fishing communities with the need to maintain healthy marine ecosystems. Furthermore, it was reported that the Agreement aims to ensure a level playing field in international fisheries trade by addressing distortive subsidies.
16. The Committee was briefed on data from the Food and Agriculture Organization (FAO), which showed that global fish stocks were at risk due to overexploitation, with implications for poverty and food security. It was noted that all UN Member States, including Kenya, had adopted the 2030 Agenda for Sustainable Development, and the Agreement was directly aligned with SDG 14, focused on marine sustainability.
17. The Committee was informed of the salient features of the Agreement, which include:
 - i. A ban on subsidies for vessels or operators engaged in IUU (Illegal, Unreported, and Unregulated) fishing;
 - ii. A ban on subsidies for fishing related to overfished stocks;

- iii. Special and Differential Treatment (SDT) provisions for developing countries and Least Developed Countries (LDCs);
 - iv. Provision of targeted technical assistance and capacity building to support implementation.
18. Further, the Committee was informed that upon ratification, Kenya would be obligated to:
- i. Enact or align laws and administrative procedures to ensure harmful subsidies are not granted or maintained;
 - ii. Prohibit subsidies to vessels or operators involved in IUU fishing;
 - iii. Prohibit subsidies targeting overfished stocks;
 - iv. Report regularly to the WTO on fisheries subsidies and submit a description of the national fisheries regime, referencing relevant legal and administrative frameworks.
19. In addition, the state Department noted that Kenya stood to gain various benefits, including:
- i. Sustainable fisheries management for food security, biodiversity, and poverty reduction;
 - ii. Reduction of trade distortion by eliminating unfair subsidies;
 - iii. Avoidance of trade disruptions by curbing overfishing and overcapacity;
 - iv. Long-term sustainability of the fishing industry;
 - v. Flexibility in implementation for developing countries;
 - vi. Access to technical assistance and capacity building;
 - vii. Promotion of constitutional objectives under Articles 60(1)(e) and 69(1)(a) concerning sustainable resource use and equitable benefit sharing.
20. The Committee was informed that there were no financial implications, as implementation would be covered under existing annual budgets of relevant Ministries and Departments. Additionally, there were no legal implications, since the Agreement was consistent with the Constitution and did not require new legislation or amendments.
21. In conclusion, the State Department emphasized the need for Kenya to ratify the Agreement to fully enjoy the anticipated benefits. The Committee was therefore requested to:
- i. Note the contents of the memorandum;
 - ii. Approve Kenya's ratification of the WTO Agreement on Fisheries Subsidies in its entirety, without reservations, in line with the Treaty Making and Ratification Act (Cap 4D).

Members Concerns/ Clarifications

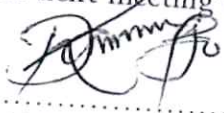
The Committee requested for the following information from the stakeholders:

- i. *What are the potential subsidies in this agreement?*
- ii. *The scientific or technical research supporting the agreement*
- iii. *The technical and capacity assistance envisaged in the agreement*
- iv. *The level of public participation done on the agreement and how it was done*

MIN.NO.DC/ BEW&I/071/2025:

ADJOURNMENT

There being no other business, the Chairperson adjourned the meeting at thirty- one minutes past one o'clock. The next meeting will be held on the same day at thirty minutes past two o'clock.



Signed.....
HON. BOWEN KANGOGO, MP. CBS
(CHAIRPERSON)

Date..... 8/4/2025.



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
13TH PARLIAMENT - THIRD SESSION - 2024

MINUTES OF THE 46TH SITTING OF THE DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION HELD ON TUESDAY 12TH
NOVEMBER, 2024 IN COMMITTEE ROOM 25, 5TH FLOOR, BUNGE TOWER,
PARLIAMENT BUILDINGS AT 10.00 AM

PRESENT

- | | | |
|---|---|-------------------|
| 1. Hon. Bowen David Kangogo, MP | - | Chairperson |
| 2. Hon. Kemero Maisori Marwa Kitayama, MP | - | Vice- Chairperson |
| 3. Hon. Eng. Nzengu Paul Musyimi, MP | | |
| 4. Hon. Eng. Tandaza Kassim Sawa, MP | | |
| 5. Hon. Eng. Muiruri Muthama Stanley, MP | | |
| 6. Hon. Gachagua George, MP | | |
| 7. Hon. Dorothy Muthoni Ikiara, MP | | |

APOLOGIES

1. Hon. Chepkwony Charity Kathambi, MP
2. Hon. William Kamket, MP
3. Hon. Buyu Rozaah Akinyi, MP
4. Hon. Were Charles Ong'ondo, MP
5. Hon. Eric Wamumbi, MP
6. Hon. Eng. Nebart Bernard Muriuki, MP
7. Hon. Mnyazi Amina Laura, MP
8. Hon. Adow Mohamed Aden, MP

**IN- ATTENDANCE – NATIONAL ASSEMBLY
COMMITTEE SECRETARIAT**

- | | |
|-------------------------|----------------------------|
| 1. Ms. Ivy Kageha | Third Clerk Assistant |
| 2. Dr. Benjamin Ng'imor | Principal Fiscal Analyst |
| 3. Ms. Lynette Otieno | Senior Legal Counsel |
| 4. Mr. Eugene Apaa | Research Officer |
| 5. Ms. Fridah Ngari | Media Relations Officer |
| 6. Mr. Eugene Luteshi | Audio Recording Officer II |
| 7. Ms. Yasmin Hassan | Sergeant-at-Arms |

MIN.NO.DC/ BEW&I/237/2024:

PRELIMINARIES

The Chairperson called the meeting to order at thirty- five minutes past ten o'clock and prayed. He thereafter requested all present to make a self- introduction.

AGENDA:

The agenda of the meeting was presented as follows:

1. Prayers
2. Preliminaries/Introductions
 - i. Adoption of the Agenda

11. Remarks by the Chairperson
3. Confirmation of Minutes/Matters Arising
4. **Agenda:**
Meeting to Consider the Legal and Research Brief on Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization (Agreement on Fisheries Subsidies)
5. Any other Business
6. Adjournment/Date of the next meeting

MIN.NO.DC/ BEW&I/238/2024: ADOPTION OF THE AGENDA

The agenda of the day was adopted having been proposed and seconded by Hon. Eng. Muiruri Muthama Stanley, MP and Hon. George Gachagua, MP respectively.

MIN.NO.DC/ BEW&I/249/2024: LEGAL BRIEF ON PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

The Legal Counsel briefed the Committee on the protocol amending the Marrakesh agreement establishing the World Trade Organization (Agreement on Fisheries Subsidies) as follows;

1. This brief is guided by the Constitution which empowers Parliament to make provisions having the force of law in Kenya and the Interpretation and General Provisions Act, Cap 2 that which provides for construction, application and interpretation of statutes and the Treaty Making and Ratification Act, Cap.4D that provides for making and ratification of treaties in Kenya and other relevant laws.
2. Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the law of Kenya while Article 2(6) of the Constitution provides that –
“any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution”.
3. Pursuant to the foregoing, Parliament enacted The Treaty Making and Ratification Act, Cap.4D (hereinafter referred to as “the Act”) to give effect to Article 2(6) of the Constitution. The Act governs the making and ratification of treaties in Kenya.
4. Section 2 of the Act defines a treaty as an *“international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention”.*
5. Treaties can be referred to by various terms such as Convention, Agreements, Covenants, Final Acts, Charters, Protocols, Pacts and Accords including Constitutions establishing intergovernmental organizations.

6. Treaties may be bilateral (between two parties) or multilateral (between three or more parties) or pluri-lateral (between groups of States that come together to formulate, influence or negotiate outside multilateral frameworks).
7. Under the Act, the responsibility of initiating the treaty making process, negotiating and ratifying a Treaty lies with the Executive. In making this decision, the Executive ought to be guided by Section 5(2) of the Act which provides the considerations that must be followed including-
 - a. *the need that the new treaty is to meet;*
 - b. *the existing legal regime, including the extent of its applicability to the perceived problem;*
 - c. *the probability of reaching the required measure of agreement on the solution aimed for;*
 - d. *any relevant legislative efforts related to the perceived problem;*
 - e. *the optimal form for the proposed treaty;*
 - f. *the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;*
 - g. *the anticipated time schedule for completing the treaty-making process;*
 - h. *the expected costs of formulating and adopting the treaty to Kenya; and*
 - i. *in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.*

1. ROLE OF THE NATIONAL ASSEMBLY IN TREATY MAKING AND RATIFICATION

8. Although initiation of the treaty making process is a role of the Executive, Parliament as the legislative arm decides whether a treaty shall form part of the law of Kenya upon which the treaty comes into force. This flows from **Article 94(5) of the Constitution** which provides that -

"no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation".
9. After the Treaty has been approved by the National Assembly, it therefore becomes binding upon Kenya and Kenya cannot invoke the provisions of its domestic law to justify any failure to perform its obligations under a treaty ratified by it.
10. According to the Vienna Convention on the Law of Treaties, 1969 which governs the making and ratification of treaties internationally, a treaty becomes binding on a state upon ratification.
11. Section 2 of the Treaty Making and Ratification Act defines ratification as the *"the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides"*.
12. Under section 7 of the Act, where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State Department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—
 - a) the objects and subject matter of the treaty;
 - b) any constitutional implications including—

- i any proposed amendment to the Constitution, and
- ii that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- c) the national interests which may be affected by the ratification of the treaty;
- d) obligations imposed on Kenya by the treaty,
- e) requirements for implementation of the treaty;
- f) policy and legislative considerations;
- g) financial implications,
- h) ministerial responsibility;
- i) implications on matters relating to counties;
- j) the summary of the process leading to the adoption of the treaty;
- k) the date of signature;
- l) the number of states that are party to the treaty,
- m) the views of the public on the ratification of the treaty;
- n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure

13 Section 8(1) of the Treaty Making and Ratification Act provides that where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.

14. Section 8 of Cap.4D provides for consideration by Parliament as follows-

8(1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of National Assembly.

(2) Deleted by Act No. 18 of 2014, Sch.

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.

(4) The National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) Deleted by Act No. 18 of 2014, Sch

(7) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.

(8) Deleted by Act No. 18 of 2014, Sch.

(9) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the

provisions of the Constitution even if the reservation is permitted under the relevant treaty.

15. The National Assembly Standing Orders. Part XXI provides for the ratification of treaties as follows

Ratification of Treaties

170A. (1) *A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration.*

(2) *The committee shall undertake public participation before submitting its report to the House.*

(3) *In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—*

(a) *the social and environmental impact of the treaty in the short-term, medium-term and long-term; and,*

(b) *the nature and evidence of any public participation conducted on the treaty.*

(4) ***The report of the committee to the House shall include—***

(a) *information on the views of the people on the ratification of the treaty emanating from public participation conducted by the committee;*

(b) *the findings of the committee on the treaty and any other information the committee may deem necessary; and*

(c) *a recommendation that the House—*

(i) *approves the ratification of the treaty, or*

(ii) *approves the ratification of the treaty with reservations, or*

(iii) *rejects the ratification of the treaty.*

(5) *In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the Treaty.*

(6) *Upon decision of the House on a treaty the Clerk shall, within seven days, notify the relevant Cabinet Secretary and enter the information in the register of treaties.*

16. Section 16 of the Act provides that where the ratification of a treaty referred to is approved by National Assembly without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

17. Where a treaty is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty

18. Where the National Assembly refuses to approve the ratification of the treaty, the Government shall not ratify the treaty.

2. SCRUTINY OF THE WORLD TRADE ORGANIZATION AGREEMENT ON FISHERIES SUBSIDIES

20. The World Trade Organization Agreement on Fisheries Subsidies (hereinafter referred to as "the Agreement") have been committed to the Departmental Committee on Blue Economy, Water and Irrigation, which is required, pursuant Standing Order 170A, to facilitate public participation and make appropriate recommendations on whether the House should approve, approve with reservations or reject ratification of the agreement
21. In its twelfth session, held in Geneva, Switzerland from 12 to 17 June 2022, the WTO Ministerial Conference reached a Decision to adopt an amendment Protocol to insert the Agreement on Fisheries Subsidies into Annex 1A of the WTO Agreement, and opened the Protocol for acceptance by Members.
22. The World Trade Organization (WTO) is the recognized international organization that deals with the rules of trade between member nations. The WTO agreements are agreements negotiated and signed by the member nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.

Summary of the provisions of the Agreement

23. **Article 1 of the Agreement** sets out the type of subsidies covered by the disciplines and the overall scope of the rules. According to this article, the Agreement applies to subsidies as defined in Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) that are specific within the meaning of Article 2 of the same agreement. **Counter veiling measures is an action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country.**
24. Article 1 of the Agreement also specifies that disciplines should apply only to marine wild capture fishing and fishing-related activities at sea. This means the rules would apply to subsidies to activities like onboard processing and transshipping of catch but would exclude, for example, subsidies to pre- and post-harvest activities such as packaging or processing if they happen onshore
25. **For greater certainty(exclusions)-**
- (i) subsidies to aquaculture and inland fisheries are excluded from the scope of the Agreement;
 - (ii) payments made by governments to other governments under fisheries access agreements should not be considered to be subsidies; and
 - (iii) that subsidies must be attributed to the member providing them, regardless of the flag or registry of vessels or the nationality of recipients.
26. Article 2 of the Agreement defines a number of key terms. It includes definitions of fish, fishing, fishing-related activities, vessel, and operator. Importantly, the definition of fish used in the Agreement is broad, including "all species of living marine resources." As such, the new rules will apply to all living marine organisms, including invertebrates, mammals, plants, and reptiles

27. In this regard, subject to the country position on the matter, there may be need to align the definitions of *fish, fishing, fishing-related activities, vessel, and operator* as provided in Fisheries Management and Development Act, Cap. 378 *vis-a-vis* the Agreement.

Article 3 -Illegal, unreported and unregulated fishing (IUU fishing)

28. **Article 3 of the Agreement** establishes subsidy rules that relate to Illegal, unreported and unregulated fishing (IUU fishing). IUU fishing remains a pervasive problem in global fisheries. It undermines fisheries management regimes and affects fisheries' ability to deliver key socio-economic benefits sustainably. In Article 3, WTO members agreed that a vessel or operator that has been found to engage in IUU fishing activities, or any vessel that provides at-sea support to an IUU vessel (such as bunkering, replenishment, or other support activities), should not benefit from any form of subsidies (Article 3.1). This rather strict prohibition is balanced by specific provisions that set out the requirements that an IUU determination must fulfill in order to trigger the prohibition.
29. Articles 3.2 and 3.3 provide the subsidizing member with some level of control over how the prohibition is applied, in particular in determining the duration for which the prohibition applies
30. In recognition of developing countries' need for some time to implement the rule, their subsidies to vessels or operators fishing in their own domestic waters are shielded from legal challenges under the IUU subsidy prohibition for 2 years. The prohibition is also accompanied by softer, complementary rules, including one that allows port states to bring evidence of possible IUU fishing to the attention of the member subsidizing the vessel involved.
31. In summary article 3 provides that Members agree not to provide subsidies to vessels or operators found to have engaged in IUU fishing or fishing-related activities in support of IUU fishing. Prohibition is triggered when a coastal member, a flag state member, or a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) makes an affirmative determination that a vessel or operator has engaged in IUU fishing activity.
32. Article 3 of the agreement **makes requirements for determinations to trigger the prohibition**. Determinations made by coastal members must be based on relevant factual information and follow a few key procedural steps, including notification of the flag state and (if known) the subsidizing member and the ability for both to provide information in the determination process. Determinations by RFMO/As must be in accordance with the RFMO/As' **procedures and relevant international law and involve the provision of timely notification and relevant information**.
33. The subsidizing member sets the **duration of the prohibition of subsidies, considering the severity of the infraction**. At a minimum, the prohibition shall apply as long as the IUU sanction remains in force or the vessel or operator is listed on an IUU list, whichever is the longer.
34. **Developing country members' subsidies** for activities occurring in their domestic EEZ cannot be challenged at the WTO during the first two years after entry into force based on Article 3.1 of IUU fishing (*grace period*).

- 35 **Legislation and measures obligation:** All members must have laws, regulations or administrative procedures in place to ensure that no subsidies are granted to or maintained by any vessel or operator engaged in IUU fishing.
- 36 **Due regard and appropriate action obligation:** A subsidizing member has an obligation to give due regard to a notification by a port state member that a vessel in one of its ports has engaged in IUU fishing and to take appropriate action with regard to its subsidies.

Article 4: Subsidies Regarding Overfished Stocks

- 37 Article 4 of the Agreement addresses situations in which stocks are overfished, that is, their abundance is considered too low to ensure safe reproduction. Article 4 prohibits WTO members from providing subsidies for fishing and fishing-related activities regarding overfished stocks. This relatively strict prohibition is balanced with an exemption that allows the provision of subsidies in the context of particular programs and in particular situations, as well as a grace period for developing countries fishing in their national waters.
- 38 **Prohibition:** Members agree not to provide subsidies for fishing or fishing-related activities regarding stocks that are overfished. Prohibition is triggered when a stock is recognized as overfished by a coastal member or a relevant RFMO/A, based on the best scientific evidence available to the coastal member or RFMO.
- 39 **Sustainability-related Exemption for the Subsidizing Member.** The prohibition does not apply if the subsidies themselves, or if fisheries management measures, are implemented to rebuild the overfished stock(s) to a biologically sustainable level. Developing countries' subsidies for fishing or fishing-related activities on overfished stocks in their domestic EEZ cannot be challenged at the WTO during the first 2 years after entry into force. **Members have no obligation to assess stocks; they must only refrain from providing subsidies when stocks are recognized as overfished by a relevant coastal member or RFMO/A.**

Article 5- Other subsidies

- 40 **Unregulated high seas prohibition:** Members agree not to provide subsidies to fishing and fishing-related activities that occur on the high seas and do not fall within the competence of a relevant RFMO/A.
- 41 Members must take special care and exercise due restraint when granting subsidies-
- (i) to vessels that do not fly their flag,
 - (ii) to fishing and fishing-related activities regarding unassessed stocks

Article 6: Specific Provisions For LDC Members

- 42 Beyond the grace period for developing members under the subsidy prohibitions regarding IUU fishing and overfished stocks, enumerated earlier, the Agreement also includes some crosscutting, horizontal SDT provisions. These consist of an LDC-specific due restraint clause and provisions regarding technical assistance and capacity building (TACB). Article 6 of the Agreement introduces an obligation for members to exercise due restraint in raising matters involving LDCs under the Agreement, and explicitly

requires that the specific situation of an LDC is considered in exploring possible solutions.

Article 7-Technical Assistance and Capacity Building

43. Article 7 of the Agreement covers technical assistance and capacity building (TACB). It includes an obligation to provide TACB for the implementation of the instrument and provides for the creation of a specific voluntary funding mechanism under the WTO in cooperation with the FAO and the International Fund for Agricultural Development to support the implementation of the disciplines.

Article 8: Notification And Transparency

44. **Obligation to Provide Fisheries-related Information in Subsidy Notifications.** As part of their regular subsidy notifications to the WTO, members must provide information, for each subsidy, on the type or kind of fishing activity that is subsidized.

45. As far as possible, they must also provide information on:

- (i) stock status;
- (ii) conservation and management measures;
- (iii) identification of subsidized vessels;
- (iv) fleet capacity; and
- (v) Catch.

46. **Other Transparency Obligations.** Members must also fulfil transparency requirements by providing information on:

- (i) an IUU vessel list (annually) and IUU determinations (when they are made);
- (ii) implementation measures taken by their authorities;
- (iii) their domestic fisheries regime; and
- (iv) the RFMO/As they are party to.

Article 9: Institutional Arrangements

47. The Agreement also includes provisions on institutional arrangements, regarding the important task of monitoring WTO members' implementation of their obligations. Article 9 establishes a committee to oversee the new rules and sets out what its work would be. The Committee on Fisheries Subsidies established composed of representatives from each of the Members will meet twice a year. It is tasked with reviewing the operation of the Agreement annually and examining all the information provided by members in their notifications not less than every 2 years. With a view to improving the way the Agreement operates, Article 9(4) also provides for a review to be undertaken **5 years after the treaty's entry into force, and then every 3 years**. This exercise could lead to proposals to amend the Agreement based on the experience gained in implementing its provisions.

Articles 10&11-Dispute Settlement and Final Provisions

48. Article 10 of the Agreement establishes that, the existing rules under the WTO's dispute settlement mechanism will apply to this new instrument. The Agreement also provides that the specific procedures applicable to subsidy disputes under Article 4 of the ASCM (WTO Agreement on Subsidies and Countervailing Measures) applies to disputes under the main substantive articles of this agreement.

49. Members will not be able to use unilateral trade policy remedies with respect to the obligations under the new fisheries subsidies agreement. Rather, they must use the

multilateral dispute settlement process and be authorized to act in response to subsidies found to be in breach of the Agreement's rules.

50. The Agreement's provisions may not be applied in a way that prejudices the jurisdiction, rights, or obligations of members under international law.
51. The Agreement and findings related to it have no legal implications for territorial claims or the delimitation of maritime boundaries.
52. WTO panels established to settle disputes under the Agreement shall not make any findings if such findings would need to be based on any asserted territorial claims or delimitation of maritime boundaries.

Article 12: Termination Of Agreement If Comprehensive Disciplines Are Not Adopted

53. 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, the Agreement shall stand immediately terminated.

3. MEMORANDUM ON THE WORLD TRADE ORGANISATION AGREEMENT ON FISHERIES SUBSIDIES

54. The Cabinet Secretary, Ministry of Investments, Trade and Industry, submitted a copy of the agreement and a Memorandum dated 10th June, 2024 to the National Assembly.
55. **Purpose of the Memorandum:** to appraise the National Assembly on the Agreement and to seek approval for ratification.
56. **The rationale for ratification** of the agreement is that it will aid in reduction in trade distortion, avoidance of fish trade disruption and ensuring sustainability of the fishing industry.
57. The ratification of the agreement was approved by Cabinet on 23rd April, 2024.

4. WHETHER RESERVATIONS CAN BE ENTERED ON THE CONVENTION

58. It is important to note that the Agreement does not allow for reservations to be made by State Parties to the Agreement.
59. The Convention only allows for revision of the Agreement.

5. RECOMMENDATION

60. Subject to any view by the Committee to the contrary, it is our considered opinion that:
 - a) Subject to the provisions of Standing Order 170A (2), this committee should facilitate public participation on the agreement; and
 - b) the Committee may call for any additional information from the Cabinet Secretaries for Investments, Trade and Industry; Mining, Blue Economy & Maritime Affairs; Foreign Affairs & Diaspora Affairs; the National Treasury & Economic Planning pursuant to the provisions of Standing Order 170A (3).

