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## FISHERY SUSTAINABILITY AND THE WTO FISHERIES SUBSIDIES AGREEMENT: ITS CAUSES, CONSEQUENCES, AND PROSPECTS

I-JU CHEN\*

*The World Trade Organization Agreement on Fisheries Subsidies (FSA), adopted by the World Trade Organization (WTO) in 2022, was henceforth subject to considerable negotiations and revisions. As a consequence of these efforts, the FSA went into effect on September 15, 2025. The agreement recognises the importance of environmental sustainability for economic stability, food security, and ocean health and is thus the first WTO treaty to have, at its core, the goal of environmental sustainability. Among the FSA's key fishery provisions are those targeting the subsidisation of Illegal, Unregulated, and Unreported (IUU) fishing; the overexploitation of fishery stocks; and the important regulatory roles of Regional Fishery Management Organisations (RFMOs). In this paper, the author argues how the FSA reflects an effort to integrate fishery regulations into existing international regimes despite the challenges arising from the traditional territorial structures of international law. Further, the author explores the causes and justifications behind this sustainability-focused trade agreement and then assesses the efficacy of the FSA in sustaining fisheries. Finally, the author concludes with the argument that the FSA, as a heavily negotiated multilateral trade agreement, offers a great deal of hope for the much-needed regulation of fishery subsidies but must overcome several outstanding problems, including an incomplete formulation of fishery subsidies (e.g., those destined for fuel) and an unwieldy dispute settlement mechanism.*

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\* Lecturer and Programme Director of International Commercial Law in the School of Law at the University of Exeter. The author may be contacted at I.Chen2[at]exeter.ac.uk. The usual disclaimer applies.

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## I. INTRODUCTION

On September 15, 2025, the FSA entered into force,<sup>1</sup> marking a milestone in global efforts to collectively tackle various governmental subsidy policies that undermine the sustainable development of marine ecosystems. Fisheries around the world play a key role in economies by creating employment opportunities, particularly in remote and rural locations. Nevertheless, many countries have failed to promote policies that yield sound long-term environmental, economic, and social outcomes.<sup>2</sup> In general, fishery sectors face three main challenges related to sustainable development. The first is the marine problem—perhaps more aptly termed the marine *crisis*—of depleted stocks. The second challenge concerns the significant inadequacies of the present fishery-management framework for preventing the unsustainable exploitation of fish resources. Third, shortsighted government subsidies of domestic fishery sectors directly result in overcapacity, overfishing, and IUU fishing. In response to the scale of these three co-constitutive problems and to the attention they have attracted, the United Nations and other international governmental bodies have attempted to forge an international law of the sea capable of ensuring fishery sustainability. In this paper, the author explores the FSA from the interlocking perspectives of the fish trade, fishery sustainability, and international legal regimes.

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<sup>1</sup> *Agreement on Fisheries Subsidies*, WTO Doc. WT/MIN(22)/W/22 (adopted on June 17, 2022) [hereinafter *Agreement on Fisheries Subsidies*].

<sup>2</sup> Lakshman D. Guruswamy, *The Promise of the United Nations Convention on the Law of the Sea (UNCLOS): Justice in Trade and Environment Disputes*, 25 *ECOLOGY L. Q.* 189, 195 (1998) [hereinafter *Guruswamy on UNCLOS*].

In evaluating the effectiveness of the FSA, the author begins with an essential enquiry on why, in the realm of fishery sustainability, do some international legal regimes succeed while others struggle or even fail? According to Young's exceptional 2011 monograph on the topic, the international law of the sea is rife with problems yet remains one of the most effective instruments through which fishery management can be exercised.<sup>3</sup> To update, in WTO recent scholarship, Cima's article in 2024,<sup>4</sup> presented a normative legal argument that resonates with Young's approach to legal interaction. Moreover, Cima focused on framing WTO subsidy rules (including those affecting fisheries) within sustainable development and legal reform efforts, which aligned with Young's focus on integrating sustainable legal principles across regimes. Thus, standing on Young's landmark review and subsequent research, the author assesses the underlying features of effective maritime legal regimes and then turns the attention specifically to the FSA, a multilateral trade agreement that targets a particular threat to environmental sustainability (i.e., state subsidisation of fishing operations) on an inter-regime, cross-jurisdictional level.<sup>5</sup>

In contrast to most international environmental legal regimes, the United Nations Convention on the Law of the Sea (UNCLOS) is remarkably expansive and complex. The broad environmental stakes addressed by UNCLOS were not fully appreciated when it came into force in 1994,<sup>6</sup> nor were the constraints imposed on it by the global North–South divide. Interestingly, the United Nations had adopted UNCLOS over a decade earlier, in 1982, yet had never amassed enough votes to ratify it until 1994. This fact, however, did not prevent UNCLOS from exhibiting exceptional stability as an international legal tool: between 1982 and 1994, it attracted a high degree of compliance from member states.<sup>7</sup> Moreover, the international environmental obligations and the dispute settlement procedures contained in UNCLOS have proven to possess the legal force necessary to prevail over such trade liberalisation mandates as those found in the 1947 General Agreement on Tariffs and Trade (GATT) and in its successor institution, the WTO (established in 1995).<sup>8</sup>

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<sup>3</sup> MARGARET A. YOUNG, *TRADING FISH, SAVING FISH: THE INTERACTION BETWEEN REGIMES IN INTERNATIONAL LAW* 3 (2011) [hereinafter Young].

<sup>4</sup> Elena Cima & Daniel C. Esty, *Making international trade work for sustainable development: toward a new WTO framework for subsidies*, 27(1) J. INT'L. ECON. L. 1, 1–17 (2024).

<sup>5</sup> Juan He, *A Jurisdictional Assessment of International Fisheries Subsidies Disciplines to Combat Illegal, Unreported and Unregulated Fishing*, 14(21) SUSTAINABILITY 1, 7 (2022) [hereinafter He].

<sup>6</sup> Lakshman D. Guruswamy, *Should UNCLOS or GATT/WTO Decide Trade and Environment Disputes*, 28(1) MINN. J. INT'L. L. 287, 290–291 (1998) [hereinafter Guruswamy].

<sup>7</sup> Edward L. Miles, *Negotiating a New Design for a World Ocean Regime*, 6(3) GLOB. ENV'T POL. 43, 55 (2006) [hereinafter Miles].

<sup>8</sup> See Steve Charnovitz, *Trade and the Environment in the WTO*, 10 J. INT'L. ECON. L. 1 (2007) (since the Doha Round in 2001, a burgeoning body of literature has taken shape discussing

Surprisingly, a few provisions in trade-liberalisation mandates have dovetailed with the agendas laid out in UNCLOS. For example, Article XX in the GATT allows signatories to the agreement to adopt certain policies that, though they clash with the objectives of the GATT, are regarded as exceptions worthy of protection: among the listed exceptions are those pertaining to environmental protection.<sup>9</sup> Nevertheless, being well aware of the potential obstacles posed by overlapping international jurisdictions and agendas, the framers of UNCLOS incorporated into it various principles of international environmental law to create “a binding system of adjudication and dispute resolution that confers upon its legal forums the jurisdiction and adjudicatory authority to hear trade-and-environment disputes.”<sup>10</sup>

Fishery management revolves around the conservation of stocks,<sup>11</sup> the balanced use of fishery resources, and the management of sustainable fishing practices in all types of maritime zones, but especially those in international waters.<sup>12</sup> As a practice, fishery management has taken shape over many decades through various regulatory frameworks culminating in UNCLOS. Each of these frameworks has functioned, in its own way, to govern fisheries management, and the sheer number and variety of them have resulted in overlapping and, sometimes, conflicting provisions.<sup>13</sup> These fishery-regulating regimes confront, in fundamentally different ways and due to the challenges posed by the link between the fish trade and fishery sustainability: it is no exaggeration to say that each regime operates according to a unique set of principles.<sup>14</sup> Countries turn to these regimes, particularly to UNCLOS, owing, in

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this linkage between trade liberalisation and environmental protection).

<sup>9</sup> Appellate Body Report, *United States — Import Prohibition of Certain Shrimp and Shrimp*, WTO Doc. WT/DS58/AB/RW (adopted Nov. 21, 2001).

<sup>10</sup> Guruswamy on UNCLOS, *supra* note 2, at 193.

<sup>11</sup> See United Nations Convention on the Law of the Sea, art. 63–68, Dec. 10, 1982, 1833 U.N.T.S. 397 (the main types of fish stocks are discrete stocks, straddling stocks, highly migratory stocks, anadromous stocks, marine mammals, catadromous species, and sedentary species).

<sup>12</sup> See CHEN-JU CHEN, *FISHERIES SUBSIDIES UNDER INTERNATIONAL LAW* 19 (2010) (there are several types of maritime zones: exclusive economic zones, territorial seas, contiguous zones, continental-shelf areas, and high seas).