RESEARCH BRIEF ON PROTOCOL
AMENDING THE MARRAKESH
AGREEMENT ESTABLISHING THE
WORLD TRADE ORGANIZATION
(AGREEMENT ON FISHERIES
SUBSIDIES)

The Research Officer briefed the Committee on the protocol amending the Marrakesh agreement establishing the World Trade Organization (Agreement on Fisheries Subsidies) as follows;

61. The agreement on fisheries subsidies is a World Trade Organization (WTO) agreement which wants to regulate fisheries subsidies and promote sustainable development in the fisheries sector. It establishes a set of binding prohibitions and rules that seek to ensure that the support provided by governments to their fishing sector does not undermine the sustainability of marine resources.
62. The Objective of the agreement, which is yet to come into force, is to—
 - (a) Safeguard the worlds seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity.
 - (b) Reduce trade distortion, avoid fish trade disruption and ensure sustainability of fishing industry.

OBSERVATIONS:

Policy implications:

63. In accordance with Article 2(6) of the Constitution and the Treaty Making and Ratifications Act, No. 45 of 2012, once the agreement is signed and ratified it shall form part of the laws of Kenya.
64. The agreement if ratified will—
 - (a) Augment the Kenya's fight against illegal, unreported, and unregulated fishing along its territorial waters through article two of the agreement;
 - (b) Help address Kenya's other challenge of overfishing within its water through article four which state that no member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock;
 - (c) help enhance the skills and technical capacity of all stakeholders in the fishing industry through targeted technical assistance and capacity building to countries
 - (d) help Kenya's efforts in the conservation and management of fish stocks in its exclusive economic zone through information sharing and transparency by signatories that the agreement envisions; and
 - (e) help to address some of Kenya's disputes with its neighbors on fishing matters in its exclusive economic zone and thereby reduce conflict with other countries through provision on disputes settlement.

Financial Implications

- 65. There are no financial implications imposed on Kenya by the treaty and no expenditure of public funds will be incurred in implementing the Treaty and contributions of members to the mechanism is on voluntary basis.

Implications on matters relating to Counties

- 66. The treaty relates to matters under Part 1 Section twelve of the Fourth Schedule to Constitution that provides for intellectual property therefore it is not a matter concerning counties.

Committee Resolution

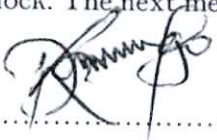
- 67. The Committee should subject the agreement to public participation before making its final recommendations. The Secretariat was requested to begin the process of facilitating public participation on the agreement; the first step being placing an advert in the dailies immediately.
- 68. Further, the Secretariat was requested to invite the relevant Ministries pursuant to the provisions of Standing Order 170A (3) for consideration and provision of additional information on the Same; **Ministry of Investments, Trade and Industry; Mining, Blue Economy & Maritime Affairs; Foreign Affairs & Diaspora Affairs; the National Treasury & Economic Planning**

MIN.NO.DC/ BEW&I/241/2024: ANY OTHER BUSINESS

The Chairperson informed the Committee that the proposed inspection/site visit to Coastal regions had been rescheduled to ^{Thursday} 28th - Sunday, 1st December, 2024 due to procurement challenges.

MIN.NO.DC/ BEW&I/242/2024: ADJOURNEMENT

There being no other business, the Chairperson adjourned the meeting at fifty- five minutes past eleven o'clock. The next meeting will be held on notice.

Signed.....

HON. BOWEN DAVID KANGOGO, MP
(CHAIRPERSON)

Date.....



REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - THIRD SESSION
DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION

IN THE MATTER OF ARTICLES 2(5) & (6) AND 119 (1)(b) OF THE CONSTITUTION AND SECTION 8 OF
THE TREATY MAKING AND RATIFICATION ACT, 2012

AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:-
**THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE
ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)**

INVITATION FOR PUBLIC PARTICIPATION AND SUBMISSION OF MEMORANDA

WHEREAS, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Protocol amending the Marrakesh Agreement establishing the World Trade Organization (Agreement on Fisheries Subsidies) was tabled in the House on 19th June, 2024 and committed to the Departmental Committee on Blue Economy, Water and Irrigation for consideration and reporting to the House;

FURTHER, WHEREAS the Protocol sets out to safeguard the world's seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity and further seeks to create a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets;

NOW THEREFORE, in compliance with Articles 118(1)(b) and 2(5) & (6) of the Constitution and Section 8 of the Treaty Making and Ratification Act, 2012, the Departmental Committee on Blue Economy, Water, and Irrigation hereby invites members of the public and stakeholders to submit memoranda on the Protocol.

The full text of the Agreement and the accompanying Memoranda to Parliament may be accessed at www.parliament.go.ke/the-national-assembly/yhouse-business/paper-hall

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 41842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to ca@parliament.go.ke to be received on or before Friday 29th November, 2024 at 5.00 pm.

S. HORROGE
CLERK OF THE NATIONAL ASSEMBLY
Friday 15th November 2024

For the Nation of Society and the Just Government of the People



REPUBLIC OF KENYA
THIRTEENTH PARLIAMENT- THIRD SESSION (2024)
THE NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION

IN THE MATTER OF ARTICLES 2(5) & (6) AND 118 (1)(b) OF THE CONSTITUTION
AND
SECTION 8 OF THE TREATY MAKING AND RATIFICATION ACT, 2012
AND
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF:-

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S. NUNOGE
CLERK OF THE NATIONAL ASSEMBLY
Friday 15th November 2024

**LEGAL AND RESEARCH
BRIEFS**

REPUBLIC OF KENYA



DIRECTORATE OF LEGAL SERVICES

THE NATIONAL ASSEMBLY

SUBMITTED TO: DEPARTMENTAL COMMITTEE ON
BLUE ECONOMY, WATER AND IRRIGATION

DATE: 12TH NOVEMBER 2024

**BRIEF ON THE CONSIDERATION OF THE RATIFICATION OF THE WORLD
TRADE ORGANIZATION AGREEMENT ON FISHERIES SUBSIDIES**

1. INTRODUCTION

- 1) This brief is guided by the Constitution which empowers Parliament to make provisions having the force of law in Kenya and the Interpretation and General Provisions Act, Cap 2 that which provides for construction, application and interpretation of statutes and the Treaty Making and Ratification Act, Cap.4D that provides for making and ratification of treaties in Kenya and other relevant laws.
- 2) Article 2(5) of the Constitution of Kenya, 2010 provides that the general rules of international law shall form part of the law of Kenya while Article 2(6) of the Constitution provides that –

“any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution”.
- 3) Pursuant to the foregoing, Parliament enacted The Treaty Making and Ratification Act, Cap.4D (hereinafter referred to as “the Act”) to give effect to Article 2(6) of the Constitution. The Act governs the making and ratification of treaties in Kenya.
- 4) Section 2 of the Act defines a treaty as an “*international agreement concluded between States in written form and governed by*

international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention”.

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 - d) *any relevant legislative efforts related to the perceived problem;*
 - e) *the optimal form for the proposed treaty;*
 - f) *the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;*
 - g) *the anticipated time schedule for completing the treaty-making process;*
 - h) *the expected costs of formulating and adopting the treaty to Kenya; and*
 - i) *in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.*

2. ROLE OF THE NATIONAL ASSEMBLY IN TREATY MAKING AND RATIFICATION

8) Although initiation of the treaty making process is a role of the Executive, Parliament as the legislative arm decides whether a treaty shall form part of the law of Kenya upon which the treaty comes into force. This flows from **Article 94(5) of the Constitution** which provides that -

“no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by this Constitution or by legislation”.

9) After the Treaty has been approved by the National Assembly, it therefore becomes binding upon Kenya and Kenya cannot invoke the provisions of its domestic law to justify any failure to perform its obligations under a treaty ratified by it.

10) According to the Vienna Convention on the Law of Treaties, 1969 which governs the making and ratification of treaties internationally, a treaty becomes binding on a state upon ratification.

11) Section 2 of the Treaty Making and Ratification Act defines ratification as the *“the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides”.*

12) Under section 7 of the Act, where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State Department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

a) the objects and subject matter of the treaty;

b) any constitutional implications including—

- i. any proposed amendment to the Constitution; and
- ii. that the treaty is consistent with the Constitution and promotes constitutional values and objectives;

- c) the national interests which may be affected by the ratification of the treaty;
- d) obligations imposed on Kenya by the treaty;
- e) requirements for implementation of the treaty;
- f) policy and legislative considerations;
- g) financial implications;
- h) ministerial responsibility;
- i) implications on matters relating to counties;
- j) the summary of the process leading to the adoption of the treaty:
- k) the date of signature;
- l) the number of states that are party to the treaty;
- m) the views of the public on the ratification of the treaty;
- n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

13) Section 8(1) of the Treaty Making and Ratification Act provides that where the **Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of the National Assembly.**

14) Section 8 of Cap.4D provides for consideration by Parliament as follows-

8(1)Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of National Assembly.

(2) Deleted by Act No. 18 of 2014, Sch.

(3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in

the ratification process in accordance with laid down parliamentary procedures.

*(4) The National Assembly may **approve the ratification of a treaty with or without reservations to specific provisions of the treaty.***

(5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.

(6) Deleted by Act No. 18 of 2014, Sch

*(7) Where the National Assembly **refuses to approve the ratification of a treaty, the** Clerk of the National Assembly **shall submit the resolution of the** House to the relevant Cabinet Secretary **within fourteen days** of the resolution.*

(8) Deleted by Act No. 18 of 2014, Sch.

*(9) The National Assembly shall **not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.***

15) The National Assembly Standing Orders. Part XXI provides for the ratification of treaties as follows

Ratification of Treaties

170A. (1) A treaty submitted to the National Assembly for ratification shall be laid on the Table of the House and stand committed to the relevant Committee for consideration.

(2) The committee shall undertake public participation before submitting its report to the House.

(3) *In addition to the information required to be submitted to the National Assembly under written law, the committee may require the relevant Cabinet Secretary to submit further information, including—*

- (a) the social and environmental impact of the treaty in the short-term, medium-term and long-term; and,*
- (b) the nature and evidence of any public participation conducted on the treaty.*

(4) **The report of the committee to the House shall include—**

- (a) information on **the views of the people** on the ratification of the treaty emanating from public participation conducted by the committee;*
- (b) the **findings of the committee on the treaty and any other information** the committee may deem necessary; and*
- (c) a **recommendation** that the House—*
 - (i) **approves** the ratification of the treaty, or*
 - (ii) **approves** the ratification of the treaty **with reservations**, or*
 - (iii) **rejects** the ratification of the treaty.*

(5) *In approving ratification of a treaty with reservations, the House shall specify the affected provisions of the treaty and the proposed text of each reservation, which may include prescription of timelines within which an obligation is to be fulfilled before implementation of the Treaty.*

(6) Upon decision of the House on a treaty the Clerk shall, within seven days, notify the relevant Cabinet Secretary and enter the information in the register of treaties.

16) Section 16 of the Act provides that where the ratification of a treaty referred to is approved by National Assembly without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

17) Where a treaty is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty

18) Where the National Assembly refuses to approve the ratification of the treaty, the Government **shall not ratify** the treaty.

3. SCRUTINY OF THE WORLD TRADE ORGANIZATION AGREEMENT ON FISHERIES SUBSIDIES

20) The World Trade Organization Agreement on Fisheries Subsidies (hereinafter referred to as "the Agreement") have been committed to the Departmental Committee on Blue Economy, Water and Irrigation, which is required, pursuant Standing Order 170A, to facilitate public participation and make appropriate recommendations on whether the House should approve, approve with reservations or reject ratification of the agreement.

21) In its twelfth session, held in Geneva, Switzerland from 12 to 17 June 2022, the WTO Ministerial Conference reached a Decision to adopt an amendment Protocol to insert the Agreement on Fisheries Subsidies into Annex 1A of the WTO Agreement, and opened the Protocol for acceptance by Members.

22) The World Trade Organization (WTO) is the recognized international organization that deals with the rules of trade between member nations. The WTO agreements are agreements negotiated and signed by the member nations and ratified in their parliaments. The goal is to ensure that trade flows as smoothly, predictably and freely as possible.

Summary of the provisions of the Agreement

23) **Article 1 of the Agreement** sets out the type of subsidies covered by the disciplines and the overall scope of the rules. According to this article, the Agreement applies to subsidies as defined in Article 1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM) that are specific within the meaning of Article 2 of the same agreement. **Counter veiling measures is an action taken by the importing country, usually in the form of increased duties to offset subsidies given to producers or exporters in the exporting country.**

24) Article 1 of the Agreement also specifies that disciplines should apply only to marine wild capture fishing and fishing- related activities at sea. This means the rules would apply to subsidies to activities like onboard processing and transshipping of catch but would exclude, for example, subsidies to pre- and post-harvest activities such as packaging or processing if they happen onshore.

25) **For greater certainty(exclusions)-**

- (i) subsidies to aquaculture and inland fisheries are excluded from the scope of the Agreement;
- (ii) payments made by governments to other governments under fisheries access agreements should not be considered to be subsidies; and

(iii) that subsidies must be attributed to the member providing them, regardless of the flag or registry of vessels or the nationality of recipients.

26) Article 2 of the Agreement defines a number of key terms. It includes definitions of fish, fishing, fishing-related activities, vessel, and operator. Importantly, the definition of fish used in the Agreement is broad, including "all species of living marine resources." As such, the new rules will apply to all living marine organisms, including invertebrates, mammals, plants, and reptiles.

27) **In this regard, subject to the country position on the matter, there may be need to align the definitions of *fish, fishing, fishing-related activities, vessel, and operator* as provided in Fisheries Management and Development Act, Cap. 378 *vis-a-vis* the Agreement.**

Article 3 -Illegal, unreported and unregulated fishing (IUU fishing)

28) **Article 3 of the Agreement** establishes subsidy rules that relate to Illegal, unreported and unregulated fishing (IUU fishing). IUU fishing remains a pervasive problem in global fisheries. It undermines fisheries management regimes and affects fisheries' ability to deliver key socio-economic benefits sustainably. In Article 3, WTO members agreed that a vessel or operator that has been found to engage in IUU fishing activities, or any vessel that provides at-sea support to an IUU vessel (such as bunkering, replenishment, or other support activities), should not benefit from any form of subsidies (Article 3.1). This rather strict prohibition is balanced by specific provisions that set out the requirements that an IUU determination must fulfill in order to trigger the prohibition.

- 29) Articles 3.2 and 3.3 provide the subsidizing member with some level of control over how the prohibition is applied, in particular in determining the duration for which the prohibition applies
- 30) In recognition of developing countries' need for some time to implement the rule, their subsidies to vessels or operators fishing in their own domestic waters are shielded from legal challenges under the IUU subsidy prohibition for 2 years. The prohibition is also accompanied by softer, complementary rules, including one that allows port states to bring evidence of possible IUU fishing to the attention of the member subsidizing the vessel involved.
- 31) In summary article 3 provides that Members agree not to provide subsidies to vessels or operators found to have engaged in IUU fishing or fishing-related activities in support of IUU fishing. Prohibition is triggered when a coastal member, a flag state member, or a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A) makes an affirmative determination that a vessel or operator has engaged in IUU fishing activity.
- 32) Article 3 of the agreement **makes requirements for determinations to trigger the prohibition.** Determinations made by coastal members must be based on relevant factual information and follow a few key procedural steps, including notification of the flag state and (if known) the subsidizing member and the ability for both to provide information in the determination process. Determinations by RFMO/As must be in accordance with the RFMO/As' **procedures and relevant international law and involve the provision of timely notification and relevant information.**
- 33) The subsidizing member sets the **duration of the prohibition of subsidies, considering the severity of the infraction.** At a minimum, the prohibition shall apply as long as the IUU sanction

remains in force or the vessel or operator is listed on an IUU list, whichever is the longer.

- 34) **Developing country members' subsidies** for activities occurring in their domestic EEZ cannot be challenged at the WTO during the first two years after entry into force based on Article 3.1 of IUU fishing (*grace period*).
- 35) **Legislation and measures obligation:** All members must have laws, regulations or administrative procedures in place to ensure that no subsidies are granted to or maintained by any vessel or operator engaged in IUU fishing.
- 36) **Due regard and appropriate action obligation:** A subsidizing member has an **obligation to give due regard to a notification by a port state member that a vessel in one of its ports has engaged in IUU fishing and to take appropriate action** with regard to its subsidies.

Article 4: Subsidies Regarding Overfished Stocks

- 37) Article 4 of the Agreement addresses situations in which stocks are overfished, that is, their abundance is considered too low to ensure safe reproduction. Article 4 prohibits WTO members from providing subsidies for fishing and fishing-related activities regarding overfished stocks. This relatively strict prohibition is balanced with an exemption that allows the provision of subsidies in the context of particular programs and in particular situations, as well as a grace period for developing countries fishing in their national waters.
- 38) **Prohibition:** Members agree not to provide subsidies for fishing or fishing-related activities regarding stocks that are overfished. Prohibition is triggered when a stock is recognized as overfished by a coastal member or a relevant RFMO/A, based on the best scientific evidence available to the coastal member or RFMO.

39) Sustainability-related Exemption for the Subsidizing Member.

The prohibition does not apply if the subsidies themselves, or if fisheries management measures, are implemented to rebuild the overfished stock(s) to a biologically sustainable level. Developing countries' subsidies for fishing or fishing-related activities on overfished stocks in their domestic EEZ cannot be challenged at the WTO during the first 2 years after entry into force. **Members have no obligation to assess stocks; they must only refrain from providing subsidies when stocks are recognized as overfished by a relevant coastal member or RFMO/A.**

Article 5- Other subsidies

- 40) Unregulated high seas prohibition: Members agree not to provide subsidies to fishing and fishing-related activities that occur on the high seas and do not fall within the competence of a relevant RFMO/A.
- 41) Members must take special care and exercise due restraint when granting subsidies-
- (i) to vessels that do not fly their flag;
 - (ii) to fishing and fishing-related activities regarding unassessed stocks.

Article 6: Specific Provisions For LDC Members

- 42) Beyond the grace period for developing members under the subsidy prohibitions regarding IUU fishing and overfished stocks, enumerated earlier, the Agreement also includes some crosscutting, horizontal SDT provisions. These consist of an LDC-specific due restraint clause and provisions regarding technical assistance and capacity building (TACB). Article 6 of the Agreement introduces an obligation for members to exercise due restraint in raising matters

involving LDCs under the Agreement, and explicitly requires that the specific situation of an LDC is considered in exploring possible solutions.

Article 7-Technical Assistance And Capacity Building

43) Article 7 of the Agreement covers technical assistance and capacity building (TACB). It includes an obligation to provide TACB for the implementation of the instrument and provides for the creation of a specific voluntary funding mechanism under the WTO in cooperation with the FAO and the International Fund for Agricultural Development to support the implementation of the disciplines.

Article 8: Notification And Transparency

44) **Obligation to Provide Fisheries-related Information in Subsidy Notifications.** As part of their regular subsidy notifications to the WTO, members must provide information, for each subsidy, on the type or kind of fishing activity that is subsidized.

45) As far as possible, they must also provide information on:

- (i) stock status;
- (ii) conservation and management measures;
- (iii) identification of subsidized vessels;
- (iv) fleet capacity; and
- (v) Catch.

46) **Other Transparency Obligations.** Members must also fulfil transparency requirements by providing information on:

- (i) an IUU vessel list (annually) and IUU determinations (when they are made);
- (ii) implementation measures taken by their authorities;
- (iii) their domestic fisheries regime; and
- (iv) the RFMO/As they are party to.

Article 9: Institutional Arrangements

47) The Agreement also includes provisions on institutional arrangements, regarding the important task of monitoring WTO members' implementation of their obligations. Article 9 establishes a committee to oversee the new rules and sets out what its work would be. The Committee on Fisheries Subsidies established composed of representatives from each of the Members will meet twice a year. It is tasked with reviewing the operation of the Agreement annually and examining all the information provided by members in their notifications not less than every 2 years. With a view to improving the way the Agreement operates, Article 9(4) also provides for a review to be undertaken **5 years after the treaty's entry into force, and then every 3 years**. This exercise could lead to proposals to amend the Agreement based on the experience gained in implementing its provisions.

Articles 10&11-Dispute Settlement and Final Provisions

48) Article 10 of the Agreement establishes that, the existing rules under the WTO's dispute settlement mechanism will apply to this new instrument. The Agreement also provides that the specific procedures applicable to subsidy disputes under Article 4 of the ASCM (WTO Agreement on Subsidies and Countervailing Measures) applies to disputes under the main substantive articles of this agreement.

49) Members will not be able to use unilateral trade policy remedies with respect to the obligations under the new fisheries subsidies agreement. Rather, they must use the multilateral dispute settlement process and be authorized to act in response to subsidies found to be in breach of the Agreement's rules.

50) The Agreement's provisions may not be applied in a way that prejudices the jurisdiction, rights, or obligations of members under international law.

51) The Agreement and findings related to it have no legal implications for territorial claims or the delimitation of maritime boundaries.

52) WTO panels established to settle disputes under the Agreement shall not make any findings if such findings would need to be based on any asserted territorial claims or delimitation of maritime boundaries.

Article 12: Termination Of Agreement If Comprehensive Disciplines Are Not Adopted

53) 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, the Agreement shall stand immediately terminated.

4. MEMORANDUM ON THE WORLD TRADE ORGANISATION AGREEMENT ON FISHERIES SUBSIDIES

26. The Cabinet Secretary, Ministry of Investments, Trade and Industry, submitted a copy of the agreement and a Memorandum dated 10th June, 2024 to the National Assembly.

27. **Purpose of the Memorandum:** to appraise the National Assembly on the Agreement and to seek approval for ratification.

28. **The rationale for ratification** of the agreement is that it will aid in reduction in trade distortion, avoidance of fish trade disruption and ensuring sustainability of the fishing industry.

29. The ratification of the agreement was approved by Cabinet on 23rd April, 2024.

5. WHETHER RESERVATIONS CAN BE ENTERED ON THE CONVENTION

30. It is important to note that the Agreement does not allow for reservations to be made by State Parties to the Agreement.

31. The Convention only allows for revision of the Agreement.

6. RECOMMENDATION

32. Subject to any view by the Committee to the contrary, it is our considered opinion that:

- a) Subject to the provisions of Standing Order 170A (2), this committee should facilitate public participation on the agreement; and
- b) the Committee may call for any additional information from the Cabinet Secretaries for Investments, Trade and Industry; Mining, Blue Economy & Maritime Affairs; Foreign Affairs & Diaspora Affairs; the National Treasury & Economic Planning pursuant to the provisions of Standing Order 170A (3).



BRIEF ON THE AGREEMENT ON FISHERIES SUBSIDIES

A. BACKGROUND

The agreement on fisheries subsidies is a World Trade Organization (WTO) agreement which wants to regulate fisheries subsidies and promote sustainable development in the fisheries sector. It establishes a set of binding prohibitions and rules that seek to ensure that the support provided by governments to their fishing sector does not undermine the sustainability of marine resources.