<sup>13</sup> See Shigeru Oda, *Fisheries under the United Nations Convention on the Law of the Sea*, 77(4) AM. J. INT'L L. 739, 755 (1983) (the existence of distinct international fishery regimes provides a vivid example of fragmentation in international law. Shigeru Oda comments that this fragmentation is so important that it constitutes its own field of international law, meriting special consideration and treatment).

<sup>14</sup> See FIONA SMITH, *Current Perceptions of the Problem, in AGRICULTURE AND THE WTO: TOWARDS A NEW THEORY OF INTERNATIONAL AGRICULTURAL TRADE REGULATION* 25 (2009) (legal systems vary in all respects. Fiona Smith presents an account of these variations in her impressive research).

large measure, to ‘the environmental shortcomings of the GATT/WTO regimes’.<sup>15</sup> Such is the case with the WTO’s FSA, whose core principles reveal tensions with the core principles of trade-liberalisation mandates.

A particularly thorny problem sitting at the intersection of trade-and-environment frameworks is the use of fishery subsidies by national governments: these subsidies take many forms and, in essence, serve as financial facilitators of fishing operations around the globe.<sup>16</sup> Starting in 2001, WTO members attempted to draft a multilateral trade agreement that, while adhering to international trade law frameworks, would effectively counter the threat of fishery subsidies. The regulation of such subsidies generally falls under the purview of the WTO thanks to its Subsidies and Countervailing Measures (SCM) Agreement. Nevertheless, the SCM Agreement’s primary focus was on market distortion, which did not prioritise matters related to environmental sustainability. The prioritisation of environmental sustainability in the FSA marks a shift away from the SCM Agreement’s marked tendency to prioritise adverse trade effects over adverse environmental effects.<sup>17</sup> Since 2001, when the WTO inaugurated the Doha Development Round of negotiations, WTO members have agreed to include the regulation of fisheries subsidies into the WTO agenda. Despite this progress and the WTO’s eventual adoption and enforcement of the FSA, the agreement faces several daunting obstacles that could impede its conservation efforts targeting fishery stocks and their maritime environments.<sup>18</sup>

The rest of this paper unfolds as follows. In Part II, the author explores the extent to which the domestic subsidies of national governments help sustain local fisheries, but often at the cost of environmental sustainability. In Part III, which is the focal part of this paper, the author goes on to demonstrate how the current international law of the sea has a distinctly finite batch of regulations governing the aforementioned fishery subsidies. Given this fact, the author also addresses the significance of integrating a legally sound set of international sustainability-focused fishery regulations, including those governing fishery subsidies, into a broadly binding trade agreement for fisheries. In Part IV, the paper evaluates the FSA, which the WTO adopted in June 2022 but did not put into effect until September 2025.<sup>19</sup> The paper demonstrates that, in some key ways, the FSA is more suitable than other international fishery regulations owing to its streamlined focus on the often destructive role played by fishery subsidies in the ongoing depletion of fishery stocks

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<sup>15</sup> Guruswamy, *supra* note 6, at 296.

<sup>16</sup> Youngjeen Cho, *Bringing Trade and Environmental Norms Together: The Case of the WTO Fisheries Subsidies Negotiations*, 23(2) ASIAN INT’L. STUD. REV. 247 (2022) [hereinafter Cho].

<sup>17</sup> Mustaqeem De Gama, *Fisheries subsidies, the WTO, and sustainability*, 27(4) J. INT’L. ECON. L. 675, 675–682 (2024) [hereinafter De Gama].

<sup>18</sup> Cho, *supra* note 16, at 247–266.

<sup>19</sup> Agreement on Fisheries Subsidies, *supra* note 1.

around the world. Additionally, the author also examines key weaknesses in the FSA and proposes solutions for them. Finally, Part V concludes the paper.

## II. FISHERY SUSTAINABILITY AND FISHERY SUBSIDIES

### *A. The Effects of Open-Access Fishing on Fish Stocks*

Marine areas, beyond the boundaries of any state's jurisdiction, can be comprehended as a significant part of the global commons.<sup>20</sup> The shared ownership of the world's oceans reflects a chief structural characteristic of fishery sectors: many of them operate according to the open-access regime and are thus known as common-property resources.<sup>21</sup> In the open-access regime, neither nations nor companies exercise exclusive property rights over ocean fisheries. In many instances, fishing companies and individually operated fishing outfits compete with one another for catches from the same fishery stocks. This common-property resource regime causes what the environmentalist Garrett Hardin famously described as 'the tragedy of the commons', a concept he introduced in 1968.<sup>22</sup> According to Hardin, commons-based arrangements for many centuries worked reasonably well with respect to sustainability because factors such as war and disease kept the number of human beings and other life organisms significantly below the carrying capacity of the earth's lands, waters, and skies. Eventually, however, the day came when technological progress enabled humans to overcome the balancing effects of war and disease. In these new circumstances, individuals' unfettered access to natural resources (i.e., commons) would almost assuredly lead to ecological and demographic tragedy.<sup>23</sup> The tragedy of the commons, in the context of fisheries, would play out in the following way. Fishing companies, large and small, assume that any fish stocks the companies leave behind will be captured by other fishing companies.<sup>24</sup> Wary of their competition, all of these companies are thus, compelled to exploit fishery resources as rapidly as possible. This behaviour, of course, is incompatible with fishery sustainability.<sup>25</sup>

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<sup>20</sup> See Young, *supra* note 3, at 36.

<sup>21</sup> Gareth Porter, *Natural Resource Subsidies, Trade and Environment: The Cases of Forests and Fisheries*, (Ctr. for Int'l. Env't. Law, 1997) <https://nautilus.org/wp-content/uploads/2015/03/NaturalResourceSubsidies.pdf>. [hereinafter Porter].

<sup>22</sup> See Garrett Hardin, *The Tragedy of the Commons*, 162 (3859) SCIENCE 1243 (1968) [hereinafter Hardin].

<sup>23</sup> *Id.* at 1244.

<sup>24</sup> See Hardin, *supra* note 22.

<sup>25</sup> See Porter, *supra* note 21, at 69–70 (an exceptional example of the open-access nature of oceans can be found in the traditional regulatory norms governing local aquatic environments. These norms, known formally as 'customary marine tenure systems', affect many countries, including, perhaps most notably, Japan and South Pacific countries); See Marjo Vierros, *Global Marine Governance and Oceans Management for the Achievement of SDG 14*,

Hardin's theory proposed that coercive regulation was the only viable solution to the tragedy of the commons.<sup>26</sup> However, critics of Hardin have argued that collective action, taken voluntarily by individuals and communities, can effectively combat the very real threat to finite and exhaustible resources such as fisheries.<sup>27</sup> Marjo Vierros,<sup>28</sup> argues that the tragedy of the commons is avoidable in fisheries: advances in the international governance of oceans and their fisheries make it possible to conserve fishery resources in ways that permit sustainable development of these resources and of marine environments, more broadly. Vierros proposes that the potential of proper governance, if it is to become a reality, must be recognised and embraced not only by policy and regulatory decision-makers but by the general public, as well. We are all ocean stakeholders because we all depend, for our very survival, on the ecological health of oceans.<sup>29</sup>

#### B. *The Unsustainable Exploitation of Fish*

Fishery resources are undergoing a crisis of depletion caused by unsustainable fishing practices. These practices include overfishing, overcapacity, IUU fishing, discards, and by-catch (i.e., non-target fish caught in hauls).<sup>30</sup> The above practices explain why the global fishery catch continues to surpass its own historic records year after year, so that global fisheries are in imminent danger of collapse.<sup>31</sup>

Perhaps the greatest factor contributing to overfishing is overcapacity i.e., the ability of fishing fleets to haul in catches beyond sustainable levels. Overcapacity is more

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54(2) UN CHRONICLE 66, (May 16, 2017) <https://www.un-ilibrary.org/content/journals/15643913/54/2/41/read> [hereinafter Vierros]; Eric M Singer, *Towards a Sustainable Fishery: The Price-Cap Approach*, 24 TULANE ENV'T. L. J. 253, 254 (2011).

<sup>26</sup> See Hardin, *supra* note 22.

<sup>27</sup> See ELINOR OSTROM, GOVERNING THE COMMONS: THE EVOLUTION OF INSTITUTIONS FOR COLLECTIVE ACTION (1990) (Elinor Ostrom describes certain measures that can mitigate problems arising from the tragedy of the commons. She finds that, for example, individuals' ability to comply with rules is itself tied to their ability to participate in amending the rules and in overseeing compliance with them. Hence, improved institutions for collective action can be one way to alleviate the tragedy of the commons).