The Objective of the agreement, which is yet to come into force, is to—

- (a) Safeguard the worlds seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity.
- (b) Reduce trade distortion, avoid fish trade disruption and ensure sustainability of fishing industry.

B. OBSERVATIONS:

Policy implications:

In accordance with Article 2(6) of the Constitution and the Treaty Making and Ratifications Act, No. 45 of 2012, once the agreement is signed and ratified it shall form part of the laws of Kenya.

The agreement if ratified will—

- (a) Augment the Kenya's fight against illegal, unreported, and unregulated fishing along its territorial waters through article two of the agreement;
- (b) Help address Kenya's other challenge of overfishing within its water through article four which state that no member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock;
- (c) help enhance the skills and technical capacity of all stakeholders in the fishing industry through targeted technical assistance and capacity building to countries

- (d) help Kenya's efforts in the conservation and management of fish stocks in its exclusive economic zone through information sharing and transparency by signatories that the agreement envisions; and
- (e) help to address some of Kenya's disputes with its neighbors on fishing matters in its exclusive economic zone and thereby reduce conflict with other countries through provision on disputes settlement.

Financial Implications

There are no financial implications imposed on Kenya by the treaty and no expenditure of public funds will be incurred in implementing the Treaty and contributions of members to the mechanism is on voluntary basis.

Implications on matters relating to Counties

The treaty relates to matters under Part 1 Section twelve of the Fourth Schedule to Constitution that provides for intellectual property therefore it is not a matter concerning counties.

C. Proposed Way forward

The Committee should subject the agreement to public participation before making its final recommendations.

**SUBMISSIONS FROM
STATE DEPARTMENT
FOR TRADE**



MINISTRY OF INDUSTRIALIZATION, TRADE AND ENTERPRISE DEVELOPMENT
STATE DEPARTMENT FOR TRADE AND ENTERPRISE DEVELOPMENT

REPORT OF THE

NATIONAL TRADE NEGOTIATIONS COUNCIL
WORKSHOP

LAKE NAIVASHA RESORT

3RD - 5TH JUNE 2022

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1. INTRODUCTION

Ministerial Conference (MC) is the highest decision-making organ in the World Trade Organization (WTO) and it meets biennially. Since, its establishment in 1995, WTO has held 11 Ministerial Conferences and taken decisions on specific multilateral trade issues, as well as provided direction on outstanding/protracted issues.

The last Ministerial Conference (MC11) was held in Buenos Aires in 2017. The 12th Ministerial Conference will be held in Switzerland, Geneva from 12th June to 15th June, 2022 and will be co-chaired by Kazakhstan Minister of Trade and Integration. The Conference was postponed twice owing to the outbreak of the COVID 19 Pandemic. It is expected that the 12th Ministerial Conference will take the format of an open-ended meeting on the response of the WTO to the covid-19 Pandemic. It will also take the format of a business-like and streamlined discussion with no negotiations expected to take place. The Ministers are expected to take stock of the progress made in the WTO negotiations.

The current issues scheduled for MC12 discussion include:

1. Agriculture reforms
2. Fisheries Subsidies
3. Food crisis
4. WTO responses to the pandemic and TRIPS waiver
5. WTO reforms
6. Other Issues.
 - Development (Special and Differential Treatment and DDA)
 - Joint Statement Initiatives (JSIs)
 - Regular Work- These include TRIPS moratorium, Ecommerce work programme, and E-Commerce Moratorium

The TRIPS and E-commerce moratorium is likely to be pushed to the next Ministerial Conference (MC13)

In preparation, the Kenya National Trade Negotiations Council (NTNC) held a preparatory workshop at the Lake Naivasha Resort from 3rd-6th June 2022 with a view to develop Kenya's position for use during MC12. The State Department for Trade and Enterprise Development organized the workshop with support from Trademark East Africa (TMEA).

2. OBJECTIVES OF THE WORKSHOP

The purpose of the Workshop was to bring together Kenya's Geneva-based Economic Counsellors and Kenya's trade negotiators under the NTNC with a view to:

1. Further review the Kenyan Position for the MC 12 & General Statement, Thematic Statements;
2. Align the country Position Paper with the WTO negotiations state of play; and
3. Review of MC 12 outcome document and update Kenya's positions in thematic areas

3. WTO NEGOTIATIONS STATE OF PLAY

3.1 Agriculture Reforms

The issues which are under discussion for MC12 in relation to Agriculture reforms are:

- Domestic support
- Public stockholding for food security
- Market access
- Special Safeguard Mechanism
- Export restrictions
- Export competition
- Cotton
- Transparency

There are draft ministerial decisions/declarations released by the Director General which highlights most of the issues above under discussion for MC12. The draft ministerial decisions are;

- 1.0 Draft Ministerial Decision on Agriculture reform which was released on 31st May, 2022. The outcome of the discussions is under the auspices of the agriculture committee and green room discussions.
- 2.0 Draft Ministerial Declaration on World Food Programme (WFP) for food purchases. The declaration would exempt the WFP from export prohibition and restrictions for foods bought for humanitarian purposes.

3.2 Fisheries Subsidies

There is a text released on the 28th November, 2021 on Fisheries Subsidies. The text has remained intact since it was earmarked to be escalated to the Ministers for a Ministerial Declaration in the 12th Ministerial Conference before it was postponed.

Even though there have been negotiations spearheaded by the chair of the Committee on Fisheries, no updated/revised version of the text has been released. It is expected that a revised version of the text will be released just before the start of the MC12 and escalated to the Ministers. Discussions are ongoing to bridge the extreme positions and build consensus

It is therefore imperative to prepare the CS on the revised version of the text in case there will be negotiations on the same.

3.3 Food Crisis

Food crisis is a new addition to the MC 12 agenda, due to the rising food insecurity occasioned by the Covid-19 pandemic and further exacerbated by the geopolitical situation (Russia-Ukraine war), which disrupted the global food supply chains. Russia and Ukraine are some of the biggest producers and exporters of grains specifically wheat.

The food situation is likely to worsen in the coming years due to the fact to shortage of fertilizers as Russia is a leading exporter of fertilizers.

In response to this situation, the WTO has negotiated a draft Ministerial Declaration on Trade and Food Security which is a result of green room discussions. Additionally, a number of countries including Egypt have prepared a draft Ministerial Declaration on food security in the context of net food-importing developing countries (NFIDCs) and least developing countries (LDCs).

3.4 WTO Response to the Pandemic and TRIPS Waiver

The TRIPS Waiver proposes the waiver from certain provisions of the TRIPS Agreement, negotiations of which have been longstanding at the WTO. Parallel to these negotiations, there have been discussions under the auspices of the OTTAWA Group which have yielded a draft declaration on the TRIPS agreement and public health.

The Declaration has broadened the WTO Response to Covid-19 pandemic from the waiver of some provisions of the TRIPS Agreement to allow for the prevention, containment and treatment of the disease which included export restriction, tariffs, and trade facilitation

The discussions on the TRIPS Waiver were undertaken under the TRIPS council while the discussions on the TRIPS Waiver and Public health were undertaken under the General Council Chairperson of the GC. Due to the similarity of the two issues, it was proposed that the two issues (Waiver of TRIPS and the WTO Response to the Pandemic) be harmonized and presented for a ministerial council for adoption at the MC12.

The discussions were chaired by Amb. Walker of New Zealand who consolidated the declaration of the TRIPS Agreement and Public Health together with many other declarations and proposals that had been developed by members. Ambassador Walker however excluded the TRIPS Waiver proposal from the harmonized declaration.

The harmonized text by Ambassador Walker WTO Response to the Pandemic included:

- Consolidation of all proposals on WTO and COVID-19
- Excluded TRIPS Waiver proposal
- Transparency & Monitoring
- Export restrictions and prohibitions
- Trade facilitation, regulatory cooperation & coherence, and tariffs
- Role of trade in services
- Collaboration with other international organizations
- Framework for future preparedness

The document proposes a framework for future preparedness for pandemics and excludes the TRIPS Waiver which was relegated to the TRIPS Council.

The proponents of the TRIPS Waiver refused to back the document if the proposal for TRIPS Waiver isn't included. The director general (DG) therefore took the initiative to bring together the main proponents (South Africa and India) and opponents (US and EU) of the document to come up with a compromise position for declaration at the MC12. The discussions were unable to yield a compromise position and the issue was escalated to the MC.

The team came up with a document which was submitted to the TRIPS Council for the consideration. The Council has since considered the matter. It was not a waiver as was supported by the proponents but has introduced flexibilities within the trips agreement which make it easier for members to members to invoke article 31 (on compulsory licenses in case of emergencies).

Further, the document limits the scope of the waiver from vaccines, therapeutics and diagnostics to cover vaccines only. Consequently, the document has lost the support of many members and is not expected to sail through. Discussions are ongoing under the WTO response

to the pandemic behind the scenes but as it stands there is a deadlock on the same due to lack of agreement on the TRIPS Waiver.

3.5 WTO Reforms

The issue of WTO reform is popular and gaining tract among members. The specific WTO reform issues are:

- **Dispute Settlement System** - Addressing the appellate body Stalemate, Preservation of the essential features of DSM which include Independent, two-tier DSM, and automaticity in the launch of disputes, and Decision making by consensus
- **Monitoring function**- Transparency/notification, and emphasis on capacity building as opposed to additional transparency obligations
- **Reinvigorating the negotiation function under the WTO**- Preservation of rules on decision making & amendments and addressing development concerns of developing countries - DDA
- **Basic structure** - One of which is the decision- making process where consensus is deemed ineffective and alternative decision-making system are being considered. There is a strong push to do away with consensus. Towards MC12, what approach needs to be adopted, Working Group or Political commitment first.

3.6 Other Issues

The WTO Ministerial Conference has left room for other discussions on other issues including:

- **Regular Work**: TRIPS Moratorium and E-Commerce Work Programme and Moratorium. The TRIPS and E-Commerce Moratorium are expected to be extended to MC13.
- **Joint Statement Initiatives (JSIs)** – These JSIs include E-commerce, IFD, Services Domestic Regulations, and MSMEs
- **Development**- These are the Doha Development Agenda (DDA), Special and Differential Treatment (S&DT) – G90 proposals anchored on Para 44 of the Doha Declaration, and Proposals for Differentiation among developing countries
- **Trade and Gender** – Draft Ministerial Declaration on the advancement of Gender Equity and Women’s Economic Empowerment within Trade.
- **Trade and environmental Sustainability** – Environmental measures market access, fossil fuel subsidy reform, circular economy & plastics

4. DETAILED UPDATES ON THEMATIC AREAS

4.1 FISHERIES NEGOTIATIONS

There has been a strong push for an outcome after over 20 years of deliberations on rules especially as there is currently political goodwill for this to be concluded.

The Chair of the Negotiating Group on Rules circulated a revised Fisheries Text, TN/RL/W/276/Rev.2 on 8th November 2021, and it was expected that the draft text would respond to the positions articulated by the Ministers at the 15th July, 2021 virtual Trade Negotiations Committee (at Ministerial level) devoted to the subject.

However, sharply differing positions among the WTO members is evident on the number of issues that are still outstanding. For example, some countries have demanded comprehensive cuts in subsidies granted by governments to distant-water fishing fleets, while others have sought preferential treatment for small-scale and artisanal fishing in any trade deal that is concluded.

Whilst appreciating the enormous effort expended by the Chair of the negotiating group, in moving the process forward in the revised text. Kenya will therefore make precise and substantive proposals to recalibrate the text with a view to strengthening our aspirations in the development of our Blue Economy sector.

As WTO members prepare for the 12th ministerial conference in Geneva this year, countries are hoping for a concrete outcome since major strides have been made towards development of a comprehensive text on fisheries subsidies with a comprehensive draft text already in place and undergoing scrutiny at the WTO by different negotiating groups. There stands a decision to be made whether the fisheries text will be a stand-alone Agreement or an Annex to the Agreement on Subsidies and Countervailing Measures.

4.2 AGRICULTURE NEGOTIATIONS

Agriculture is the most distorted element in trade comprising of goods with most protection in majority of countries therefore categorized as sensitive products with political connotation.

Evolution of the Agreement on Agriculture (AoA)

The Agreement on Agriculture was an inbuilt agenda of the Uruguay Round and the negotiations began in 2000 at the heart of the Doha Development Agenda (DDA), with modalities sought under single undertaking.

2022 marks 22 years since AoA negotiations started - (DDA) as mandated in UR Agreement on Agriculture - Article 20. The 2008 Rev.4 modalities came close to be agreed on, but members resorted to "low-hanging fruits" at the time.

The Bali MC9 (2013) agreed not to challenge PSH schemes for developing countries until a permanent solution is found by MC11. In Nairobi MC10 (2015) agreed to eliminate export subsidies, but failed to reaffirm remaining DDA issues. During the MC11 (2017) no agreement on any of the DDA issues was reached.

The Preamble of the AoA formed the basis for initiating a process of reform on trade in agriculture, to establish a fair and market-oriented agricultural trading system. Long term objective is to establish a fair, market oriented agricultural system and provide for substantial progressive reductions in agricultural support and protection sustained.

Pillars of the Agreement on Agriculture

1) Domestic support

Use of production linked payments to encourage producers to produce more while maintaining high internal prices.

2) Market access – tariffs in agriculture for export (high tariffs to be negotiated)

Use of market access barriers (e.g., tariffs, import restrictions) to protect domestic producers from competition.

3) Export subsidies

Due to rising production and need to keep internal price above a predetermined level, export subsidies used to promote export of surplus production requirements.

Structure Of the Agreement

Market Access	Domestic Support	Export Competition
Tariffs	Green Box	Export Subsidies
Tariff Quotas	Blue Box	Anti-circumvention
Special Safeguard		

New Developments/ State of Play in Agricultural Negotiations

Agriculture remains one of the top priorities for the WTO membership. Progress in this area could help to correct and prevent restrictions and distortions in global trade.

Negotiations have been going on for the last 22 years. On 31st May, the Chair released three texts that were developed following consultations

1. *Draft ministerial decision on WFP*; Seeks for members to exempt WFP procurement of food meant for non-commercial humanitarian purposes from export prohibition or restrictions.
2. *On Agriculture*; The preamble commits members to resolve to intensify negotiations on the topics as listed below:
 - Regarding Domestic Support the draft proposed the need to continue the negotiations after MC12 and specifically to reduce substantially trade distorting support
 - Paragraph 4 of the draft reaffirms that SDT forms an integral part of the negotiations and shall be considered.

a) Public Stockholding for Food Security

The draft recalls previous mandates to find a permanent solution and acknowledges importance of the PSH programs for food security by some developing members and at the same time mindful of other members food security. Members will continue negotiations to agree to a permanent solution by MC13.

b) Market Access

Members will undertake to continue negotiations on this area post MC12 with a view to improving substantially

c) Special Safeguard Mechanism

Negotiations will continue in the auspices of the dedicated sessions of CoAss. Additionally, members agree on engagements in enhanced technical discussions on all the elements necessary recalling what was envisioned in para.7 of the Hong Kong Ministerial Declaration.

d) Export Restriction

Negotiations will continue post MC12 and are focused on transparency especially in respect to export

e) Export competition

Export competition refers to the support provided to enable producers to export. This is a highly trade distorting and protectionist form of support. Firstly the 2015 Nairobi Decision on Export Competition required all Members that had scheduled export subsidies to eliminate them, within specific timelines for both developed and developing countries. So far, some of the affected Members have revised their schedules of concessions to eliminate the export subsidies.

The core of the reform programme on export competition are the commitments to reduce subsidized export quantities, and the amount of money spent subsidizing exports.

f) Transparency

The text underscores the importance of notification obligations and members agree to work with the COA to review and update transparency provisions as well as other agriculture related transparency requirements.

g) Food Security

Article 5 – Agricultural safeguard mechanisms

Complications

Developing countries (such as China, Brazil, SA, India) are becoming big US competitors and are being allowed to use the same subsidies.

4.3 THE WTO RESPONSE TO COVID-19 PANDEMIC

WTO Members acknowledge that the organization has an important role to play in the multilateral response to the Covid-19 pandemic. To this end, Members have actively deliberated on how best to position the WTO to play its role in mitigating the effects of the pandemic on world trade.

While WTO members have engaged in concerted deliberations on the role of the WTO in addressing the pandemic, they are yet to agree on the specifics. The proposals include waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which is meant to facilitate universal and timely access to Covid-19 vaccines, therapeutics and diagnostics to equip countries to better handle future health crises.

The TRIPS Waiver Proposal (Kenya is a co-sponsor) has unfortunately been opposed by some WTO Members, particularly the developed countries and consequently, the negotiations have resulted in a diluted proposal (quadrilateral document agreed by India, South Africa, USA and EU), which only expounds on the existing flexibilities in the TRIPS Agreement.

In the meantime, the General Council sanctioned a Facilitator-led process to produce a Ministerial Declaration on WTO response to the Pandemic. Through this process, WTO members have deliberated on how best the WTO can contribute to the mitigation of the adverse effects of the current and future pandemics. The expectation was a draft Declaration for consideration and adoption at MC12. Unfortunately, the deliberations have since stalled.

4.4 THE CURRENT GLOBAL FOOD CRISIS In 2021, the global levels of hunger reached 193 million people in about 53 countries. This was an increase of 40m from the year 2020. The situation was aggravated by intensified conflict,

significant economic shocks caused by the covid-19, and some severe weather extremes.

In 2022, the problem was compounded by the Russia – Ukraine crisis which started in February. The situation is anticipated to get worse in 2023 as the two countries are major suppliers of energy and grains in the world. Both contribute 70% of the global supply of wheat. The energy and food prices have therefore escalated due to high expenses in movement logistics and unavailability, as production levels within these two countries have gone down. Additionally, the agricultural inputs coming from these two countries, e.g., Fertilizers, have become expensive thus affecting the production of other countries.

In response to this, a draft decision on food security has been made. The draft is addressing the following issues:

1. Export restraints put in place by countries to protect their population from food shortages should be in line with the WTO rules and should consider impacts on the other members.
2. Food be moved from surplus to shortage areas to ensure food security. Countries should not keep food for speculation purposes. The release of the surpluses should be done in line with the WTO rules.
3. More emphasis has been made on food aid. Foodstuffs purchased for non-commercial humanitarian to be exempt from the application of export restrictions.
4. Donor countries are encouraged to channel their donations through the WFP (World Food Program).

Plenary Outcomes

There is need for Kenya to diversify her sources of food imports so that Kenya doesn't solely depend on one country. Kenya should however be careful not to bring in pests from other importing countries. For example, India has a specific pest that is not in Kenya. Importing wheat from India, therefore, could be detrimental to our country. Importers should probably be advised to import wheat flour instead of wheat, in order to avoid entry of the pest into our territory.

- Educate Kenya's population to diversify its sources of foods/ food menus so as to cope with climate change as well as mitigate food shortages resulting from the unforeseen crisis in our main food import markets.
- Need to take climate mitigation measures e.g., plant more trees up to 10% in order to attract rain.
- Kenya to support the declaration on food crisis given that it doesn't have the capacity to produce enough food to feed its population.
- Kenya to consider capturing matters of nutrition in the declaration

4.5 WTO REFORMS

The WTO has been in place since 1995 and most Members are of the view that the organization ought to be reformed to align it with the current global economic situation and to ensure that it effectively addresses the policy and systemic concerns that Members have with the multilateral trading system. Proposals for reforms encompass aspects such as the development promise that Members undertook at Doha, to place the needs and interest of developing countries at the heart of the WTO, which has so far, not been delivered.

Moreover, the preamble to the Marrakesh Agreement, which explicitly referred to the imperative for securing for African countries a share in the growth of world trade

commensurate with their needs has not been met. Members envisage that WTO reform should broadly focus on:

1. Dispute Settlement function
 - The US has vetoed the appointment of new Appellate Body (AB) members, thus crippling it.
 - The US claims members want to gain concessions via lawsuits. It also claims the AB has usurped the negotiation mandate of the WTO. The US considers this as judicial overreach.
 - *The way forward for dispute settlement is restoration of the AB.*
2. Negotiating function
 - Prominence should be given to new issues. These are; digital trade, investment facilitation, services, domestic regulation, role of state.
 - EU supports pluri-lateral approach to negotiations as it considers the single undertaking a failure
 - The African Group (AG) proposes the preservation of core principles of multilateralism
 - The AG would also like the Special & Differential Treatment architecture.
3. Monitoring
 - Transparency & Notifications; Developing countries face challenges in filing notification. They need capacity development

WTO reform should aim at restoring the effectiveness and credibility of the WTO as a forum for the negotiation of trade rules and further liberalization. The WTO rules therefore ought to be aligned with the trade and economic realities of the 21st century.

Achieving reform necessitates alliance-building, avoiding polarization and the willingness of members to engage in an incremental process that will eventually lead to a compromise. The forthcoming MC12 will therefore be key for the WTO reform process both in terms of delivering a potential package of outcomes and in launching new processes and areas of work that can serve as a springboard for the reform agenda.

4.6 OTHER ISSUES

a. Joint Statement Initiatives (JSIS)

At the MC 10 Ministerial Declaration, Members' interest was in exploring new approaches to the negotiations. Some members supported DDA while others felt the need to explore new negotiation architectures.

At MC 11 4 Joint Ministerial Statements were issued by different groups of WTO Members with the aim of exploring the advancement of negotiations on new issues under the WTO.

JSIs at the WTO are pursued on a plurilateral track. These JSIs relate to:

- E-commerce
- Investment facilitation for development
- Informal working group on MSMEs
- Services domestic regulations

Other initiatives are:

- Trade and gender
- Trade and environmental sustainability

Even though the African Group has taken a strong position against JSIs on systemic grounds, Kenya and some African countries are members of JSIs (Kenya is a member of the E-commerce

and MSMEs JSIs). Members of all the JSIs are working towards outcomes for adoption by their respective Ministers at MC12.

b. Regular Work

E-commerce 1998 Work Program

The General Council and relevant WTO bodies continue work on E-commerce based on the existing mandate set out in the 1998 Work Program, albeit with limited progress. In the meantime, Members have proposed to maintain the current practice of not imposing customs duties on electronic transmissions until MC13 (Moratorium).

There's a divide among Members on whether to lift the moratorium on customs duties on electronic transmissions or make it permanent.

TRIPS Moratorium

Article 64.2 of the TRIPS Agreement suspended non-violation and situation complaints under the TRIPS Agreement and mandated the TRIPS Council to examine the scope and modalities for such complaints and submit recommendations to the Ministerial Conference. The TRIPS Council is yet to fulfil this mandate and therefore, Members, under the TRIPS Council, have agreed to extend the moratorium until the next Ministerial Conference (MC13).

Members are also divided on whether non-violation and situation complaints apply to the TRIPS Agreement, with the majority calling for making the moratorium permanent.