<sup>28</sup> Vierros, *supra* note 25.

<sup>29</sup> *Id.*

<sup>30</sup> Frank Asche & Martin D. Smith, *Trade and Fisheries: Key Issues for the World Trade Organization*, 15 (WTO, Staff Working Paper No. ERSD-2010-03, 2010) [hereinafter Asche & Smith]; DANIEL PAULY, IN A PERFECT OCEAN: THE STATE OF FISHERIES AND ECOSYSTEMS IN THE NORTH ATLANTIC OCEAN 75–83 (2nd ed., 2003).

<sup>31</sup> Fabrizio Meliado, *Fisheries Management Standards in the WTO Fisheries Subsidies Talks: Learning How to Discipline Environmental PPMs?*, 46(5) J. WORLD TRADE 1083, 1089 (2012) [hereinafter Meliado].

than just the number of fishing vessels participating in a fishing operation; the advances in methods and technology can also greatly reinforce the overcapacity levels of fishing fleets. It has been firmly linked to the destruction of fish habitats, fish stocks, marine biodiversity, and the livelihoods of fishers.<sup>32</sup>

IUU fishing accounts for a significant percentage of fish catches and has become a growing concern for analysts, who have noted the grave threat that this set of practices poses for fish populations, ecosystems, and their biodiversity.<sup>33</sup> By its very nature, IUU fishing is especially difficult to regulate: after all, any economic activities that are illegal, unregulated, or unreported are inherently secretive and thus difficult to detect. To prevent IUU fishing enterprises from accessing fisheries, regulators have proposed various initiatives ranging from eco-labels and product-traceability requirements to improvements in reporting infrastructure.<sup>34</sup>

These forms of unsustainable fishing harm not only aquatic environments but human communities, as well. Often, the communities most dependent on fishing for their livelihoods are among the world's most economically vulnerable. In the event that a major fishery collapses, the first people to suffer, whether from a decline in employment or a decline in food security, would likely be members of these communities. Consequently, durable solutions to overfishing must also be equitable. Any transnational effort to preserve stocks should also strive to construct sustainable fishery economies based on mechanisms other than the current system in which economic incentives generate largely unfettered marketplace competition.

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<sup>32</sup> Asche & Smith, *supra* note 30, at 25; see FISHERIES AND AQUACULTURE ORGANISATION, THE STATE OF WORLD FISHERIES AND AQUACULTURE: 1998 (1998); FOOD AND AGRICULTURE ORGANIZATION, REPORT OF THE FAO TECHNICAL WORKING GROUP ON THE MANAGEMENT OF FISHING CAPACITY 15, FAO Fisheries Report No. 586 (1998); see also Daniel Pauly et al., *Fishing Down Marine Food Webs*, 279(5352) SCIENCE 860 (1998); D Gréboval & Gordon Munro, *Overcapitalisation and Excess Capacity in World Fisheries: Underlying Economics and Methods of Control*, in MANAGING FISHING CAPACITY: SELECTED PAPERS ON UNDERLYING CONCEPTS AND ISSUES (1999); Niels Vestergaard et. al., *Measuring capacity and capacity utilization in fisheries: the case of the Danish Gill-net fleet*, 1445 FISHERIES RSCH. 1, 1–12 (2002); Dominique Gréboval et al., *Managing Fishing Capacity: Selected Papers on Underlying Concepts and Issues*, in 1999 ROME: FOOD AND AGRICULTURAL ORGANIZATION OF THE UNITED NATIONS 34 (1999).

<sup>33</sup> Diane Desierto, *First Global Treaty Against Illegal, Unreported, and Unregulated (IUU) Fishing Entry into Force*, EJIL:TALK! (June 09, 2017), <https://www.ejiltalk.org/first-global-treaty-against-illegal-unreported-and-unregulated-iuu-fishing-enters-into-force/>; FISHERIES AND AQUACULTURE ORGANISATION, REPORT OF FAO/UNEP EXPERT MEETING ON IMPACTS OF DESTRUCTIVE FISHING PRACTICES, UNSUSTAINABLE FISHING, AND ILLEGAL, UNREPORTED AND UNREGULATED (IUU) FISHING ON MARINE BIODIVERSITY AND HABITATS 7, Fisheries and Aquaculture Report No. 932 (2010).

<sup>34</sup> Asche & Smith, *supra* note 30.