5. CONCLUSION

As a conclusion on the WTO negotiation state of play;

- Efforts are underway toward a multilateral outcome on Fisheries Subsidies for MC12
- A number of Ministerial declarations are being discussed
- MC12 Outcome document is also under discussion led by the Chair, General Council.
- The Negotiation Ministerial should push for outcomes on fisheries, WTO response to the pandemic, and WTO Reforms.

1. STATEMENT ON FISHERIES - Fisheries Subsidies

At the outset, Kenya recognizes the tremendous work undertaken in these negotiations as reflected in the 8th November, 2021 text. We anticipated that the draft text would respond to the positions we articulated at the 15th July, 2021 virtual Trade Negotiations Committee (at Ministerial level) devoted to this subject.

However, we note that the 8th November text still documents sharply differing positions among the WTO members as evidenced by the number of issues still outstanding.

Kenya regards concrete outcomes from these negotiations as integral to Kenya's Blue Economy agenda. We recognize the development of our fisheries sector as key to poverty eradication, food security, employment creation, industrialization and for the realization of Kenya's vision 2030 and Sustainable Development Goals (SDGs). Currently, the sector employs 15,000 fishermen directly and 45,000 people across the value chain. Once fully harnessed, the blue economy contribution to the Kenya's GDP is expected to double.

In this regard, we consider the following issues as critical for a balanced text.

- i. Respect for the principle of proportionate burden and responsibility-sharing.
- ii. Provision for scope exclusion for artisanal/small-scale fishing.
- iii. Precise, effective and operational Special & Differential Treatment provisions that go beyond transitional periods, targeted Technical Assistance and Capacity development.
- iv. Transparency and Notification obligations that are not unduly burdensome or onerous.

Against this backdrop, Kenya will make precise and substantive proposals to recalibrate the text with a view to ensuring that the new disciplines arising out of the Fisheries Subsidies negotiations will level the playing ground and thus improve and strengthen our development aspirations in our Blue Economy sector.



KENYA'S POSITION FOR THE 12TH WTO MINISTERIAL CONFERENCE: 12TH – 15TH June, 2022

Introduction

The Kenya National Trade Negotiations Council (NTNC) convened from **3rd to 5th June 2022**, in Naivasha, to deliberate on the status of negotiations at the World Trade Organization (WTO), and to develop Kenya's position for the 12th Ministerial Conference (MC12), which will be held from **12th to 15th June 2022** in Geneva, Switzerland.

The current issues scheduled for MC12 discussion include;

1. Agriculture reforms
2. Fisheries Subsidies
3. Current food crisis
4. WTO responses to the pandemic and TRIPS waiver
5. WTO reforms
6. Other Issues.
 - Development (Special and Differential Treatment and DDA)
 - Joint Statement Initiatives (JSIs)
 - Regular Work- These include TRIPS moratorium, Ecommerce work programme, and E-Commerce Moratorium

The Council deliberated on the priority areas for Kenya and adopted the following positions for the specific issues.

1. AGRICULTURE

Under Agriculture, negotiations mainly revolve around domestic support, market access, and export competition pillars(As per Annex 1).

Additionally, there is pressure on the WTO to resolve issues related to the continuation of subsidies for food security referred to as public stockholding (PSH), exemption of World Food Programme(WFP)

purchases from export restrictions, and improved notices by the patrons of export restrictions.

i. Domestic Support Pillar

Negotiations under this pillar aim to eliminate trade-distorting support provided to farmers in developed countries which restricts the export of products from developing countries. This domestic support not only distorts trade but also limits access to global markets for agricultural products from developing and least developed countries. Heavily subsidizing countries such as the US and the EU are not keen to reduce the subsidies.

These negotiations are expected to achieve substantial cuts in trade-distorting domestic support since the reduction of Overall Trade-Distorting Domestic Support (OTDS) alone would not make any significant impact as the current applied OTDS by the top developed country subsidizers are below the *de minimis*.

The African Group and many developing countries are opposed to the specific domestic subsidies granted to farmers to reduce the cost of production due to their trade-distorting effects. Some countries have resorted to box-shifting from the amber box (trade-distorting support) to the green box (nontrade distorting support) to avoid disciplines on agriculture.

Under the current negotiations, there is no convergence on this issue, since the heavily subsidizing countries are not keen to reduce the amount of trade-distorting support that they extend to their farmers, while other WTO members support disciplining this domestic support pillar.

Kenya's Position

Negotiations should achieve stricter disciplines on product-specific trade-distorting support and develop modalities for the reduction of the Overall Trade-Distorting Domestic Support (OTDDS) by 50% by the year 2030 as per the 10th Ministerial Conference Declaration. ¹The reduction commitment should take into consideration the principle of proportionality².

¹ Agriculture is the backbone of Kenya's economy contributing to 22.4% of overall GDP (Economic Survey 2021) and employs between 65% to 75% of the population. The Trade distorting support by some developed countries negatively impacts the livelihood of Kenyans.

² **Principle Of Proportionality:** trade-offs among competing norms and values (the legality of an action shall be determined depending on the respect of the balance between the objective and the means and methods used as well as the consequences of the action)

ii. Public Stockholding (PSH) for Food Security

According to the FAO's 2019 "State of Food Security and Nutrition in the World", hunger is on the rise in almost all African sub-regions. Africa has the highest prevalence of undernourishment, at almost 20% as compared to a world average of 10.8%. This situation is forecasted to be worse over the coming years due to climate change, increasing population, and unexpected pandemics such as covid-19.

The Bali Ministerial Conference allowed members to have PSH programmes and mandated negotiations to find a permanent solution to PSH programmes. During the Nairobi Ministerial Conference, members were mandated to engage constructively to negotiate and make all concerted efforts to agree and adopt a permanent solution on PSH for food Security purposes. Since Bali and Nairobi Ministerial Conferences, negotiations for a permanent solution on PSH programmes have continued, but no solution has been reached despite several proposals from members.

Kenya supports the extension of the negotiations on PSH programmes so that a solution can be found by the next Ministerial Conference (MC13). These programs are important to Kenya because they provide the policy framework for the current programs on food security such as the strategic food reserves undertaken by the government (NCPB and KNTC programmes).

Kenya's Position

Support PSH Work Program with clear-cut timelines and deliverables and also an extension of the Bali Decision ³to include new programs for developing countries that currently do not have recourse to the interim solution.

iii. Market Access

Under this pillar, some of the concerns raised by many WTO members are tariff escalations (where the amount of tariff on a product increase with

³ Peace Clause (Bali Ministerial Decision of 7 December 2013)

1. Members agree to put in place an interim mechanism as set out below, and to negotiate on an agreement for a permanent solution¹, for the issue of public stockholding for food security purposes for adoption by the 11th Ministerial Conference.
2. In the interim, until a permanent solution is found, and provided that the conditions set out are met, Members shall refrain from challenging through the WTO Dispute Settlement Mechanism, compliance of a developing Member with its obligations under Articles 6.3 and 7.2 (b) of the Agreement on Agriculture (AoA) in relation to support provided for traditional staple food crops in pursuance of public stockholding programmes for food security purposes existing as of the date of this Decision, that are consistent with the criteria of paragraph 3, footnote 5, and footnote 5&6 of Annex 2 to the AoA when the developing Member complies with the terms of this Decision.

value addition on the product) and tariff peaks (high tariffs for some sensitive products relative to other products).

Negotiations have not made any progress because of divergence among the membership. Members will undertake to continue negotiations on this area post MC12 with a view to improving substantially and progressively provide market access opportunities to members at a timeframe to be agreed, in accordance with the reform programme provided for in Article 20 of the Agreement on Agriculture (AoA).

Kenya's Position

Kenya Supports the Elimination of Tariff Escalation and Tariff Peaks to enable value addition for agricultural products for export. This is in line with the OACPS position ⁴and supports Kenya's industrialization agenda on value addition

iv. Special Safeguard Mechanism (SSM)

Discussions on this issue witnessed a very low level of participation by non-proponents, with claims on its possible adverse effect on accessing markets, and the link to broader market access negotiations.

The African Group supports the right of developing countries to have access to an operational, flexible and easy-to-use price-based and volume-based SSM to address import surges and price depressions in line with the Nairobi Decision on this issue.

The Draft Ministerial Decision on Agriculture, states that pursuant to the Nairobi Ministerial Decision (WT/MIN(15)/43 - WT/L/978, members shall continue

negotiations on a special safeguard mechanism for developing country Members in dedicated sessions of the CoA-SS as envisaged under paragraph 7 of the Hong Kong Ministerial. The decision also states that the General Council shall regularly review progress in these negotiations with the aim of making recommendations for the consideration of Ministers at MC13.

Kenya's Position

Develop modalities of Work Program on SSM with clear-cut deliverables, by MC 13.

⁴ The OACPS position on Agriculture calls for an outcome that, "Contains a work programme aimed at addressing issues related to tariff simplification, tariff escalation, preference erosion, designation of special products and unjustified non-tariff barriers that impede the market access opportunities of developing countries and LDCs

v. Export Restriction

The discussions here are centered on Art. 12.2 of the Agreement on Agriculture (AoA) which focus on;

- 1) The requirement that members give due consideration to the effects of their measure's on importing members' food security
- 2) Members' practices regarding advance written notices
- 3) Transparency requirements for measures of a longer duration.

The discussions on Art. 12.2 of AoA have not significantly progressed because developing members feel that the obligations demanded by developed members are more burdensome and not of priority to them.

At the moment, the World Food Program (WFP) has petitioned the WTO concerning the exemption of the foodstuff that it purchases for non-commercial humanitarian use from the application of export restrictions.

Kenya's Position

Support the WFP Decision as a stand-alone decision without prejudice to work relating to other export restriction measures.

vi. Export Competition

Export competition refers to the support provided to enable producers to export. This is a high trade-distorting and protectionist form of support. The core of the reform programme on export competition are the commitments to reduce subsidized export quantities, and the amount of money spent subsidizing exports. The 2015 Nairobi Decision on Export Competition required all Members that had scheduled export subsidies to eliminate them, within specific timelines for both developed and developing countries. So far, some of the affected Members have revised their schedules of concessions to eliminate these subsidies while others have not.

Kenya's Position

Call for expeditious implementation of the Nairobi commitments on export competition.

vii. Cotton

The domestic support provided to cotton farmers in major economies has distorted the global market for cotton. Under the rubric of the cotton initiative, members have been seeking solutions on the issues raised by the C4 members (Benin, Burkina Faso, Chad, Mali) along two tracks:

- a. the trade aspects, and
- b. the development assistance aspects.

Members also commit to continue negotiations after MC12 with a view to reducing trade-distorting domestic support for cotton in accordance with modalities to be agreed by MC13 and in line with the mandate to address it ambitiously, expeditiously, and specifically within the agriculture.

Members undertake to continue holding Dedicated Discussions on cotton on a bi-annual basis

Kenya's Position

Support the proposals by the Cotton 4 members.

viii. Transparency

Members are required to improve on their notification obligation under the AoA to enhance transparency. The notifications across the three pillars are detailed and require a lot of information and skills to undertake the notifications. Developing members feel that these obligations are too burdensome and will require technical assistance to comply.

The current negotiations in this area encourage members to fulfil their notification obligations. Members are called to make efforts to provide outstanding Domestic Support notifications prioritising from the year 2010 while considering developing members' differences in terms of capacity and especially the least developed.

Kenya Position

Kenya encourages the provision of technical assistance to developing members to fulfill their notifications obligations in this area while encouraging those members with the ability to undertake notifications as per the requirements of the agreement. Efforts should also be made to make the notification process simpler for members to fulfill their obligations.

2. Fisheries Subsidies

The Chair of the Negotiating Group on Rules circulated a revised Fisheries Subsidies Text, TN/RL/W/276/Rev.2 on 8th November 2021. However, sharply differing positions among the WTO members are evident on a number of issues. For example, some countries have demanded comprehensive cuts in subsidies granted by governments to distant-water fishing fleets, while others have sought preferential treatment for small-scale and artisanal fishing in any trade deal that is concluded.

Whilst appreciating the enormous effort expended by the Chair of the negotiating group, in moving the process forward in the revised text. Kenya will continue to make precise and substantive proposals to recalibrate the text with a view to strengthening our aspirations in the development of our Blue Economy sector.

Kenya's Position

Towards conservation and management of marine resources to biologically sustainable levels, Kenya considers the following issues as critical for a balanced fisheries text.

- i. Respect for the principle of proportionate burden and responsibility-sharing.**
- ii. Provision for curve out for artisanal/small-scale fishing or fishing-related activities that extend beyond 12 nautical miles measured from the baseline.**
- iii. Precise, effective and operational Special & Differential Treatment provisions that go beyond transitional periods, targeted Technical Assistance and Capacity development.**
- iv. Transparency and Notification obligations that are not unduly burdensome or onerous.**
- v. Provision for *de-minimis* curve out not exceeding 1.2% of annual share of global marine capture fish production to developing country members.**

3. Development (Special & Differential Treatment)

Development is one of the fundamental aspects of the multilateral trading system anchored on the Doha Development Agenda (DDA). The multilateral trading system should give policy space for developing Members to meet their development goals, including industrialization. Developing members continue to confront many challenges and capacity constraints, which underscore the continued relevance of special and differential treatment (S&DT) in their favour. Finding a solution to the

longstanding issues on S&DT for developing countries within the WTO is crucial to addressing, *inter alia*, the trade imbalances skewed in favour of developed countries.

Kenya's Position

Kenya as a member of the G90, supports the proposal on S&DT and calls for a political declaration at MC12 reiterating the importance of the development agenda to developing countries.

4. WTO Reforms

The WTO has been in place since 1995 and most Members are of the view that the organization ought to be reformed to align it with the current global economic situation and to ensure that it effectively addresses the policy and systemic concerns that Members have with the multilateral trading system. Proposals for reforms encompass aspects such as the development promise that members undertook at Doha, to place the needs and interests of developing countries at the heart of the WTO, which has so far, not been delivered.

Moreover, the preamble to the Marrakesh Agreement, which explicitly referred to the imperative for securing for African countries a share in the growth of world trade commensurate with their needs has not been met. Members envisage that WTO reform should broadly focus on reinvigorating the negotiation function of the WTO (plurilateral approaches, special and differential treatment, rulemaking); transparency (notifications); and the Dispute Settlement Body (the Appellate Body stalemate).

Kenya's Position

Kenya advocates for a high-level political commitment at MC12 that initiates the commencement of dialogue on reform post MC12. This will;

- **Define the path towards WTO reform**
- **Allow all members an opportunity to table their specific issues and concerns**
- **Provide the space for Members to cogently finetune and define their priority WTO reform interests, and;**
- **Provide the opportunity to shape the discussion to ensure a balanced agenda that does not lock in the**

status quo but reforms the WTO to meet the goals of the Marrakesh Agreement.

5. WTO Response to COVID-19 Pandemic

WTO Members acknowledge that the organization has an important role to play in the multilateral response to the Covid-19 pandemic. To this end, members have actively deliberated on how best to position the WTO to play its role in mitigating the effects of the pandemic on world trade.

While WTO members have engaged in concerted deliberations on the role of the WTO in addressing the pandemic, they are yet to agree on the specifics. The proposals include a waiver from certain provisions of the TRIPS Agreement for the prevention, containment and treatment of COVID-19, which is meant to facilitate universal and timely access to Covid-19 vaccines, therapeutics, and diagnostics to equip countries to better handle future health crises.

The TRIPS Waiver Proposal (Kenya is a co-sponsor) has unfortunately been opposed by some WTO Members, particularly the developed countries and consequently, the negotiations have resulted in a diluted proposal (quadrilateral document agreed by India, South Africa, USA and EU), which only expounds on the existing flexibilities in the TRIPS Agreement.

In the meantime, the General Council sanctioned a Facilitator-led process to produce a Ministerial Declaration on WTO response to the Pandemic. Through this process, WTO members have deliberated on how best the WTO can contribute to the mitigation of the adverse effects of the current and future pandemics. The expectation was a draft Declaration for consideration and adoption at MC12. Unfortunately, the deliberations have since stalled.

Kenya's Position

Kenya supports the facilitator-led process for a Ministerial Declaration that incorporates all the areas of interest for developing countries and LDCs with respect to WTO's response to the COVID-19 pandemic. Kenya specifically supports the proposals advanced by the ACP Group (See Annex 2 attached).

6. Joint Statement Initiatives (JSIs)

JSIs at the WTO are pursued on a plurilateral track. These JSIs relate to:

- E-commerce
- Investment facilitation for development
- Informal working group on MSMEs
- Services domestic regulations

Other initiatives are:

- Trade and gender
- Trade and environmental sustainability

Even though the African Group has taken a strong position against JSIs on systemic grounds, Kenya and some African countries are members of JSIs (Kenya is a member of the E-commerce and MSMEs JSIs). Members of all the JSIs are working towards outcomes for adoption by their respective Ministers at MC12.

7. Regular Work

i. E-commerce 1998 Work Program

The General Council and relevant WTO bodies continue to work on E-commerce based on the existing mandate set out in the 1998 Work Program, albeit with limited progress. In the meantime, Members have proposed to maintain the current practice of not imposing customs duties on electronic transmissions until MC13 (Moratorium).

There's a divide among Members on whether to lift the moratorium on customs duties on electronic transmissions or make it permanent.

Kenya Position

Developing countries, particularly the Africa Group, support the lifting of the moratorium to enable them to collect revenue. Kenya supports the African Group.

ii. TRIPS Moratorium

Article 64.2 of the TRIPS Agreement suspended non-violation and situation complaints under the TRIPS Agreement and mandated the TRIPS Council to examine the scope and modalities for such complaints and submit recommendations to the Ministerial Conference. The TRIPS Council is yet to fulfill this mandate and therefore, Members, under the TRIPS Council, have agreed to extend the moratorium until the next Ministerial Conference (MC13).

Members are also divided on whether non-violation and situation complaints apply to the TRIPS Agreement, with the majority calling for making the moratorium permanent.

Kenya Position

Kenya supports calls to make the TRIPS moratorium permanent.

8. Current Global Food Crisis:

The rising food prices and costs of production as well as export restrictions on food commodities have caused food insecurity and could have great consequences for global food security in the coming years. This has been aggravated by intensified conflict, significant economic shocks, covid-19, and severe weather conditions.

There is increasing evidence that the cost of agricultural inputs and the cost of food itself is alarmingly escalating, exposing populations to food insecurity calling for an immediate intervention to handle the situation by all WTO members.

Kenya notes with concern that trade disruptions, escalating prices and excessive volatility for food and agricultural products are bound to undermine food security. This is particularly so for net food-importing developing countries who owing to their fiscal and other capacity-related challenges, as well as deteriorating terms of trade, are disproportionately affected by the crisis.

Kenya Position

Kenya calls upon WTO Members to support unrestricted movement of food from areas of surplus to food deficient regions and exercise due restraint in the imposition of any trade measure, that may harm the food security objectives of other members, in accordance with current WTO provisions.

ANNEX 1: BASED ON THE RELEASED THREE TEXTS THAT WERE DEVELOPED FOLLOWING CONSULTATIONS WITH MEMBERS BY THE *CHAIR OF COMMITTEE ON AGRICULTURE* CIRCULATED ON 31ST MAY 2022

THEMATIC AREA	PROPOSAL	KENYA POSITION AND OR/COMMENTS
<p>1. DRAFT MINISTERIAL DECISION ON WORLD FOOD PROGRAMME (WFP) FOOD PURCHASES EXEMPTION FROM EXPORT PROHIBITIONS OR RESTRICTIONS</p>	<p>The draft Decision seeks for members to exempt WFP procurement of food meant for non-commercial humanitarian purposes from export prohibition or restrictions. Para 2 provides flexibility for members; clarifies that out that the Ministerial Decision shall not be construed to prevent the adoption by any Member of measures to ensure its domestic food security in accordance with relevant WTO disciplines.</p>	<p>Supports the WFP Decision as a stand-alone decision without prejudice to work relating to other export restriction measures.</p>
<p>2. DRAFT MINISTERIAL DECISION ON AGRICULTURE</p>	<p>Members to resolve to intensify negotiations on the topics as listed below with an aim of achieving the modalities in the relevant areas and other outcomes by MC13 as well as working towards a permanent solution on PSH by the MC13. The negotiations shall build on progress made so far, as well as members existing submissions, technical discussions which are evidence based.</p>	
<p>Domestic Support <i>(Use of production linked payments to encourage producers to produce more while maintaining high internal prices)</i></p>	<p>The draft proposes the need to continue the negotiations after MC12 and specifically to reduce substantially trade distorting domestic support, improving the disciplines within a reasonable timeframe to be agreed. Para 4 of the draft reaffirms that Special & Differential Treatment (S&DT) forms an integral part of the negotiations and shall be taken into account.</p>	<p>Negotiations should achieve stricter disciplines on product-specific support and Green Box support. Develop modalities for the reduction of the OTDDS by 50% by the year 2030. The</p>

THEMATIC AREA	PROPOSAL	KENYA POSITION AND OR/COMMENTS
		reduction commitment should take into consideration the principle of proportionality.
Public Stockholding	<p>The draft recalls previous mandates to find a permanent solution and acknowledges importance of the PSH programmes for food security by some developing members and at the same time mindful of other members food security.</p> <p>Members will continue negotiations to agree to a permanent solution by MC13. The elements to be considered by the negotiations include, review of external reference price, programme and product coverage, limits on PSH programmes, transparency, safeguards and legal certainty.</p> <p>Finally, the negotiations will be held in the auspices of dedicated sessions and progress reports provided by CoAss to the GC.</p>	Support for Work Program with clear-cut timelines and deliverables and also extension of the Bali Decision to include new programs of developing countries who currently do not have recourse to the interim solution.
Market Access <i>(Use of market access barriers (e.g. tariffs, import restrictions) to protect domestic producers from competition)</i>	<p>Market Access members will undertake to continue negotiations on this area post MC12 with a view to improving substantially and progressively provide Market Access opportunities to members at a timeframe to be agreed.</p> <p>Further negotiations will continue with an aim to achieve tangible progress by MC13</p>	Kenya is not a demandeur for the Market Access pillar
Export Restrictions	The text states that negotiations will continue post MC12 and are focussed on transparency especially in respect to export prohibitions and restriction as well as improving the disciplines.	Supports the WFP Decision as a stand-alone decision without prejudice to work relating to

THEMATIC AREA	PROPOSAL	KENYA POSITION AND OR/COMMENTS
		other export restriction measures.
Cotton	Members commit to continue negotiations after MC12 with a view to reducing trade-distorting domestic support for cotton in accordance with modalities to be agreed by MC13 and in line with the mandate to address it ambitiously, expeditiously, and specifically within the agriculture	Support the proposals by the Cotton 4 members
Transparency	<p>The text underscores the importance of notification obligations and members agree to work with the COA to review and update transparency provisions as well as other agriculture related transparency requirements.</p> <p>Additionally, members are called to make efforts to provide outstanding Domestic Support notifications prioritising from the year 2010 while considering developing members differences in terms of capacity and especially the least developed. negotiations taking into account progress made in the overall domestic support negotiations.</p>	
Export Competition	<p>On export competition, the text reaffirms commitment to ensure effective implementation of previous decisions in respect to the subject.</p> <p>The aim is to make tangible progress by MC13.</p>	Call for expeditious implementation of the Nairobi commitments on export competition
Special Safeguard Mechanism	The text is explicit that negotiations on this subject will continue in the auspices of the dedicated sessions of CoAss.	Develop modalities of Work Program on SSM with clear-cut deliverables, by MC 13