If left poorly regulated, such competition fuels the unsustainable exploitation of fisheries driven by overfishing, overcapacity, IUU fishing, discards, and bycatch.<sup>35</sup>

*C. Issues with Fishery Subsidies*

Subsidies are a key contributor to unsustainable fishing practices.<sup>36</sup> Evidence suggests that fluctuations in government fishery subsidies are positively associated with the exploitation of fishery sectors: the more government subsidisation there is, the more fishery exploitation there is.<sup>37</sup> Such subsidies have persisted, despite criticism from environmentalists and economists.<sup>38</sup> Although not all fishery subsidies are harmful, those that are tend to financially incentivise overfishing and overcapacity.<sup>39</sup> Given the potential and observed negative effects of harmful fishery subsidies, there is widespread agreement among regulators that international governmental bodies should better manage these state practices. In particular, regulators could introduce measures capable of reorienting state fishery subsidies to public projects promoting the well-being of coastal communities.<sup>40</sup>

Currently, international organisations are split in their motivation to regulate subsidies. Quite predictably, the World Bank treats subsidies more as a threat to sound economic policies than as a threat to the environment: ‘subsidies (i) can be more distortive to trade flows than existing tariff barriers and (ii) can displace trade and production in other trading partners, with important repercussions for developing countries’.<sup>41</sup> The United Nations, by contrast, is notably attentive to the unsound environmental effects of state subsidies. Of the 17 United Nations Sustainable Development Goals (UN SDGs), which were created in 2015, UN SDG 14 addresses the health of maritime environments, and UN SDG 14.6 specifically prohibits fishery subsidies that “contribute to overcapacity, overfishing, and...IUU fishing”.<sup>42</sup>

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<sup>35</sup> *Id.* at 24.

<sup>36</sup> YUMIKO KURA ET AL., *FISHING FOR ANSWERS: MAKING SENSE OF THE GLOBAL FISH CRISIS* (2004).

<sup>37</sup> U. Rashid Sumaila et al., *Global Fisheries Subsidies: An Updated Estimate*, 69 MARINE POL’Y. 189, 189–190 (2016).

<sup>38</sup> *Id.*

<sup>39</sup> Andrés M Cisneros-Montemayor et al., *A constructive critique of the World Trade Organization draft agreement on harmful fisheries subsidies*, 135 MARINE POL’Y., 1 (2022) [hereinafter Cisneros-Montemayor].

<sup>40</sup> *Id.*

<sup>41</sup> WORLD BANK, *UNFAIR ADVANTAGE: DISTORTIVE SUBSIDIES AND THEIR EFFECTS ON GLOBAL TRADE*’ EQUITABLE GROWTH, FINANCE AND INSTITUTIONS INSIGHT, 11–12 (2023).

<sup>42</sup> United Nations G.A. Res. 70/1, *Transforming Our World: The 2030 Agenda for Sustainable Development*, Goal 14 (Oct. 21, 2015), <https://sdgs.un.org/goals/goal14>.

Subsidisation is a multifaceted regulatory tool that states use in support of their economic, policy, and (increasingly) environmental projects.<sup>43</sup> However, as with many national regulatory tools, fishery subsidies produce negative spillover beyond the given state's territory.<sup>44</sup> Nevertheless, states remain wedded to their subsidisation of high-seas fishing because it is widely understood that an absence of these subsidies would retard economic growth.<sup>45</sup> International organisations' regulation of fishery subsidies is not unprecedented: voices have advocated for the prohibition of these subsidies, especially if the subsidies are linked to IUU fishing. Fishery subsidies take several forms, with fuel subsidies being the most common form. Perhaps predictably, very little of these fuel-based fishery subsidies goes to small-scale fishing operations for instance, in 2020, only 7% of fuel subsidies went to vulnerable fishing communities.<sup>46</sup> Put another way, states heavily subsidise industrial fleets over small-scale fishing operations, perpetuating domestic socio-economic inequalities.<sup>47</sup> As the United Nations Conference on Trade and Development (UNCTAD) has stated, these subsidisation monies could and should be reinvested in aquaculture, coastal-community livelihoods, and sustainable fisheries to reduce both undue pressures on fish stocks and social inequality.<sup>48</sup>

It is widely asserted by researchers in this field that we will never forestall, much less reverse, fishery depletion until governmental fishing subsidies undergo fundamental changes.<sup>49</sup> Economic modelling and case-study evidence suggest that fishing subsidies incentivise the overcapitalisation of and the unsustainable and excessive exploitation of fisheries around the globe.<sup>50</sup> In line with findings presented by the World Bank in 2017, not only has the capacity of global fishing ventures increased, leading to the depletion of marine resources, but the productivity of these ventures has also fallen considerably.<sup>51</sup>

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<sup>43</sup> Meliado *supra* note 31, at 1083.

<sup>44</sup> Bernard M. Hoekman et al., *Managing Externalities in the WTO: The Agreement on Fisheries Subsidies*, 26(1) J. INT'L. ECON. L. 266, 267 (2023) [hereinafter Hoekman].

<sup>45</sup> De Gama, *supra* note 17, at 676.

<sup>46</sup> Anna Schuhbauer et al., *The Global Fisheries Subsidies Divide Between Small-and Large-Scale Fisheries*, 7 FRONTIERS IN MARINE SCIENCE 1 (2020).

<sup>47</sup> De Gama, *supra* note 17, at 677; UNCTAD, *Regulating Fisheries Subsidies*, <https://unctad.org/project/regulating-fisheries-subsidies>.

<sup>48</sup> *Id.*

<sup>49</sup> FISHERIES SUBSIDIES, SUSTAINABLE DEVELOPMENT AND THE WTO 1 (Anja Von Moltke ed, 2011) [hereinafter Moltke].

<sup>50</sup> INTERNATIONAL CENTRE FOR TRADE AND SUSTAINABLE DEVELOPMENT, *Advancing Multilateral Trade Negotiations on Fisheries Subsidies*, JSTOR (2018), [https://www.jstor.org/stable/pdf/resrep66061.pdf?refreqid=fastly-default%3A65ca185854aad210fdfe86a2313e52c0&ab\\_segments=&initiator=&acceptTC=1](https://www.jstor.org/stable/pdf/resrep66061.pdf?refreqid=fastly-default%3A65ca185854aad210fdfe86a2313e52c0&ab_segments=&initiator=&acceptTC=1).

<sup>51</sup> WORLD BANK, *THE SUNKEN BILLIONS REVISITED: PROGRESS AND CHALLENGES IN*

Fishery-management policy holds great promise as a force capable of tamping down on overfishing, overcapacity, and the like. However, good policy can easily fail in its mission if regulators poorly enforce it or if political actors and overcapitalised fishing enterprises resist or even sabotage it.<sup>52</sup> Therefore, regulatory policy targeting the fishery subsidies of national governments must bypass the distorting, destructive effects of ineffective implementation and obstructive stakeholders.<sup>53</sup>

### III. THE INTEGRATION OF FISHERY REGULATIONS INTO A MULTILATERAL TRADE AGREEMENT

#### A. Fishery Subsidies and International Law

Skjærseth, Stokke, and Wettestad postulate that, with respect to the unsustainable exploitation of fisheries, it is less difficult to reach a consensus on soft law (unenforceable and non-binding) than on hard law (enforceable and binding).<sup>54</sup> The relative ease of soft law, however, is not necessarily due to any weaker regulatory processes associated with it.<sup>55</sup> In any case, taking on fishery subsidies, the Food and Agriculture Organisation (FAO) at the United Nations has wielded soft-law instruments that clearly and explicitly articulate the dangers of capacity-enhancing national subsidies for fishing operations.<sup>56</sup> The FAO in 1995, for example, adopted the Code of Conduct on Responsible Fisheries, which encourages states to take steps that would motivate responsible fisheries. Skjærseth, Stokke, and Wettestad propose that the incorporation of FAO soft-law norms into the hard law of WTO agreements might dramatically strengthen the latter organisation's implementation of fishery-depletion policies.<sup>57</sup> It is worth noting that FAO soft-law norms suffer from a lack of conceptual clarity. One reason for this weakness is that many of the individuals responsible for hammering out FAO norms have been state-government officials whose loyalties are divided between the appearance of environmentally sound policy and the goal of domestic economic growth.<sup>58</sup>

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GLOBAL MARINE FISHERIES, 12–13 (2017) [hereinafter *The Sunken Billions Revisited*].

<sup>52</sup> Moltke *supra* note 49, at 40–42.

<sup>53</sup> *The Sunken Billions Revisited*, *supra* note 51.

<sup>54</sup> Jon Birger Skjærseth et al., *Soft Law, Hard Law, and Effective Implementation of International Environmental Norms*, 6(3) GLOBAL ENV'T. POL. 105 (2006).

<sup>55</sup> *Id.* at 115.