THEMATIC AREA	PROPOSAL	KENYA POSITION AND OR/COMMENTS
	<p>Members agree on engagements in enhanced technical discussions on all the elements necessary recalling what was envisioned in para.7 of the Hong Kong Ministerial Declaration.</p> <p>Undertake further work to review and clarify art.12 of the AOA by MC13 is proposed</p> <p>The disciplines shall aim at ensuring no circumvention of the relevant disciplines which undermines export subsidy elimination commitments</p>	
<p>3. DRAFT MINISTERIAL DECLARATION ON TRADE AND FOOD SECURITY</p>	<p>Members commit to take concrete steps to facilitate trade and improve the functioning and long-term resilience of global markets for food, agriculture, fertilizers, and other agriculture production inputs. Particular consideration will be given to the specific needs and circumstances of developing country Members, especially those of least-developed and net food-importing developing countries.</p> <p>Members reaffirm our commitment to intensify the agriculture negotiations in all areas in accordance with the Ministerial Decision on Agriculture we have adopted at this Session.</p>	

ANNEX 2: THE WTO RESPONSE TO THE PANDEMIC (OUTCOME DOCUMENT-JOB/IP/58/Rev.1(QUAD /WALKER PROCESS)

THEMATIC AREA	PROPOSAL	KENYAN POSITION
Scope	<p>OUTCOME TEXT: Para 1: Scope- Proposal Limited to Patents</p>	<p>That the Scope be extended to the earlier India and proposal co-sponsored by Kenya to other related form of IP -Copyright, Industrial Designs and undisclosed information.</p>
Subject Matter	<p>Paras 1,2,3</p>	<p>Proposal by Kenya in line with the ACP/Developing Countries Proposal for the subject matter to include vaccines, diagnostics and therapeutics.</p>
Differentiation	<p>Para 2: Definition of Eligible member, Para. 1 footnote 1 That is bracketed.</p> <p>*[for the purpose of this decision, all developing country members are eligible members, developing country members with capacity to export are encouraged to opt out of this decision] [For the purpose of this decision, the developing countries who exported more than 10% of the worlds exports of Covid 19 vaccines doses in 2021 are not eligible members]</p>	<p>Kenya does not support differentiation as it discriminates on those developing countries with capacity to manufacture taking into cognisance lack of capacity on developing and least developed countries</p>
Differentiation	<p>Para 2: Waiver but subject to differentiation</p>	<p>Propose delete the eligible member and include all developing countries and Least Developing Countries.</p> <p>-Kenya's position is that the waiver should be granted automatically without any condition on differentiation on eligible and non-eligible members.</p> <p>Kenya position is that the scope of the waiver should include industrial designs, copyright and undisclosed information.</p>

Article 31(b)-Use without authorisation of the Right Holder	Para. 3(b)-It is proposed that an eligible member need not require the proposed user to make efforts to obtain authorisation from the right holder for the purposes of Article 31(b)	Kenya proposes for automatic authorization during emergencies and pandemics once the provisions of Article 31(b) of the TRIPS Agreement are invoked should there be a pandemic especially so for future pandemics. The wording is ambiguous and couched in permissive terms (need not require) but should read that "...a member shall not require authorisation"... And not limited to Patents only.
Article 31(f)-Authorisation predominantly for supply of Domestic Market	Para. 3f -proposed that the authorized use under Article 31 of TRIPS be predominantly to supply its domestic market and any proportion of authorised use to eligible members.	The authorised use should be to supply the domestic markets of developing countries and LDCs and not only eligible members.
	Para 3(d)-prohibition of re-exportation of the COVID 19 vaccine imported into the territories to prevent supplies that may have been diverted into their markets inconsistently.	Kenya's position is that re-exportation should be allowed in developing countries and LDCs instead of the proposed differentiation for future Pandemics and emergencies. The use of effective legal means should be deleted as it ambiguous and it would be difficult to guarantee that legal regime would be effective and to what standards?
Article 31(h)-Determination of remuneration upon authorization	Para 3e- Proposal that determination of adequate remuneration upon authorization may take into account humanitarian and other circumstances to support eligible members	Kenya proposes the wording be couched mandatorily with the word 'shall' instead of 'May' determination be on the basis of all relevant circumstances. -Differentiation is opposed and it is proposed that all developing countries and LDCs be included and that the scope should go beyond Covid 19 and extend to future pandemics
Article 39.3-Undisclosed information	Para. 4- Proposal not to hinder an eligible member to enable the effectiveness of any authorization issued	Kenya supports this paragraph to enable members disclose the information /undisclosed data including test data but would propose all developing countries and LDCs
Transparency & Notification	Para 5-Eligible members to Communicate to the Council adoption of the measure including grant of authorisation.	Kenya is agreeable but proposes that eligible member be replaced with developing countries and LDCs to avoid differentiation.

		It is further proposed that the Notification include that the notification be made as soon as it is practicable.
Application/Term and review of this Decision	Para 6- proposal that the application of the provisions be [3] or [5] years from the date of the decision.	Kenya proposes 5 years subject to deletion of eligible member and replace it with developing countries and LDCs. Kenya is agreeable with the provisions that the TRIPS Council review the operation of the decision annually.

***Article 31 of the TRIPS Agreement referred to in the above matrix is hereby quoted:**

Article 31

Other Use Without Authorization of the Right Holder

“Where the law of a Member allows for other use of the subject matter of a patent without the authorization of the right holder, including use by the government or third parties authorized by the government, the following provisions shall be respected:

- a. authorization of such use shall be considered on its individual merits;
- b. such use may only be permitted if, prior to such use, the proposed user has made efforts to obtain authorization from the right holder on reasonable commercial terms and conditions and that such efforts have not been successful within a reasonable period of time. This requirement may be waived by a Member in the case of a national emergency or other circumstances of extreme urgency or in cases of public non-commercial use. In situations of national emergency or other circumstances of extreme urgency, the right holder shall, nevertheless, be notified as soon as reasonably practicable. In the case of public non-commercial use, where the government or contractor, without making a patent search, knows or has demonstrable grounds to know that a valid patent is or will be used by or for the government, the right holder shall be informed promptly;
- c. the scope and duration of such use shall be limited to the purpose for which it was authorized, and in the case of semi-conductor technology shall only be for public non-commercial use or to remedy a practice determined after judicial or administrative process to be anti-competitive;
- d. such use shall be non-exclusive;
- e. such use shall be non-assignable, except with that part of the enterprise or goodwill which enjoys such use;
- f. any such use shall be authorized predominantly for the supply of the domestic market of the Member authorizing such use;

- g. authorization for such use shall be liable, subject to adequate protection of the legitimate interests of the persons so authorized, to be terminated if and when the circumstances which led to it cease to exist and are unlikely to recur. The competent authority shall have the authority to review, upon motivated request, the continued existence of these circumstances;
- h. the right holder shall be paid adequate remuneration in the circumstances of each case, taking into account the economic value of the authorization;
- i. the legal validity of any decision relating to the authorization of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- j. any decision relating to the remuneration provided in respect of such use shall be subject to judicial review or other independent review by a distinct higher authority in that Member;
- k. Members are not obliged to apply the conditions set forth in subparagraphs (b) and (f) where such use is permitted to remedy a practice determined after judicial or administrative process to be anti-competitive. The need to correct anti-competitive practices may be taken into account in determining the amount of remuneration in such cases. Competent authorities shall have the authority to refuse termination of authorization if and when the conditions which led to such authorization are likely to recur;
- l. where such use is authorized to permit the exploitation of a patent ("the second patent") which cannot be exploited without infringing another patent ("the first patent"), the following additional conditions shall apply:
 - i. the invention claimed in the second patent shall involve an important technical advance of considerable economic significance in relation to the invention claimed in the first patent;
 - ii. the owner of the first patent shall be entitled to a cross-licence on reasonable terms to use the invention claimed in the second patent; and
 - iii. the use authorized in respect of the first patent shall be non-assignable except with the assignment of the second patent.

BRIEF TO THE NATIONAL ASSEMBLY'S DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION ON WTO AGREEMENT ON FISHERIES SUBSIDIES

A. WORLD TRADE ORGANIZATION (WTO)

1. The World Trade Organization (WTO) is the international organization dealing with the rules of trade between nations.
2. The WTO was established on 1st January, 1995. It is the successor to the General Agreement on Tariffs and Trade (GATT), which was the forum for negotiating lower tariffs and other trade barriers from 1947 to 1994.
3. The main goal of the WTO is to use trade as a means to improve people's living standards, create better jobs and promote sustainable development.
4. WTO has 166 members as at 30th August 2024 (representing 98 per cent of world trade).
5. The functions of the WTO include: -
 - (i) Administering WTO trade agreements
 - (ii) Forum for trade negotiations – it provides a forum for its members to negotiate trade agreements.
 - (iii) Handling trade disputes – it provides a forum for its members to resolve the trade problems they face with each other.
 - (iv) Monitoring national trade policies.
 - (v) Technical assistance and training for developing countries – it helps developing countries improve their capacity to trade
 - (vi) Cooperation with other international organizations
6. Kenya has been a WTO member since 1 January 1995 and a member of GATT (General Agreement on Tariffs and Trade) since 5 February 1964.
7. The core of the WTO are the agreements, negotiated and signed by the bulk of the world's trading nations and ratified in their parliaments.

B. AGREEMENT ON FISHERIES SUBSIDIES

Problem Analysis

1. According data from the Food and Agriculture Organization (FAO), fish stocks in many parts of the world are at risk of collapsing due to overexploitation and thus worsening poverty and endangering food and nutrition security.
2. All United Nations member states adopted the 2030 Agenda for Sustainable Development in 2015. One of the Agendas is the Sustainable Development Goal (SDG) 14 which is on “Conserving and sustainably using the oceans, seas and marine resources for sustainable development”.
3. During the 11th WTO Ministerial Conference (MC11) held in 2017, Members were mandated to prohibit fisheries subsidies that contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and refrain from introducing new such subsidies.

Conclusion and Adoption of the Agreement on Fisheries Subsidies

1. The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organization (WTO) Ministerial Conference held in Geneva, Switzerland in June 2022.
2. The main objective of the Agreement is to safeguard the world’s seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity.
3. The Agreement applies to marine wild capture fishing and fishing related activities at sea or ocean. Aquaculture and inland fisheries are excluded from the scope of this Agreement.
4. It endeavors to strike a balance between supporting the livelihoods of fishing communities and ensuring the long-term health and capacity of the world's seas, oceans and marine resources.
5. The Agreement strives to create a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets.

6. The Agreement sets new rules to curb harmful subsidies and protect global fish stocks in a manner that also recognizes the needs of fishers in developing and least-developed countries (LDCs). The Agreement prohibits support for illegal, unreported and unregulated (IUU) fishing. It bans support for fishing overfished stocks.
7. The process leading to the conclusion and adoption of the Agreement involved intensive negotiations, discussions, considerations, compromises, and a consensus among the WTO member countries and Kenya fully participated in the negotiations and adoption process.

Key Provisions in the Agreement

The key provisions in the Agreement include: -

1. Banning granting or maintenance of any subsidy to a vessel or operator engaged in IUU fishing or fishing related activities in support of IUU fishing.
2. Banning granting or maintenance of subsidies for fishing or fishing related activities regarding an overfished stock.
3. Special and Differential Treatment (SDT) provisions to developing members and Least-Developed Countries (LDCs) which allow them more time and flexibility in implementing subsidy reductions and the Agreement in general.
4. Provision for targeted technical assistance and capacity building to developing members and LDCs to help them implement the Agreement.

States Obligations

Upon ratification of the Agreement, Kenya will be required to: -

1. Have laws, regulations and/or administrative procedures in place to ensure that fisheries subsidies, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.
2. Not 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.

3. Not grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.
4. Provide a description of the fisheries regime with references to Kenyan laws, regulations and administrative procedures relevant to the Agreement within one year of the date of entry into force of this Agreement, and promptly inform the WTO of any modifications thereafter.
5. Regularly notify on fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidies commitments.

Benefits Accruing to Kenya

1. Kenya regards the Agreement to Fisheries Subsidies as integral to Kenya's Blue Economy agenda. Currently, the fisheries sector employs more than 15,000 fishermen directly and more than 45,000 people across the value chain. Once fully harnessed, the blue economy contribution to the Kenya's GDP is expected to increase greatly.
2. The development of Kenya's fisheries sector is key to poverty eradication, food security, employment creation, preservation of marine biodiversity, industrialization and for the realization of Kenya's Vision 2030 and Sustainable Development Goals (SDGs).
3. This Agreement is in concurrence with Kenya's national interests and is a significant step towards achieving these shared objectives. Other effects of the Agreement will be reduction in trade distortion, avoidance of fish trade disruption and ensuring sustainability of the fishing industry.
4. Benefits that will accrue to Kenya by ratifying the Agreement include: -
 - (i) Promotion of sustainable fisheries for food security, poverty alleviation, and the preservation of marine biodiversity.
 - (ii) Reduction of trade distortion by eliminating harmful fisheries subsidies that may create an unfair advantage for subsidized fishing operations, distorting trade in fish and fishery products. By curbing such subsidies,

the agreement helps to create a level playing field for fishers and fishery-related industries.

- (iii) Avoidance of disruption of trade by the elimination or substantially reducing subsidies that contribute to overfishing and overcapacity in the fishing industry thus reducing the availability of fish for export and domestic consumption.
- (iv) Ensuring sustainability of the fishing industry through the sustainable management of fishery resources which is critical for ensuring the long-term viability of the fishing industry. Reduced overfishing will lead to more stable and reliable sources of fish for domestic and international trade.
- (v) Ensuring trade and economic development are not hampered as the agreement recognizes the special needs and circumstances of developing countries and LDC's, and allows them more flexibility in implementing subsidy reduction measures.
- (vi) Access to the targeted technical assistance and capacity building assistance to developing country Members and LDCs.

Constitutional and Legislative Implication

1. The Agreement is consistent with the Constitution and indeed promotes its principles under
 - i. Article 60 (1)(e) relating to sound conservation and protection of ecologically sensitive areas, and
 - ii. Article 69 (1)(a) that relates to ensuring sustainable exploitation, utilization, management, and conservation of the environment and natural resources, and ensuring the equitable sharing of the accruing benefits.
2. Additionally, there will be no legal implications from ratifying the Agreement which will require amendments of the Constitution, existing or enactment of new legislations.

Implication Relating to Counties

The obligations imposed under the protocols are under the purview of the National Government.

Financial Implication

The implementation of the Agreement will not require additional budget. Its activities will be undertaken under the regular annual budgetary allocation to the implementing Government Ministries, Departments and Agencies. Furthermore, the Agreement provides for targeted technical and capacity building assistance to developing country Members, including LDC Members which Kenya can take advantage of.

Ministerial Responsibilities

1. The Ministry of Investments, Trade and Industry will be responsible for coordinating the implementation of the Agreement and submitting notifications to the World Trade Organization.
2. The Ministry of Mining, Blue Economy and Maritime Affairs will oversee the implementation of the Agreement.
3. The Office of the Prime Cabinet Secretary and Ministry of Foreign & Diaspora Affairs will be responsible for preparation and depositing of the instrument of ratification. The Office will also be the custodian of the Agreement.
4. The National Treasury and Economic Planning will be responsible for the regular annual release of funds for activities towards implementation of the Agreement.
5. The State Law Office will provide legal advice on implementation of the Agreement.

Ratification and Current Status

1. The Agreement will enter into force upon acceptance by two-thirds of the membership i.e. 111 members. For the Agreement to enter into force, two-thirds of the one hundred and sixty-six (166) WTO members must formally accept the Protocol of the Agreement on Fisheries Subsidies by depositing an "instrument of acceptance" with the WTO.
2. As at 20th March 2025, ninety-four (94) of the WTO members had ratified i.e. deposited their instruments of acceptance. Seventeen (17) African members have formally accepted the Agreement. Seventeen (17) more formal acceptances are needed for the Agreement to come into effect.

3. Kenya has initiated the process of ratification in accordance with the Treaty Making and Ratification Act, 2012.
4. During the 4th Cabinet meeting-2024 held on 23rd April 2024, the Cabinet considered and approved Kenya's ratification of the Agreement and subsequently the Cabinet Secretary for Investments, Trade & Industry submitted the Agreement and a memorandum to the National Assembly for consideration and approval.
5. The Ministry submitted the Agreement and a Parliamentary Memorandum on the Agreement to the National Assembly, on 18th June 2024, for consideration and approval for ratification.

**SUBMISSIONS FROM
STATE DEPARTMENT
FOR BLUE ECONOMY
AND FISHERIES**



SUBMISSIONS OF MEMORANDUM BY THE STATE DEPARTMENT FOR THE BLUE ECONOMY AND FISHERIES TO THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION FOR CONSIDERATION AND RATIFICATION OF THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANISATION (AGREEMENT ON FISHERIES SUBSIDIES) BY KENYA.

MARCH, 2025.

MEMORANDUM ON KENYA'S RATIFICATION OF THE WORLD TRADE ORGANIZATION AGREEMENT ON FISHERIES SUBSIDIES.

A. OBJECTIVES OF THE MEMORANDUM.

- 1) The purpose of this Memorandum is to:
 - a) Apprise the National Assembly Departmental Committee on Blue Economy, Water and Irrigation on the significance of the World Trade Organization Agreement on Fisheries Subsidies;
 - b) Seek Parliamentary Consideration and Approval for Kenya to ratify the World Trade Organization Agreement on Fisheries Subsidies in line with section 8 of The Treaty Making and Ratification Act Cap 4D.

B. BACKGROUND


- 2) The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World

Trade Organization (WTO) Ministerial Conference (MC12) held in Geneva, Switzerland on 17th June 2022. The Agreement delivers on the mandate given to Members during the 11th Ministerial Conference (MC11) and on the Sustainable Development Goal (SDG) 14.6.

- 3) The Agreement applies to marine wild capture fishing and fishing related activities at sea or ocean. Aquaculture and inland fisheries are excluded from the scope of this Agreement.
- 4) The process leading to the conclusion and adoption of the Agreement involved intensive negotiations, discussions, considerations, compromises, and a consensus among the WTO member countries and Kenya fully participated in the negotiations and adoption process.
- 5) All the one hundred and sixty-four (164) WTO members are party to the Agreement and the Agreement will enter into force upon ratification by two-thirds of the members which translates to 111 member states.

- 6) As of March 20th 2025, at least Ninety (90) WTO member states had accepted and signed the Agreement.
- 7) As of March 20th 2025, at least Eighty-Six (86) WTO member states had ratified the Agreement
- 8) The Agreement does not permit reservations in respect of any of its provisions.

C. OBJECTS OF THE AGREEMENT

- 9) The main objectives of the Agreement are to: - 
Safeguard the world's seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity.
- 10) Balance between supporting the livelihoods of fishing communities and ensuring the long-term health and capacity of the world's seas, oceans and marine resources.
- 11) Create a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets.

D. ANALYSIS OF THE PROBLEM

- 12) According to data from the Food and Agriculture Organization (FAO), fish stocks in many parts of the world are at risk of collapsing due to overexploitation and thus worsening poverty and endangering food and nutrition security.
- 13) All United Nations member states adopted the 2030 Agenda for Sustainable Development in 2015. One of the Agendas is the Sustainable Development Goal (SDG) 14 which is on “Conserving and sustainably using the oceans, seas and marine resources for sustainable development”.
- 14) During the 11th WTO Ministerial Conference (MC11) held in 2017, Members were mandated to prohibit fisheries subsidies that contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and refrain from introducing new such subsidies. (See Articles 3,4

and 5 of the Agreement on fisheries Subsidies herein attached as Annex 1)

E. SALIENT FEATURES OF THE AGREEMENT

15) The key provisions in the Agreement include: -

- a) Banning granting or maintenance of any subsidy to a vessel or operator engaged in IUU fishing or fishing related activities in support of IUU fishing.
- b) Banning granting or maintenance of subsidies for fishing or fishing related activities regarding an overfished stock.
- c) Special and Differential Treatment (SDT) provisions to developing members and Least-Developed Countries (LDCs) which allow them more time and flexibility in implementing subsidy reductions and the Agreement in general. (See article 6 of the Agreement herein attached as Annex 1)
- d) Provision for targeted technical assistance and capacity building to developing members and LDCs to help them implement the Agreement. (See article 7 of the Agreement herein attached as Annex 1)

F. STATES OBLIGATIONS

16) Upon ratification of the Agreement, Kenya will be required to: -

- a) Have laws, regulations and/or administrative procedures in place to ensure that fisheries subsidies, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.
- b) Not 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.
- c) Not grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.
- d) Provide a description of the fisheries regime with references to Kenyan laws, regulations and administrative procedures relevant to the Agreement within one year of the date of entry into force of this Agreement, and promptly inform the WTO of any modifications thereafter.

- e) Regularly notify on fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidies commitments.

G. BENEFITS ACCRUING TO KENYA

17) The benefits that will accrue to Kenya by ratifying this Agreement include: -

- a) Promotion of sustainable fisheries for food security, poverty alleviation, and the preservation of marine biodiversity.
- b) Reduction of trade distortion by eliminating harmful fisheries subsidies that may create an unfair advantage for subsidized fishing operations, distorting trade in fish and fishery products. By curbing such subsidies, the agreement helps to create a level playing field for fishers and fishery-related industries.
- c) Avoidance of disruption of trade by the elimination or substantially reducing subsidies that contribute to overfishing and overcapacity in the fishing industry thus reducing the availability of fish for export and domestic consumption.

- d) Ensuring sustainability of the fishing industry through the sustainable management of fishery resources which is critical for ensuring the long-term viability of the fishing industry. Reduced overfishing will lead to more stable and reliable sources of fish for domestic and international trade.
- e) Ensuring trade and economic development are not hampered as the agreement recognizes the special needs and circumstances of developing countries and LDC's, and allows them more flexibility in implementing subsidy reduction measures.
- f) Access to the targeted technical assistance and capacity building assistance to developing country Members and LDCs.
- g) Promotion of Kenya's constitution objectives of Sections 60 (1) (e) and 69 (1) (a) which require productive, sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensuring the equitable sharing of the accruing benefits.

H. FINANCIAL IMPLICATIONS

18) The implementation of the Agreement will not require additional budget. Its activities will be undertaken under the regular annual budgetary allocation to the implementing Government Ministries, Departments and Agencies. Furthermore, the Agreement provides for targeted technical and capacity building assistance to developing country Members, including LDC Members which Kenya can take advantage of.

I. LEGAL IMPLICATIONS

19) There are no legal implications from ratifying the Agreement which will require amendments of the Constitution, existing or enactment of new legislations.

20) The Agreement is consistent with the Constitution and indeed promotes its principles under Article 60 (1)(e) relating to sound conservation and protection of ecologically sensitive areas, and Article 69 (1)(a) that relates to ensuring sustainable exploitation, utilization, management, and conservation of the environment and natural

resources, and ensuring the equitable sharing of the accruing benefits.


J. WAY FORWARD

21) In view of the numerous benefits which Kenya is expected to enjoy, there is need for Kenya to ratify the WTO Agreement on Fisheries Subsidies.

K. RECOMMENDATIONS TO THE COMMITTEE

22) The Committee is requested to: -

- a) Note the contents of this Memorandum;
- b) Approve Kenya's ratification of the World Trade Organization Agreement on Fisheries Subsidies in line with section 8 of The Treaty Making and Ratification Act Cap 4D in its entirety without reservations.

SIGNED.......... DATE.....24/3/25.....

MS. BETSY MUTHONI NJAGI, C.B.S.

PRINCIPAL SECRETARY

**STATE DEPARTMENT FOR THE BLUE ECONOMY
AND FISHERIES.**

Important documents and Annexures

Annex 1: Protocol amending the Marrakesh Agreement
establishing the World Trade Organization

Annex 2: Correspondences

Annex 3: Cabinet Approval

Annex 4: Treaty Making and Ratification Act Cap 4D



**Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022**

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The Ministerial Conference;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
2. The Protocol shall hereby be open for acceptance by Members.
3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

ATTACHMENT

**PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION**

AGREEMENT ON FISHERIES SUBSIDIES

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2, 3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6,7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
 - (b) a flag State Member, for activities by vessels flying its flag; or
 - (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.
- 3.3 (a) An affirmative determination⁸ 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.
- (b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:
- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
 - (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
 - (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, 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.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

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 and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

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.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

ARTICLE 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.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.¹⁵

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

¹⁵ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.¹⁷

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement¹⁸ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁰

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.²¹

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

¹⁷ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

¹⁸ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.

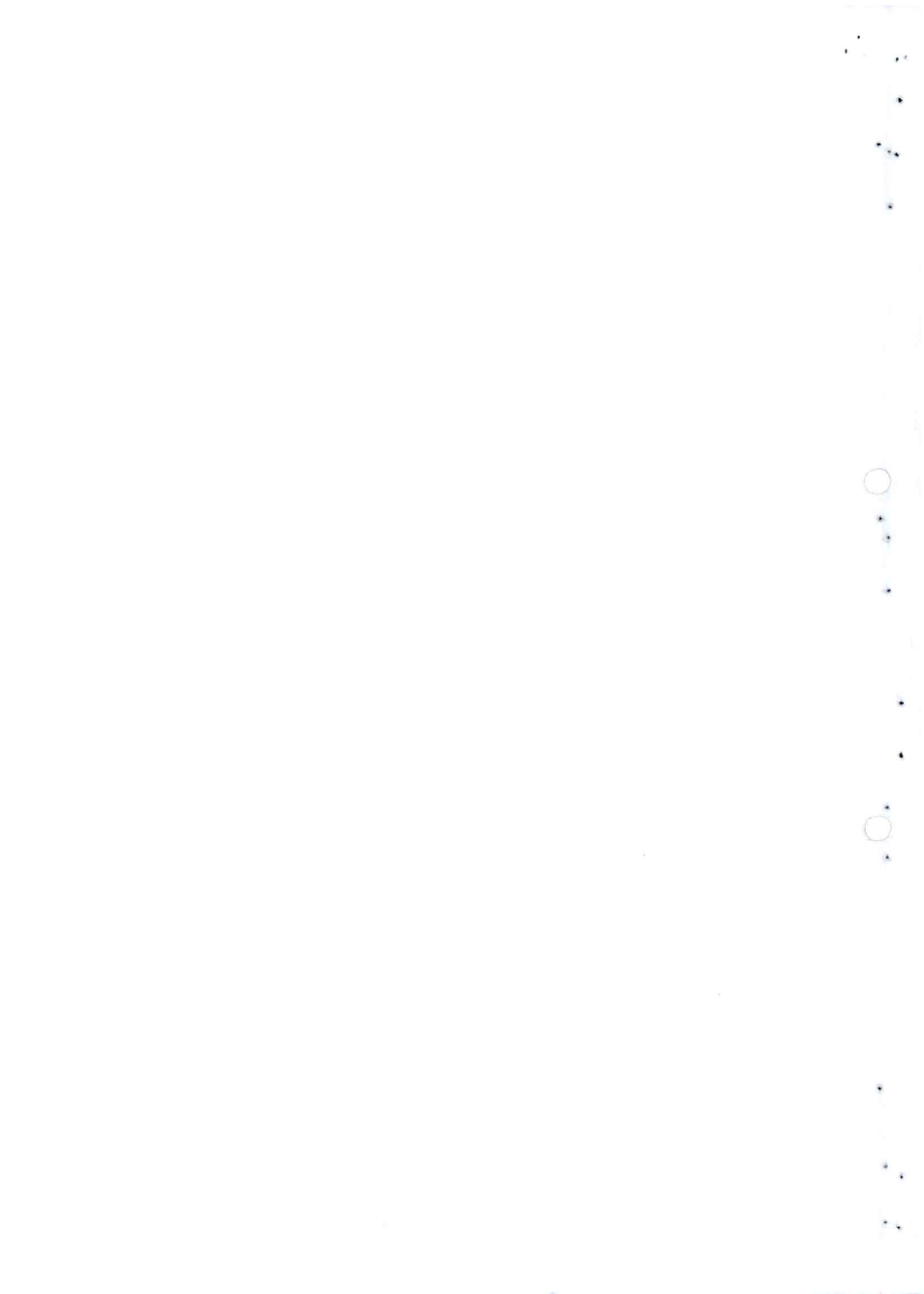
²⁰ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

²¹ Including rules and procedures of RFMO/As.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

**ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES
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.



RECEIVED

29 AUG 2023 TGT



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J
8/9/23

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
OFFICE OF THE ATTORNEY-GENERAL
P.O. Box 30430-00100, NAIROBI &
DEPARTMENT OF JUSTICE

Our Ref: AG/CONF/2/B/67 VOL.VIII (74)
Your Ref: MFA/COM/24

28th August 2023

Dr. Korir Sing'oei Phd, EBS
Principal Secretary
State Department for Foreign Affairs
Ministry of Foreign and Diaspora Affairs
NAIROBI

① Ag. DEF
Review and draw
6/9/2023

RE: RATIFICATION OF THE WTO AGREEMENT ON FISHERIES SUBSIDIES

We refer to your letter referenced MFA/COM/24 dated 4th August 2023 informing us of the adoption of the Agreement on Fisheries Subsidies and requesting for the initiation of the ratification process in accordance with the law.

We therefore advise as follows:

The process of ratification is governed by the Constitution of Kenya and Part III of the Treaty Making and Ratification Act, 2012.

Pursuant to Part III, Section 7 of the Treaty Making and Ratification Act, the Cabinet Secretary of the relevant State Department in consultation with this Office, shall prepare a Cabinet Memorandum outlining the following:

- a) The objects and subject matter of the Treaty;
- b) Any constitutional implications including proposed amendment to the Constitution and the consistency of the treaty to the Constitution;
- c) The national interests which may be affected by the ratification of the Treaty;
- d) Obligations imposed on Kenya by the Treaty;
- e) Requirements for implementation of the Treaty;
- f) Policy and legislative considerations;
- g) Financial implications;
- h) Ministerial responsibility;
- i) Implications on matters relating to counties;

SHERIA HOUSE, HARAMBEE AVENUE
P.O. Box 10113-00100, NAIROBI, KENYA TEL: +254 20 2227461/2251355-07119445555-0732529995
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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HAILLE SELASSIE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029/ 2240337
E-MAIL: justice@justice.go.ke WEBSITE: www.justice.go.ke

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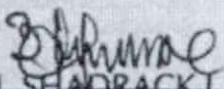
- j) The summary of the process leading to the adoption of the Treaty;
- k) The date of signature;
- l) The number of States that are party to the Treaty;
- m) The views of the public on the ratification of the Treaty;
- n) Whether the Treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- o) The proposed text of any reservations that should be entered when ratifying the Treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- p) Whether expenditure of public funds will be incurred in implementing the Treaty and an estimate, where possible, of the expenditure.

However, noting that the matter on fisheries subsidies is cross-cutting between various State Departments, we advise that the Cabinet Memorandum be initiated by the Ministry of Investment, Trade and Industry in consultation with the Ministry of Mining, Blue Economy and Maritime Affairs. Thereafter, the Cabinet Memorandum shall be co-signed by the afore-mentioned Ministries in addition to the National Treasury, the Ministry of Foreign Affairs and this Office.

Upon approval by Cabinet, the Cabinet Secretaries of the Ministry of Investment, Trade and Industry and the Ministry of Mining, Blue Economy and Maritime Affairs shall submit the Fisheries Subsidies Agreement and a Memorandum on the Agreement to the Speaker of the National Assembly for consideration pursuant to Section 8 of the Act.

When the Agreement has been approved by Parliament, then the two relevant Cabinet Secretaries shall, within thirty days from the date of the approval of the ratification of Agreement, request the Cabinet Secretary of the Ministry of Foreign Affairs to prepare the instrument of ratification of the Agreement and deposit the same at the World Trade Organization headquarters in Geneva.

Our Office avails itself to offer legal support during the ratification process.

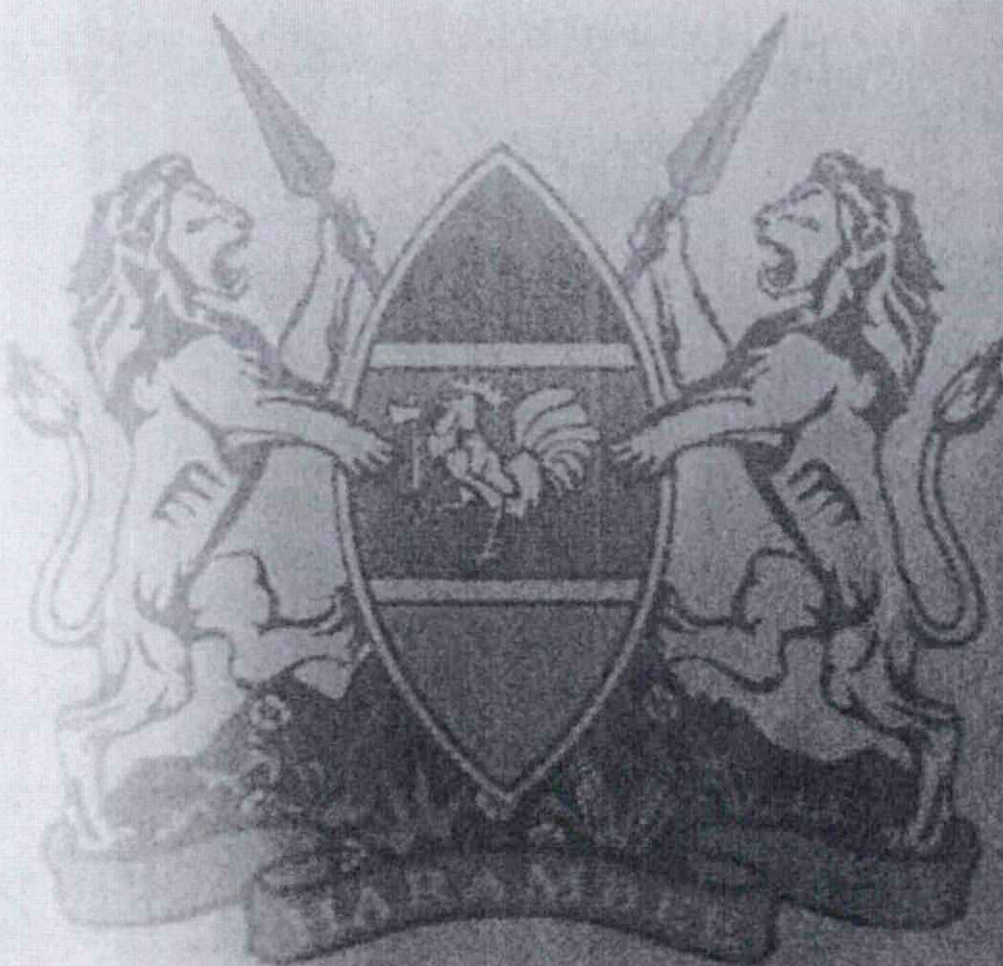

HON. SHADRACK J. MOSE
SOLICITOR GENERAL

Copy to: Hon. J. B. N. Muturi, EGH
ATTORNEY-GENERAL

Dr. Alfred Mutua, EGH
Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
NAIROBI

Ms. Betsy M. Njagi
Principal Secretary
State Department for Blue Economy and Fisheries
Ministry of Mining, the Blue Economy and Maritime Affairs
NAIROBI

Mr. Alfred K'Ombudo
Principal Secretary
State Department for Trade
Ministry of Investments, Trade and Industry
NAIROBI (MITI/SDT/DET/BEF/VOL.1 (12))





REPUBLIC OF KENYA
OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: MITI/SDT/DET/BEF/VOL. 1 (12)
Our Ref: AG/CONF/2/B/67 VOL. VIII

30th March, 2023

Mr. Alfred K'Ombundo
Principal Secretary
State Department for Trade
Ministry of Trade, Investments and Industry
NAIROBI

RE: INITIATION OF KENYA'S PROCESS TO RATIFY THE PROTOCOL ON AMENDMENT OF THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION TO INCORPORATE THE AGREEMENT ON FISHERIES SUBSIDIES

We refer to your letter referenced MITI/SDT/DET/BEF/VOL.1 (12) and dated 8th March, 2023 informing us of the adoption of the Agreement on Fisheries Subsidies and requesting for the initiation of the ratification process in accordance with the law.

Having considered the letter and the Agreement on Fisheries Subsidies, we advise as follows:

1. The process of ratification of treaties is provided for under Section 7 of the Treaty Making and Ratification Act, 2012, which requires that the **Cabinet Secretary of the relevant state department** submit to the Cabinet the treaty, together with a memorandum outlining the following:
 - a) Object and subject matter of the treaty;
 - b) Constitutional implication including proposed amendment to the Constitution and the consistency of the treaty with the Constitution;
 - c) The national interests affected by the ratification;
 - d) Obligations imposed on Kenya by the treaty;
 - e) Requirements for implementation of the treaty;
 - f) Policy and legislative considerations;
 - g) Financial implications;
 - h) Ministerial responsibility;
 - i) Implications on counties matters;
 - j) The summary of the process leading to the adoption.
 - k) The date of signature.

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DEPARTMENT OF JUSTICE
CO-OPERATIVE BANK HOUSE, HARAMBEE AVENUE P.O. Box 56057-00200, Nairobi-Kenya TEL: Nairobi 2224029, 2240337
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- l) The number of states that are party to the treaty;
 - m) The views of the public on the ratification of the treaty;
 - n) Whether the treaty sought to be ratified permits reservations and any recommendations on reservations declarations;
 - o) The proposed text of any reservations that should be entered when ratifying the treaty; and,
 - p) Whether expenditure of public funds will be incurred in implementing the treaty and an estimate, amongst others.
2. Noting that the subject matter of the Agreement involves subsidies given to fishing vessels, the preparation of the Cabinet Memorandum in line with conditions provided herein-above should be initiated by the Ministry of Investment, Trade and Industry in consultation with the Ministry of Mining, Blue Economy and Maritime Affairs. As stipulated by directives from Cabinet, the National Treasury and Economic Planning, Ministry of Foreign Affairs and this Office will also co-sign the Cabinet Memorandum

We trust that you will be guided accordingly.



HON. SHADRACK J. MOSE
SOLICITOR GENERAL

- Copy to:
- Hon. J.B.N. Muri, EGH**
ATTORNEY GENERAL

 - Hon. Moses Kuria, HSC**
Cabinet Secretary
Ministry of Investments, Trade and Industry
NAIROBI

 - Ms. Betsy M. Njagi**
Principal Secretary
Ministry of Mining, Blue Economy and Maritime Affairs
NAIROBI

SECRET



EXECUTIVE OFFICE OF THE PRESIDENT

CABINET OFFICE

Telegraphic Address

Telephone: +254-20-22275621/2/3

When replying please quote

CAB/GEN.3/1/1 VOL.XXI/114

Ref. No.

and date

STATE HOUSE

P.O. Box 40530-00100

Nairobi, Kenya

23rd April, 2024 20.....

Mr. Abubakar Hassan Abubakar
Principal Secretary
State Department for Investments Promotion
Ministry of Investments, Trade and Industry
NAIROBI

Mr. Alfred Ombudo KÓmbudo
Principal Secretary
State Department for Trade
Ministry of Investments, Trade and Industry
NAIROBI

Dr. Juma Mukhwana, PhD, CBS
Principal Secretary
State Department for Industry
Ministry of Investments, Trade and Industry
NAIROBI

Mr. Geoffrey E. Kaituko, ACIARB
Principal Secretary
State Department for Shipping & Maritime Affairs
Ministry of Mining, Blue Economy & Maritime Affairs
NAIROBI

Mr. Elijah G. Mwangi
Principal Secretary
State Department for Mining
Ministry of Mining, Blue Economy & Maritime Affairs
NAIROBI

Ms. Betsy M. Njagi
Principal Secretary
State Department for the Blue Economy & Fisheries
Ministry of Mining, Blue Economy and Maritime Affairs

NAIROBI

Dr. Chris K. Kiptoo, (PhD), CBS
Principal Secretary
The National Treasury
The National Treasury & Economic Planning
NAIROBI

Mr. James B. Muhati, CBS
Principal Secretary
State Department for Economic Planning
The National Treasury & Economic Planning
NAIROBI

Hon. Shadrack J. Mose
Solicitor- General
State Law Office
NAIROBI

RATIFICATION OF THE WORLD TRADE ORGANIZATION AGREEMENT ON FISHERIES SUBSIDIES

I refer to the 4th Cabinet Meeting - 2024 held on 23rd April, 2024, during which the Cabinet Secretary for Investments, Trade and Industry presented a Cabinet Memorandum CAB (24)58, jointly with the Prime Cabinet Secretary & Secretary for Foreign & Diaspora Affairs; the Cabinet Secretary for Mining, Blue Economy & Maritime Affairs; the Cabinet Secretary for the National Treasury & Economic Planning; and the Attorney-General.

The Memorandum sought to apprise Cabinet on the Significance of the World Trade Organization Agreement on Fisheries Subsidies and further seek Cabinet approval for Kenya to ratify the World Trade Organization Agreement on Fisheries Subsidies.

I wish to inform you that Cabinet considered the Memorandum and:

- I. Noted the contents of the Memorandum;
- II. Approved Kenya's ratification of the World Trade Organization Agreement on Fisheries Subsidies; and
- III. Directed the Cabinet Secretaries for: Investments, Trade & Industry; Mining, Blue Economy & Maritime Affairs; Foreign & Diaspora Affairs; the National Treasury & Economic Planning; and the Attorney-General to take the necessary action.

SECRET

Please proceed and take action as directed by Cabinet.



Mercy Wanjau, (Mrs.), MBS
SECRETARY TO THE CABINET

Copy to: Ms. Rebecca Miano, EGH
Cabinet Secretary
Ministry of Investments, Trade & Industry
NAIROBI

Hon. Salim Mvurya, EGH
Cabinet Secretary
Ministry of Mining, Blue Economy &
Maritime Affairs
NAIROBI

Prof. Njuguna S. Ndungú, PhD, CBS
Cabinet Secretary
The National Treasury & Economic Planning
NAIROBI

Mr. Felix K. Koskei, EGH
Chief of Staff & Head of the Public Service
Executive Office of the President
NAIROBI

Hon. Justin B. N. Muturi, EGH
Hon. Attorney-General
The State Law Office
NAIROBI

Ms. Wanjiku Wakogi, CBS
Chief of Staff
Office of the Deputy President
Executive Office of the President
NAIROBI

Mr. Joseph N. Busiega, MBS, ndc (K)
Chief of Staff
Office of the Prime & Cabinet Secretary for
Foreign & Diaspora Affairs
Executive Office of the President
NAIROBI

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THE REPUBLIC OF KENYA

LAWS OF KENYA

THE TREATY-MAKING AND RATIFICATION ACT

CAP. 4D

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Kenya

Treaty-Making and Ratification Act Cap. 4D

Legislation as at 31 December 2022

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Treaty-Making and Ratification Act (Cap. 4D)

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TREATY-MAKING AND RATIFICATION ACT

CAP. 4D

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Commenced on 14 December 2012

[Amended by Statute Law (Miscellaneous Amendments) Act, 2014 (Act No. 18 of 2014) on 8 December 2014]

[Amended by Statute Law (Miscellaneous Amendments) Act, 2018 (Act No. 18 of 2018) on 18 January 2019]

[Revised by 24th Annual Supplement (Legal Notice 221 of 2023) on 31 December 2022]

An Act of Parliament to give effect to the provisions of Article 2(6) of the Constitution and to provide the procedure for the making and ratification of treaties and connected purposes

Part I – PRELIMINARY

1. Short title

This Act may be cited as the Treaty-Making and Ratification Act.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

"bilateral treaty" means an agreement concluded between Kenya and any other State or between Kenya and an international organisation;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to foreign affairs.

"full powers" means all those powers conferred, by way of a legal document, to a person or persons designated by a competent state authority, to represent the State for negotiating, adopting, or authenticating the text of a treaty, for expressing the consent of the State to be bound by a treaty, or for accomplishing any other act with respect of a treaty;

"international organisation" means an intergovernmental organization;

"ratification" means the international act by which the State signifies its consent to be bound by a treaty and includes acceptance, approval and accession where the treaty so provides;

"Registrar" means the Registrar of Treaties appointed under section 14;

"Registry" means the Registry of Treaties established by section 10;

"relevant Cabinet Secretary" means the Cabinet Secretary for the time being responsible the subject matter of the treaty;

"relevant state department" means the state department responsible for the subject matter of the treaty to be approved for ratification;

"reservation" means a unilateral statement made by a State when signing, ratifying, accepting, approving or acceding to a treaty, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in their application to the State;

"signature" means an act whereby the State expresses its willingness to consent to the text of a treaty and has the effect of obligating the said State, even though it may not be a party to the treaty, to refrain, in good faith, from acts that would defeat the object and purpose of the treaty;

"treaty" means an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation and includes a convention.

- (2) Despite subsection (1), until after the first elections under the Constitution, references in this Act to the expression "Cabinet Secretary" and "State Department" shall be construed to mean "Minister" and "Ministry" respectively.

[Act No. 18 of 2014, Sch.]

3. Application

- (1) This Act applies to treaties which are concluded by Kenya after the commencement of this Act.
- (2) This Act shall apply to—
- (a) multilateral treaties;
 - (b) bilateral treaties which deal with—
 - (i) the security of Kenya, its sovereignty, independence, unity or territorial integrity;
 - (ii) the rights and duties of citizens of Kenya;
 - (iii) the status of Kenya under international law and the maintenance or support of such status;
 - (iv) the relationship between Kenya and any international organisation or similar body; and
 - (v) the environment and natural resources.
- (3) A treaty relating to the adjustment, alteration or variation of the present position of Kenya on matters of sovereignty, independence and territorial integrity shall be approved in a referendum in accordance with Article 255 of the Constitution:

Provided that the process of ensuring that the boundaries are correctly marked on the ground in accordance with the instruments establishing them shall not be deemed to amount to adjustment, variation or alteration under this section.

- (4) Notwithstanding subsection (2)(b), the Government may enter into bilateral agreements—
- (a) necessary for matters relating to government business; or
 - (b) relating to technical, administrative or executive matters.

[Act No. 18 of 2018, Sch.]

Part II – INITIATION AND NEGOTIATION OF TREATIES

4. General responsibility for treaty initiation

- (1) Subject to the provisions of this Act, the national executive shall be responsible for initiating the treaty-making process, negotiating and ratifying treaties.
- (2) The responsibility provided for in subsection (1) may be delegated to a relevant State department.

5. Initiation of treaty-making process

- (1) Subject to the provisions of this section, the relevant national executive or the relevant State department shall initiate the treaty-making process in such manner as may be prescribed by the Cabinet Secretary.

- (2) When deciding whether to initiate the treaty-making process or not, the national executive or the relevant State department shall consider the following—
 - (a) the need that the new treaty is to meet;
 - (b) the existing legal regime, including the extent of its applicability to the perceived problem;
 - (c) the probability of reaching the required measure of agreement on the solution aimed for;
 - (d) any relevant legislative efforts related to the perceived problem;
 - (e) the optimal form for the proposed treaty;
 - (f) the likelihood that the proposed treaty shall be accepted by a sufficient number of states, where the treaty is multilateral;
 - (g) the anticipated time schedule for completing the treaty-making process;
 - (h) the expected costs of formulating and adopting the treaty to Kenya;
 - (i) in formulating treaties relating to technical or scientific problems; whether extensive scientific studies or research have been carried out to determine the parameters of the problem and the lines of potential solutions.
- (3) The national executive or the relevant State department shall record whether the conditions in subsection (2) are met, and shall present a proposal to commence treaty-making for approval by the Cabinet.
- (4) The Cabinet shall consider and approve or disapprove a proposal for treaty-making presented in accordance with subsection (3) within a reasonable time.

6. Values and principles in negotiating treaties

- (1) In negotiating treaties, the national executive or the relevant State department shall be bound by the values and principles of the Constitution; and shall take into account the regulatory impact of any proposed treaty.
- (2) When appointing persons to negotiate a treaty, the national executive or the relevant State department shall appoint persons who are competent to undertake such negotiations in the interest of the people of Kenya.

Part III – RATIFICATION OF TREATIES

7. Approval by Cabinet

Where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining—

- (a) the objects and subject matter of the treaty;
- (b) any constitutional implications including—
 - (i) any proposed amendment to the Constitution; and
 - (ii) that the treaty is consistent with the Constitution and promotes constitutional values and objectives;
- (c) the national interests which may be affected by the ratification of the treaty;
- (d) obligations imposed on Kenya by the treaty;
- (e) requirements for implementation of the treaty;

- (f) policy and legislative considerations;
- (g) financial implications;
- (h) ministerial responsibility;
- (i) implications on matters relating to counties;
- (j) the summary of the process leading to the adoption of the treaty;
- (k) the date of signature;
- (l) the number of states that are party to the treaty;
- (m) the views of the public on the ratification of the treaty;
- (n) whether the treaty sought to be ratified permits reservations and any recommendations on reservations and declarations;
- (o) the proposed text of any reservations that should be entered when ratifying the treaty in order to protect or advance national interests or ensure conformity with the Constitution; and
- (p) whether expenditure of public funds will be incurred in implementing the treaty and an estimate, where possible, of the expenditure.

8. Consideration by Parliament

- (1) Where the Cabinet approves the ratification of a treaty, the Cabinet Secretary shall submit the treaty and a memorandum on the treaty to the Speaker of National Assembly.
- (2) *Deleted by Act No. 18 of 2014, Sch.*
- (3) The relevant parliamentary committee shall, during its consideration of the Treaty, ensure public participation in the ratification process in accordance with laid down parliamentary procedures.
- (4) The National Assembly may approve the ratification of a treaty with or without reservations to specific provisions of the treaty.
- (5) A proposed reservation shall be introduced as a provision into the treaty in accordance with the procedure set out in the Standing Orders.
- (6) *Deleted by Act No. 18 of 2014, Sch.*
- (7) Where the National Assembly refuses to approve the ratification of a treaty, the Clerk of the National Assembly shall submit the resolution of the House to the relevant Cabinet Secretary within fourteen days of the resolution.
- (8) *Deleted by Act No. 18 of 2014, Sch.*
- (9) The National Assembly shall not approve the ratification of a treaty or part of it if its provisions are contrary to Constitution, nor shall the House approve a reservation to a treaty or part of it if that reservation negates any of the provisions of the Constitution even if the reservation is permitted under the relevant treaty.

[Act No. 18 of 2014, Sch.]

9. Approval for ratification

- (1) Where the ratification of a treaty referred to in section 7 is approved by National Assembly without any reservations to the treaty, the relevant Cabinet Secretary shall, within thirty days from the date of the approval of the ratification of treaty request the Cabinet Secretary to prepare the instrument of ratification of the treaty.

- (2) Where a treaty referred to in [section 7](#) is approved for ratification with reservations to some provisions of the treaty, the treaty shall be ratified with those reservations to the corresponding article in the treaty.
- (3) Where the National Assembly refuses to approve the ratification of the treaty referred to in [section 7](#), the Government shall not ratify the treaty.

[Act No. 18 of 2014, Sch.]

10. Ratification of Treaty

- (1) All instruments of ratification of a treaty shall be signed, sealed and deposited by the Cabinet Secretary at the requisite international body and a copy thereof shall be filed with the Registrar.
- (2) Where a treaty ratified under this Act is subsequently amended or modified, the amendment or modification shall be ratified only after compliance with the procedure set out in this Part.
- (3) The provisions of subsection (2) shall apply similarly to protocols signed under a treaty.

11. Granting of full powers

The Cabinet Secretary may grant full powers to such persons as may be appropriate for the purposes of ratification of any treaty in accordance with this Act.

12. Offence to ratify without approval

- (1) A person shall not ratify any treaty on behalf of the Government of Kenya unless the treaty has been considered and approved by the Cabinet and Parliament in accordance with this Part.
- (2) A person who contravenes subsection (1) commits an offence and shall be liable to imprisonment for a term not exceeding fifteen years or to a fine not exceeding twenty million shillings or to both such fine or imprisonment.

Part IV – REGISTRY OF TREATIES

13. Registry of Treaties

- (1) There shall be a Registry of Treaties which shall be a department within the State Department responsible for matters relating to foreign affairs.
- (2) The Registry shall—
 - (a) be the depository of all treaties to which Kenya is a party;
 - (b) contain a record of all treaties in such manner as may be prescribed;
 - (c) contain the status of all treaties pending ratification or domestication and the timelines for such ratification or domestication;
 - (d) perform such other function as may be assigned to it by the Cabinet Secretary.

[Act No. 18 of 2014, Sch.]

14. Registrar

- (1) The Registry shall be headed by the Registrar of Treaties who shall be appointed by the Cabinet Secretary through an open and competitive process, with the approval of the Public Service Commission.
- (2) The office of the Registrar shall be an office in the public service.

- (3) A person shall be qualified to be appointed as Registrar if such person has—
- (a) at least a degree in law from a university recognised in Kenya; and
 - (b) at least seven years experience in the practice of law or international relations;
- (4) The Registrar shall—
- (a) maintain a record of—
 - (i) the treaties to which Kenya is a signatory;
 - (ii) the treaties proposed for ratification by Kenya;
 - (iii) the treaties that Kenya has ratified;
 - (iv) Kenya's reports to any treaty body;
 - (v) the recommendations and concluding observations from any treaty body on Kenya's reports;
 - (b) monitor the implementation of the treaties ratified by Kenya;
 - (c) inform lead State departments to observe and uphold the obligations of the respective lead state department under the respective treaties;
 - (d) advise any citizen of Kenya on the rights and obligations of Kenya under a treaty;
 - (e) maintain a website of the treaties to which Kenya is a signatory;
 - (f) keep copies of the published reports of proceedings of the negotiations that led to the adoption of the treaties ratified by Kenya;
 - (g) facilitate public access to treaties which Kenya has ratified;
 - (h) respond to public inquiries on any treaty ratified by Kenya; and
 - (i) perform such other functions as may be prescribed by the Cabinet Secretary.

Part V – GENERAL PROVISIONS

15. Public awareness

- (1) The Cabinet Secretary shall cause to be laid before the National Assembly, at least once every financial year, a report containing records of all treaties which Kenya has ratified and which may in any way bind Kenya to specific actions.
- (2) The Cabinet Secretary shall, through publication in at least two newspapers of nationwide circulation, notify the public of every treaty, which may in any way bind, or to which Kenya is a party.
- (3) The relevant state department in respect of each treaty shall take measures to inform and create awareness to the public about the effects and benefits of the treaty.

16. Reporting in compliance with terms of treaties

Where a treaty provides for the submission of periodic reports as part of its monitoring mechanisms the Cabinet Secretary shall, in conjunction with the Attorney-General and the relevant state department facilitate the preparation and submission of such report within the prescribed period.

17. Denunciation of certain treaties

- (1) Where Kenya wishes withdraw from a treaty, the relevant Cabinet Secretary shall prepare a cabinet memorandum indicating the reasons for such an intention.
- (2) The provisions of [section 4](#), [section 5](#) and [section 6](#) shall apply with necessary modifications, to withdrawal from a treaty.

18. Rules

- (1) The Cabinet Secretary may make Rules for giving effect to this Act.
- (2) Without limiting the generality of subsection (1) the Cabinet Secretary may make Rules—
 - (a) prescribing anything that needs to be prescribed under this Act;
 - (b) for the granting of full powers in other areas in addition to the one specified under [section 8](#);
 - (c) providing for the administrative steps to be taken prior to the preparation of the cabinet memorandum for cabinet approval of a treaty under this Act;
 - (d) the dissemination of information under this Act.

**SUBMISSIONS FROM
OFFICE OF THE
ATTORNEY GENERAL**



REPUBLIC OF KENYA

OFFICE OF THE ATTORNEY-GENERAL
&
DEPARTMENT OF JUSTICE

Your Ref: NA/DDC/BEW&I/2025/004
Our Ref: AG/CONF/6/B/18/1 VOL. III


24th March, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
NAIROBI

MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

Reference is made to the above matter and the letter Ref: NA/DDC/BEW&I/2025/004 dated the 18th March, 2025 inviting Ministries, Departments and Agencies to a meeting with the Departmental Committee on Blue Economy, Water and Irrigation scheduled for 24th - 25th March, 2025.

Kindly find attached the submission from the Office of Attorney General and Department of Justice on Kenya's ratification of the World Trade Organization Agreement on Fisheries Subsidies.


Hon. Shadrack J. Mose, CBS
Solicitor General

Encl:

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OFFICE OF THE ATTORNEY GENERAL
&
DEPARTMENT OF JUSTICE



**RE: SUBMISSION TO THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY,
WATER AND IRRIGATION TO CONSIDER THE PROTOCOL AMENDING THE
MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION
(AGREEMENT ON FISHERIES SUBSIDIES)**

Reference is made to the above matter and a letter Ref: NA/DDC/BEW&I/2025/004 dated the 18th March, 2025 inviting Ministries, Departments and Agencies to a meeting with the Departmental Committee on Blue Economy, Water and Irrigation for purposes of discussing the Agreement on Fisheries Subsidies.

The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organisation (WTO) Ministerial Conference on 17th June, 2022 in Geneva Switzerland. The Agreement applies to subsidies within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing measures that are specific to marine, wild capture fishing and related activities at sea. Aquaculture and inland fisheries are excluded from the scope of the Agreement.

The Agreement arose from the recommendations of the 11th WTO Ministerial Conference in 2017 where Members were mandated to prohibit fisheries subsidies that contribute to overcapacity and overfishing, eliminate subsidies that contribute to illegal, unreported and unregulated (IUU) fishing and refrain from introducing new such subsidies.

The main objectives of the Agreement are to;

- i. safeguard the world's seas, oceans and maritime resources by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity;
- ii. Creating a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets;
- iii. Ensure a balance between supporting the livelihoods of fishing communities and ensuring long term health and capacity of the worlds' seas, oceans and marine resources.

The Agreement lays out rules for prohibiting certain forms of harmful subsidies while also setting out measures for transparency and accountability in the manner Governments' support their fishing sectors. The Agreement prevents overfishing by curtailing harmful subsidies; payments made by nations to commercial fishing operators to keep such business profitable. It specifically prohibits subsidies that enable (i) illegal, unreported and unregulated (IUU) fishing; (ii) fishing of overfished stocks or; (iii) fishing of unmanaged stocks in the high seas.

The key provisions in the Agreement are:

- i. Banning granting or maintenance of any subsidy to a vessel or operator engaged in IUU or fishing related activities in support of IUU fishing (Article 3)- No member shall grant or maintain a subsidy to a vessel or operator engaged in IUU fishing or fishing related activities in support of IUU activities;
- ii. Banning granting or maintenance of subsidies for fishing or fishing related activities regarding an overfished stock (Article 4) - No member shall grant or maintain subsidies for fishing or fishing related activities regarding overfished stock;
- iii. Other subsidies (Article 5) – it requires a member to take special care and exercise restraint when granting subsidies to vessels not flying the Member's flag or when granting subsidies to fishing or fishing related activities regarding stocks the status of which is unknown.
- iv. Special and differential treatment (SDT) provisions to developing countries and Least Developed Countries (LDCs) which allow them more time and flexibility in implementing subsidy reductions and the Agreement in general (Article 6);
- v. Provision for targeted technical assistance and capacity building to developing members and LDCs to help them implement the Agreement (Article 7).
- vi. Notification and transparency- within one year of the date of entry into force, provide a description of its fisheries regime with reference to its laws, regulations and administrative procedures relevant to this Agreement (Article 8.4);
- vii. The Agreement shall not be construed or applied in a manner which would prejudice the jurisdiction, rights and obligations of Members arising under international law, including the law of the sea. Any findings, recommendations and awards with respect to this Agreement shall have no legal implications regarding territorial claims or delimitation of maritime boundaries (Article 11).

The benefits of the Agreement to the Republic of Kenya are;

- i. Promotes sustainable use of marine fisheries resources leading to enhanced food security, poverty alleviation and the preservation of marine biodiversity as it prohibits subsidies for illegal, unreported and unregulated (IUU) fishing;
- ii. Reduction of overfishing will lead to stable and reliable sources of fish for domestic and international trade and promote the blue economy;
- iii. The Agreement ensures access to targeted technical assistance and capacity building assistance to developing and Least Developed Countries;
- iv. It promotes Articles 60(1) and 69(1)(a) of the Constitution which require productive, sustainable exploitation, utilization, management and conservation of the environment natural resources and equitable sharing of accruing benefits.

The Agreement will enter into force upon ratification by two thirds of the members of the WTO. Fifty-six WTO Members have since ratified the Agreement.

Ratification of the Agreement will not require enactment of new legislation or amendment of existing legislation. There will be however need to ensure that;

- i. future Agreements negotiated between the Republic of Kenya and other countries or development partners are not inconsistent with the Agreement;
- ii. information required under the Agreement under Article 8.4 namely but not limited to description of its fisheries regime with reference to its laws, regulations and administrative procedures relevant to the Agreement is provided in a timely manner.

**SUBMISSIONS FROM
STATE DEPARTMENT
FOR FOREIGN AFFAIRS**



BRIEF FOR USE DURING THE MEETING WITH THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION TO CONSIDER KENYA'S RATIFICATION OF THE PROTOCOL AMENDING THE MARAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

1. The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organization (WTO) Ministerial Conference (MC12) held in Geneva, Switzerland on 17th June, 2022. The Agreement delivers on the mandate given to Members during the 11th Ministerial Conference (MC11) and on the Sustainable Development Goal (SDG) 14.
2. The Agreement applies to marine wild capture fishing and related activities at sea or ocean. Aquaculture and inland fisheries are excluded from the scope of this Agreement.
3. All the One Hundred and Sixty-Four (164) WTO Members are party to the Agreement. The Agreement enters into force upon ratification by two-thirds of the members.
4. Currently, only Sixty-Eight (68) WTO Members have Ratified the Agreement.
5. The Agreement does not permit reservations on any of its provisions.
6. The **main objective** Agreement is to safeguard the world's seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity. Further, to balance between supporting the livelihoods of fishing communities and ensuring the long-term health and capacity of the world's seas, oceans and marine resources. Conclusively, the

Agreement is designed to create a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets.

7. As part of the ratification process, a **Cabinet Memorandum** was submitted to the Cabinet for approval for ratification in line with section 7 of the Treaty Making and Ratification Act, CAP 4D. On the 23rd April, 2024, the Cabinet approved the ratification of the WTO Agreement on Fisheries Subsidies.
8. Following Cabinet Approval, the Prime Cabinet Secretary and Cabinet Secretary for Foreign & Diaspora Affairs submitted a **Parliamentary Memorandum** alongside a copy of the Agreement to the National Assembly.
9. Upon ratification Kenya will be required to:
 - i) Have laws, regulations and/or administrative procedures in place to ensure that fisheries subsidies, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.
 - ii) Not 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;
 - iii) Not grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock;
 - iv) Provide a description of the fisheries regime with references to Kenyan laws, regulations and administrative procedures relevant to the Agreement within one year of the date of entry into force of this Agreement, and promptly inform the WTO of any modifications thereafter;
 - v) Regularly notify on fisheries subsidies to enable effective surveillance of the implementation of fisheries subsidies commitments.

10. The benefits that will accrue to Kenya by ratifying this Agreement include:
- - (i) Promotion of sustainable fisheries for food security, poverty alleviation, and the preservation of marine biodiversity.
 - (ii) Reduction of trade distortion by eliminating harmful fisheries subsidies that may create an unfair advantage for subsidized fishing operations, distorting trade in fish and fishery products.
 - (iii) Creation of a level playing field for fishers and fishery-related industries.
 - (iv) Ensuring sustainability of the fishing industry through the sustainable management of fishery resources which is critical for ensuring the long-term viability of the fishing industry. Reduced overfishing will lead to more stable and reliable sources of fish for domestic and international trade.
 - (v) Ensuring trade and economic development are not hampered as the agreement recognizes the special needs and circumstances of developing countries and LDC's, and allows them more flexibility in implementing subsidy reduction measures.
 - (vi) Access to the targeted technical assistance and capacity building assistance to developing country Members and LDCs.
11. The Ratification of the WTO Agreement would in a nutshell strengthen national efforts to realize Kenya's constitutional objectives and values pursuant to Article 60 (1) (e) and 69 (1) (a) of the Constitution of Kenya which require productive, sustainable exploitation, utilization, management and conservation of the environment and natural resources, and ensuring the equitable sharing of the accruing benefits.
12. The ratification of the WTO Agreement on Fisheries Subsidies by Kenya will not necessitate any amendment to the Constitution and is consistent with constitutional provisions in particular Articles 60 and 69 of the Constitution of Kenya (2010).
13. Kenya's ratification of the WTO Agreement on Fisheries Subsidies will not occasion any additional public expenditure. Its implementation will be done under the normal budget of the relevant MDAs.

14. The implementation of the Agreement will be the joint responsibility of the Ministry of Investments, Trade and Industry and the Ministry of Mining, Blue Economy and Maritime Affairs.



REGISTRY OF TREATIES
STATE DEPARTMENT FOR FOREIGN AFFAIRS

23rd MARCH, 2025

**SUBMISSIONS FROM THE
NATIONAL TREASURY**



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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THE NATIONAL TREASURY
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NAIROBI
KENYA

24th March, 2025

MEMORANDUM BY THE NATIONAL TREASURY TO THE DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND IRRIGATION REGARDING THE PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING THE WORLD TRADE ORGANIZATION (AGREEMENT ON FISHERIES SUBSIDIES)

The National Treasury wishes to submit the following Memorandum on the above subject.

1. World Trade Organization

The World Trade Organization (WTO) is an inter-governmental organization which deals with global rules of trade between member states. Its main function is to ensure that trade flows smoothly, predictably and freely. The WTO was established on 1st January, 1995, under the Marrakech Agreement which was signed by 123 nations on 15th April, 1994.

The WTO currently has a membership of 164 members (representing 98 per cent of world trade). Its functions include administering WTO trade agreements; a forum for trade negotiations; handling trade disputes; Monitoring national trade policies; technical assistance and training for developing countries; and cooperation with other international organizations. Kenya became a member of WTO on 1st January, 1995.

2. Protocol Amending the Marrakesh Agreement establishing the WTO (Agreement of Fisheries Subsidies)

Since the establishment of the WTO on 1st January, 1995, a number of multilateral negotiations have been taking place during Ministerial Conference. One of the areas of focus has been the Fishery sector.

During the eleventh (11th) WTO Ministerial Conference (MC) held in Bueno Aires, Argentina in 2017, members agreed that during the next Ministerial Conference i.e., the 12th WTO MC, there should be an adoption of a comprehensive and effective disciplines that prohibit certain forms of fisheries and subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to the illegal, Unregulated and Unreported (IUU) fishing.

Consequently, during the 12th WTO MC held in Geneva, Switzerland in 2022, the Agreement on Fisheries Subsidies was adopted on 17th June, 2022. The Agreement delivers on the mandate given to Members during the 11th Ministerial Conference (MC11) and on the Sustainable Development Goal (SDG) 14.

Purpose of the Agreement

The main objectives of the Agreement are to: -

- i. Safeguard the world's seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing;
- ii. Balance between supporting the livelihoods of fishing communities and ensuring the long-term health and capacity of the world's seas, oceans and marine resources; and
- iii. Create a level playing field in international fisheries trade by ensuring that subsidies do not distort competition or create unfair advantage for certain countries or fishing fleets.

Key provisions of the Agreement

The key provisions in the Agreement include: -

- i. Banning granting or maintenance of any subsidy to a vessel or operator engaged in IUU fishing or fishing related activities in support of IUU fishing;
- ii. Banning granting or maintenance of subsidies for fishing or fishing related activities regarding an overfished stock;
- iii. Special and Differential Treatment provision to developing members and least-developed country (LDC) members allowing them more time and flexibility in implementing subsidy reductions and the Agreement in general; and
- iv. Provision of targeted technical assistance and capacity building to developing members and LDCs to help them implement the Agreement.

Scope of the Agreement

The Agreement on Fisheries Subsidies applies to marine wild capture fishing and fishing related activities at sea. It is important to note that aquaculture and inland fisheries are excluded from the scope of this Agreement.

Obligations of the Government of Kenya

The following are the obligations imposed on the Government of Kenya by the Agreement: -

- i. Not to grant or maintain any subsidy to a vessel or operators engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing;

- ii. To have laws, regulations and/or administrative procedures in place to ensure that fisheries subsidies, including such subsidies existing at the entry into force of the Agreement, are not granted or maintained;
- iii. Not to grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock;
- iv. Within one year of the date of entry into force of this Agreement, provide to the WTO a description of the fisheries regime with references to Kenyan laws, regulations and administrative procedures relevant to the Agreement, and promptly inform the WTO of any modifications thereafter. A Member may meet this obligation by providing to the WTO an up-to-date electronic link to the Member's appropriate official web page that sets out this information; and
- v. Regular notification of fisheries subsidy to enable effective surveillance of the implementation of fisheries subsidies commitments.

Financial implication

There are a number of commitments in the Agreement that may occasion additional financing from the Exchequer. These include but not limited to:

- i. Monitoring and safeguarding the country against IUU fishing;
- ii. Provision of Technical Assistance and Capacity building;
- iii. Providing timely notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidy commitments, with a view to enhance transparency within the fishery sector;
- iv. Establishment of a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives; and
- v. Settlement of dispute in the event of any dispute arising out of the implementation of the Agreement; and
- vi. Enacting relevant laws and regulations geared towards enforcing the provisions of the Agreement at the domestic level.

Our comments

The National Treasury is a member of the National Trade Negotiations Council (NTNC), a multi-agency council which is established to coordinate trade matters at bilateral, regional, inter-regional, and multilateral levels in accordance with the Marrakesh Agreement of the World Trade Organization (WTO).

In this regard, we have been actively participating in WTO Ministerial Conference Meetings where we provide technical input into the Country's position papers. We participated in the 12th WTO Ministerial Conference where the Agreement on Fisheries Subsidies was unanimously adopted by the WTO members.

Recommendation

The National Treasury has no objection to the ratification of the Protocol amending the Marrakesh Agreement establishing the WTO (the Agreement on Fisheries Subsidies). The ratification of this important multilateral Agreement will position Kenya as a global leader handling IUU fishing along its coastal marine ecosystem.

Upon ratification of the Agreement, we recommend that the Ministry of Mining, Blue Economy and Fisheries factors resource requirements for the implementation of the Agreement in their normal annual budget allocation processes for consideration during the budget making process.

DR. CHRIS KIPTOO, CBS
PRINCIPAL SECRETARY/ NATIONAL TREASURY

**COPY OF THE
AGREEMENT**



22 June 2022

(22-4789)

Page: 1/9

Ministerial Conference
Twelfth Session
Geneva, 12-15 June 2022

AGREEMENT ON FISHERIES SUBSIDIES

MINISTERIAL DECISION OF 17 JUNE 2022

The Ministerial Conference;

Having regard to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization (the "WTO Agreement");

Recalling the mandate given to Members at the Eleventh WTO Ministerial Conference in 2017 in Buenos Aires that the next Ministerial Conference should adopt an agreement on comprehensive and effective disciplines that prohibits certain forms of fisheries subsidies that contribute to overcapacity and overfishing, and eliminates subsidies that contribute to IUU-fishing recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

Decides as follows:

1. The Protocol amending the WTO Agreement attached to this Decision is hereby adopted and submitted to the Members for acceptance.
2. The Protocol shall hereby be open for acceptance by Members.
3. The Protocol shall enter into force in accordance with the provisions of paragraph 3 of Article X of the WTO Agreement.
4. Notwithstanding Article 9.4 of the Agreement on Fisheries Subsidies, the Negotiating Group on Rules shall continue negotiations based on the outstanding issues in documents WT/MIN(21)/W/5 and WT/MIN(22)/W/20 with a view to making recommendations to the Thirteenth WTO Ministerial Conference for additional provisions that would achieve a comprehensive agreement on fisheries subsidies, including through further disciplines on certain forms of fisheries subsidies that contribute to overcapacity and overfishing, recognizing that appropriate and effective special and differential treatment for developing country Members and least developed country Members should be an integral part of these negotiations.

ATTACHMENT

PROTOCOL AMENDING THE MARRAKESH AGREEMENT ESTABLISHING
THE WORLD TRADE ORGANIZATION

AGREEMENT ON FISHERIES SUBSIDIES

Members of the World Trade Organization;

Having regard to the Decision of the Ministerial Conference in document WT/MIN(22)/33 – WT/L/1144 adopted pursuant to paragraph 1 of Article X of the Marrakesh Agreement Establishing the World Trade Organization ("the WTO Agreement");

Hereby agree as follows:

1. Annex 1A to the WTO Agreement shall, upon entry into force of this Protocol pursuant to paragraph 4, be amended by the insertion of the Agreement on Fisheries Subsidies, as set out in the Annex to this Protocol, to be placed after the Agreement on Subsidies and Countervailing Measures.
2. No reservations may be made in respect of any of the provisions of this Protocol.
3. This Protocol is hereby open for acceptance by Members.
4. This Protocol shall enter into force in accordance with paragraph 3 of Article X of the WTO Agreement.¹
5. This Protocol shall be deposited with the Director-General of the World Trade Organization who shall promptly furnish to each Member a certified copy thereof and a notification of each acceptance thereof pursuant to paragraph 3.
6. This Protocol shall be registered in accordance with the provisions of Article 102 of the Charter of the United Nations.

Done at Geneva this seventeenth day of June two thousand and twenty-two, in a single copy in the English, French and Spanish languages, each text being authentic.

¹ For the purposes of calculation of acceptances under Article X:3 of the WTO Agreement, an instrument of acceptance by the European Union for itself and in respect of its Member States shall be counted as acceptance by a number of Members equal to the number of Member States of the European Union which are Members to the WTO.

ANNEX

AGREEMENT ON FISHERIES SUBSIDIES

ARTICLE 1: SCOPE

This Agreement applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures (SCM Agreement) that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing related activities at sea.^{1, 2, 3}

ARTICLE 2: DEFINITIONS

For the purpose of this Agreement:

- (a) "fish" means all species of living marine resources, whether processed or not;
- (b) "fishing" means searching for, attracting, locating, catching, taking or harvesting fish or any activity which can reasonably be expected to result in the attracting, locating, catching, taking or harvesting of fish;
- (c) "fishing related activities" means any operation in support of, or in preparation for, fishing, including the landing, packaging, processing, transshipping or transporting of fish that have not been previously landed at a port, as well as the provisioning of personnel, fuel, gear and other supplies at sea;
- (d) "vessel" means any vessel, ship of another type or boat used for, equipped to be used for, or intended to be used for, fishing or fishing related activities;
- (e) "operator" means the owner of a vessel, or any person, who is in charge of or directs or controls the vessel.

¹ For greater certainty, aquaculture and inland fisheries are excluded from the scope of this Agreement.

² For greater certainty, government-to-government payments under fisheries access agreements shall not be deemed to be subsidies within the meaning of this Agreement.

³ For greater certainty, for the purposes of this Agreement, a subsidy shall be attributable to the Member conferring it, regardless of the flag or registry of any vessel involved or the nationality of the recipient.

**ARTICLE 3: SUBSIDIES CONTRIBUTING TO
ILLEGAL, UNREPORTED AND UNREGULATED FISHING⁴**

3.1 No Member shall grant or maintain any subsidy to a vessel or operator⁵ engaged in illegal, unreported and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.

3.2 For purposes of Article 3.1, a vessel or operator shall be considered to be engaged in IUU fishing if an affirmative determination thereof is made by any of the following^{6,7}:

- (a) a coastal Member, for activities in areas under its jurisdiction; or
 - (b) a flag State Member, for activities by vessels flying its flag; or
 - (c) a relevant Regional Fisheries Management Organization or Arrangement (RFMO/A), in accordance with the rules and procedures of the RFMO/A and relevant international law, including through the provision of timely notification and relevant information, in areas and for species under its competence.
- 3.3 (a) An affirmative determination⁸ 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.
- (b) For purposes of Article 3.2(a), the prohibition under Article 3.1 shall apply where the determination by the coastal Member is based on relevant factual information and the coastal Member has provided to the flag State Member and, if known, the subsidizing Member, the following:
- (i) timely notification, through appropriate channels, that a vessel or operator has been temporarily detained pending further investigation for engagement in, or that the coastal Member has initiated an investigation for, IUU fishing including reference to any relevant factual information, applicable laws, regulations, administrative procedures, or other relevant measures;
 - (ii) an opportunity to exchange relevant information⁹ prior to a determination, so as to allow such information to be considered in the final determination. The coastal Member may specify the manner and time period in which such information exchange should be carried out; and
 - (iii) notification of the final determination, and of any sanctions applied, including, if applicable, their duration.

The coastal Member shall notify an affirmative determination to the Committee provided for in Article 9.1 (referred to in this Agreement as "the Committee").

⁴ "Illegal, unreported and unregulated (IUU) fishing" refers to activities set out in paragraph 3 of the *International Plan of Action to Prevent, Deter and Eliminate Illegal, Unreported and Unregulated Fishing* adopted by the UN Food and Agriculture Organization (FAO) in 2001.

⁵ For the purpose of Article 3, the term "operator" means the operator within the meaning of Article 2(e) at the time of the IUU fishing infraction. For greater certainty, the prohibition on granting or maintaining subsidies to operators engaged in IUU fishing applies to subsidies provided to fishing and fishing related activities at sea.

⁶ Nothing in this Article shall be interpreted to obligate Members to initiate IUU fishing investigations or make IUU fishing determinations.

⁷ Nothing in this Article shall be interpreted as affecting the competence of the listed entities under relevant international instruments or granting new rights to the listed entities in making IUU fishing determinations.

⁸ Nothing in this Article shall be interpreted to delay, or affect the validity or enforceability of, an IUU fishing determination.

⁹ For example, this may include an opportunity to dialogue or for written exchange of information if requested by the flag State or subsidizing Member.

3.4 The subsidizing Member shall take into account the nature, gravity, and repetition of IUU fishing committed by a vessel or operator when setting the duration of application of the prohibition in Article 3.1. The prohibition in Article 3.1 shall apply at least as long as the sanction¹⁰ resulting from the determination triggering the prohibition remains in force, or at least as long as the vessel or operator is listed by an RFMO/A, whichever is the longer.

3.5 The subsidizing Member shall notify the measures taken pursuant to Article 3.1 to the Committee in accordance with Article 8.3.

3.6 Where a port State Member notifies a subsidizing Member that it has clear grounds to believe that a vessel in one of its ports has engaged in IUU fishing, the subsidizing Member shall give due regard to the information received and take such actions in respect of its subsidies as it deems appropriate.

3.7 Each Member shall have laws, regulations and/or administrative procedures in place to ensure that subsidies referred to in Article 3.1, including such subsidies existing at the entry into force of this Agreement, are not granted or maintained.

3.8 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including least-developed country (LDC) Members, up to and within the exclusive economic zone (EEZ) shall be exempt from actions based on Articles 3.1 and 10 of this Agreement.

ARTICLE 4: SUBSIDIES REGARDING OVERFISHED STOCKS

4.1 No Member shall grant or maintain subsidies for fishing or fishing related activities regarding an overfished stock.

4.2 For the purpose of this Article, 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.

4.3 Notwithstanding Article 4.1, a Member may grant or maintain subsidies referred to in Article 4.1 if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level.¹¹

4.4 For a period of 2 years from the date of entry into force of this Agreement, subsidies granted or maintained by developing country Members, including LDC Members, up to and within the EEZ shall be exempt from actions based on Articles 4.1 and 10 of this Agreement.

ARTICLE 5: OTHER SUBSIDIES

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 and outside the competence of a relevant RFMO/A.

5.2 A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag.

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.

¹⁰ Termination of sanctions is as provided for under the laws or procedures of the authority having made the determination referred to in Article 3.2.

¹¹ For the purpose of this paragraph, a biologically sustainable level is the level determined by a coastal Member having jurisdiction over the area where the fishing or fishing related activity is taking place, using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery; or by a relevant RFMO/A in areas and for species under its competence.

ARTICLE 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.

ARTICLE 7: TECHNICAL ASSISTANCE AND CAPACITY BUILDING

Targeted technical assistance and capacity building assistance to developing country Members, including LDC Members, shall be provided for the purpose of implementation of the disciplines under this Agreement. In support of this assistance, a voluntary WTO funding mechanism shall be established in cooperation with relevant international organizations such as the Food and Agriculture Organization of the United Nations (FAO) and International Fund for Agricultural Development. The contributions of WTO Members to the mechanism shall be exclusively on a voluntary basis and shall not utilize regular budget resources.

ARTICLE 8: NOTIFICATION AND TRANSPARENCY

8.1 Without prejudice to Article 25 of the SCM Agreement and in order to strengthen and enhance notifications of fisheries subsidies, and to enable more effective surveillance of the implementation of fisheries subsidies commitments, each Member shall

- (a) provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}: type or kind of fishing activity for which the subsidy is provided;
- (b) to the extent possible, provide the following information as part of its regular notification of fisheries subsidies under Article 25 of the SCM Agreement^{12,13}:
 - (i) status of the fish stocks in the fishery for which the subsidy is provided (e.g. overfished, maximally sustainably fished, or underfished) and the reference points used, and whether such stocks are shared¹⁴ with any other Member or are managed by an RFMO/A;
 - (ii) conservation and management measures in place for the relevant fish stock;
 - (iii) fleet capacity in the fishery for which the subsidy is provided;
 - (iv) name and identification number of the fishing vessel or vessels benefitting from the subsidy; and
 - (v) catch data by species or group of species in the fishery for which the subsidy is provided.¹⁵

8.2 Each Member shall notify the Committee in writing on an annual basis of a list of vessels and operators that it has affirmatively determined as having been engaged in IUU fishing.

¹² For the purpose of Article 8.1, Members shall provide this information in addition to all the information required under Article 25 of the SCM Agreement and as stipulated in any questionnaire utilized by the SCM Committee, for example G/SCM/6/Rev.1.

¹³ For LDC Members, and developing country Members with an annual share of the global volume of marine capture production not exceeding 0.8 per cent as per the most recent published FAO data as circulated by the WTO Secretariat, the notification of the additional information in this subparagraph may be made every four years.

¹⁴ The term "shared stocks" refers to stocks that occur within the EEZs of two or more coastal Members, or both within the EEZ and in an area beyond and adjacent to it.

¹⁵ For multispecies fisheries, a Member instead may provide other relevant and available catch data.

8.3 Each Member shall, within one year of the date of entry into force of this Agreement, inform the Committee of measures in existence or taken to ensure the implementation and administration of this Agreement, including the steps taken to implement prohibitions set out in Articles 3, 4 and 5. Each Member shall also promptly inform the Committee of any changes to such measures thereafter, and new measures taken to implement the prohibitions set out in Article 3.

8.4 Each Member shall, within one year of the date of entry into force of this Agreement, provide to the Committee a description of its fisheries regime with references to its laws, regulations and administrative procedures relevant to this Agreement, and promptly inform the Committee of any modifications thereafter. A Member may meet this obligation by providing to the Committee an up-to-date electronic link to the Member's or other appropriate official web page that sets out this information.

8.5 A Member may request additional information from the notifying Member regarding the notifications and information provided under this Article. The notifying Member shall respond to that request as quickly as possible in writing and in a comprehensive manner. If a Member considers that a notification or information under this Article has not been provided, the Member may bring the matter to the attention of such other Member or to the Committee.

8.6 Members shall notify to the Committee in writing, upon entry into force of this Agreement, any RFMO/A to which they are parties. This notification shall consist of, at least, the text of the legal instrument instituting the RFMO/A, the area and species under its competence, the information on the status of the managed fish stocks, a description of its conservation and management measures, the rules and procedures governing its IUU fishing determinations, and the updated lists of vessels and/or operators that it has determined as having been engaged in IUU fishing. This notification may be presented either individually or by a group of Members.¹⁶ Any changes to this information shall be notified promptly to the Committee. The Secretariat to the Committee shall maintain a list of RFMO/As notified pursuant to this Article.

8.7 Members recognize that notification of a measure does not prejudice (a) its legal status under GATT 1994, the SCM Agreement, or this Agreement; (b) the effects of the measure under the SCM Agreement; or (c) the nature of the measure itself.

8.8 Nothing in this Article requires the provision of confidential information.

ARTICLE 9: INSTITUTIONAL ARRANGEMENTS

9.1 There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members. The Committee shall elect its own Chair and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of this Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

9.2 The Committee shall examine all information provided pursuant to Articles 3 and 8 and this Article not less than every two years.

9.3 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

¹⁶ This obligation can be met by providing an up-to-date electronic link to the notifying Member's or other appropriate official web page that sets out this information.

9.4 Not later than five years after the date of entry into force of this Agreement and every three years thereafter, the Committee shall review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement, taking into account the objectives thereof. Where appropriate, the Committee may submit to the Council for Trade in Goods proposals to amend the text of this Agreement having regard, inter alia, to the experience gained in its implementation.

9.5 The Committee shall maintain close contact with the FAO and with other relevant international organizations in the field of the fisheries management, including relevant RFMO/As.

ARTICLE 10: DISPUTE SETTLEMENT

10.1 The provisions of Articles XXII and XXIII of the GATT 1994 as elaborated and applied by the Dispute Settlement Understanding (DSU) shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.¹⁷

10.2 Without prejudice to paragraph 1, the provisions of Article 4 of the SCM Agreement¹⁸ shall apply to consultations and the settlement of disputes under Articles 3, 4 and 5 of this Agreement.

ARTICLE 11: FINAL PROVISIONS

11.1 Except as provided in Articles 3 and 4, nothing in this Agreement shall prevent a Member from granting a subsidy for disaster¹⁹ relief, provided that the subsidy is:

- (a) limited to the relief of a particular disaster;
- (b) limited to the affected geographic area;
- (c) time-limited; and
- (d) in the case of reconstruction subsidies, limited to restoring the affected fishery, and/or the affected fleet to its pre-disaster level.

11.2 (a) This Agreement, including any findings, recommendations, and awards with respect to this Agreement, shall have no legal implications regarding territorial claims or delimitation of maritime boundaries.

- (b) A panel established pursuant to Article 10 of this Agreement shall make no findings with respect to any claim that would require it to base its findings on any asserted territorial claims or delimitation of maritime boundaries.²⁰

11.3 Nothing in this Agreement shall be construed or applied in a manner which will prejudice the jurisdiction, rights and obligations of Members, arising under international law, including the law of the sea.²¹

11.4 Except as otherwise provided, nothing in this Agreement shall imply that a Member is bound by measures or decisions of, or recognizes, any RFMO/As of which it is not a party or a cooperating non-party.

¹⁷ Subparagraphs 1(b) and 1(c) of Article XXIII of the GATT 1994 and Article 26 of the DSU shall not apply to the settlement of disputes under this Agreement.

¹⁸ For purposes of this Article, the term "prohibited subsidy" in Article 4 of the SCM Agreement refers to subsidies subject to prohibition in Article 3, Article 4 or Article 5 of this Agreement.

¹⁹ For greater certainty, this provision does not apply to economic or financial crises.

²⁰ This limitation shall also apply to an arbitrator established pursuant to Article 25 of the Dispute Settlement Understanding.

²¹ Including rules and procedures of RFMO/As.

11.5 This Agreement does not modify or nullify any rights and obligations as provided by the SCM Agreement.

**ARTICLE 12: TERMINATION OF AGREEMENT IF COMPREHENSIVE DISCIPLINES
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.



**LETTER FROM STATE
DEPARTMENT FOR
TRADE FOWARDNING
THE AGREEMENT TO
THE NATIONAL
ASSEMBLY**



REPUBLIC OF KENYA

MINISTRY OF INVESTMENTS, TRADE AND INDUSTRY
STATE DEPARTMENT FOR TRADE
Office of the Principal Secretary

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TELPOSIA TOWERS
KENYATTA AVENUE
P.O. Box 30430 - 00109
GPO NAIROBI - KENYA

Ref: MITI/SDT/DET/10/1 (34)

Date: 10th June, 2024

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
NAIROBI

Dear *Clerk of the National Assembly*

RATIFICATION OF THE WORLD TRADE ORGANIZATION AGREEMENT ON FISHERIES
SUBSIDIES

The Agreement on Fisheries Subsidies was concluded and adopted during the 12th World Trade Organization (WTO) Ministerial Conference (MC12) held in Geneva, Switzerland on 17th June 2022. The main objective of the Agreement is to safeguard the world's seas, oceans and marine resources for posterity by promoting sustainable and responsible fishing practices through preventing overfishing and overcapacity. The Agreement requires ratification by at least two-thirds of the one hundred and sixty-four (164) WTO members for it to enter into force. By 22nd May 2024, seventy-six (76) members had already ratified.

Kenya recognizes the critical role that sustainable fisheries play in food security, poverty alleviation, and the preservation of marine biodiversity. This Agreement is in concurrence with Kenya's national interests and is a significant step towards achieving these shared objectives. Other effects of the Agreement will be reduction in trade distortion, avoidance of fish trade disruption and ensuring sustainability of the fishing industry.

The Cabinet Secretary for Investments, Trade and Industry, jointly with the Prime Cabinet Secretary & Secretary for Foreign & Diaspora Affairs; the Cabinet Secretary for Mining, Blue Economy & Maritime Affairs; the Cabinet Secretary for the National Treasury & Economic Planning; and the Attorney-General presented a Cabinet Memorandum CAB (24)58 to the Cabinet during the 4th Cabinet Meeting-2024 held on 23rd April, 2024. The Memorandum sought to apprise the Cabinet on the significance of the World Trade Organization Agreement on Fisheries Subsidies and further seek Cabinet approval for Kenya to ratify the Agreement.

The Cabinet considered and approved Kenya's ratification of the Agreement. The Cabinet further directed the Cabinet Secretaries for Investments, Trade and Industry; Mining, Blue Economy & Maritime Affairs; Foreign & Diaspora Affairs; the National Treasury & Economic Planning; and the Attorney-General to take the necessary action.

In my view of the subject matter, the Fisheries Subsidies are being granted pursuant to Section 7 of the Treaty, M.V.

of the United States, the Fisheries Subsidies are being granted pursuant to Article 10.

Yours Sincerely



Alfred K'Ombaro
PRINCIPAL SECRETARY

Alfred K'Ombaro
Principal Secretary