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> Olan Shrem Stokke & Claire Coffey, *Institutional Interplay and Responsible Fisheries: Combating Subsidies, Developing Precaution*, in INSTITUTIONAL INTERACTION IN GLOBAL ENVIRONMENTAL GOVERNANCE: SYNERGY AND CONFLICT AMONG INTERNATIONAL AND EU POLICIES (Sebastian Oberthür & Thomas Gehring eds., 2006).

*B. Theories of International Law*

The conflicting interests of differing legal regimes governing ocean-related matters have led to myriad barriers obstructing national and international regulatory agencies. A major consequence of these barriers has been the fragmented implementation of various ocean-management regulatory policies. Nowhere has this problem been more obvious than in international legal frameworks.<sup>59</sup>

Kingsbury puts forward a liberal theory of international law in which non-state actors enhance environmental protections. Although his theory elevates groups and individuals over the legal systems of states, he concedes that, in the short term, the possibility of such a radical scenario taking root is not promising. Thus, he turns to the GATT/WTO framework and proposes that rather than non-state actors such a framework, should pursue green-trade liberalisation and should do so at a conservatively incremental pace.<sup>60</sup> Whether incremental or not, WTO fishery regulation faces a major barrier which is the organisation's inflexible tendency to distinguish trade issues from such non-trade issues as environmental sustainability. This inflexibility, in turn, fuels questions about just how effective the WTO can be when it addresses trade issues that are inextricably bound up in environmental issues. Young suggests that the WTO can overcome this problem by better coordinating with national governments and stakeholders in pursuit of an environmentally sound, socially equitable allocation of resources on an international scale.<sup>61</sup> The author provides a summary of her recommended methods.

The primary coordinating approach is on national policy coordination. Many stakeholders in the WTO have acknowledged the need for greater national policy coordination within the framework of the WTO. During the WTO Doha round negotiations, members raised the need for cooperation between domestic procedures, as seen through early drafts of the Memorandums of Understanding (MOUs) between the Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES) Secretariat and the FAO. This aims to 'entrench hierarchy between regimes'. These principles are extrapolated, on an international scale, as means for international forums to develop legitimacy when interacting with domestic regimes, enabling the exertion of influence among domestic legal regimes.

The second approach is related to learning and information sharing. In addition to greater coordination with the national and supranational regimes, further information sharing can alleviate the dissonance between the legal framework's

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<sup>59</sup> Young, *supra* note 3, at 244–245.

<sup>60</sup> Benedict Kingsbury, *The Tuna-Dolphin Controversy, the World Trade Organisation, and the Liberal Project to Reconceptualize International Law*, 5(1) Y.B. INT'L. ENV'T. L. 1 (1994).

<sup>61</sup> Young, *supra* note 3, at 243–258.

intent and the mandate and conflicting interpretations of national regimes. Creating a structured and flexible means of communication between the WTO and national representatives fosters an air of mutual understanding of framework objectives. A key example is the informal workshops hosted between the United Nations Environmental Project (UNEP) and Non-Governmental Organisations (NGOs): these are a means to share data and findings with a broader range of stakeholders through the advocacy efforts of NGOs, as a means to apply societal pressure to conform with international frameworks.

The final way for coordination is regarding the allocation of resources. By itself, it is insufficient to promote more significant regime interaction; however, combined with one of the methods mentioned above, it enhances the potency of their effects. When looking at how allocating resources can enhance the effects of other methods, look towards the MOU between CITES and the FAO, as the MOU has provisions for greater resource allocation towards communication facilitation between regimes, which can be purported to its success.<sup>62</sup>

Furthermore, the need for a more efficient allocation of resources has been noted by the consultative body of the WTO Director-General as a means to contribute towards 'horizontal coordination',<sup>63</sup> with this legacy being continued by UN-Oceans to remind members of their duty to provide additional funding and support to the program.<sup>64</sup> Additionally, allocating resources can enable secretariates to achieve better treaty management and compliance,<sup>65</sup> enabling both secretariates and other IGOs to pressure non-compliant members to abide by compliance more widely. Moreover, more significant funding can also contribute towards the legitimacy of the forum by enabling them to build the capacity to fund a broader range of programmes, such as the UNEP, during the fisheries subsidy rules negotiations.<sup>66</sup>

In summary, according to Young's work regarding the three coordinating approaches, evidently, fisheries governance cannot function effectively when international trade law, environmental law, and the law of the sea operate in isolation. She argues that overlapping legal regimes must be integrated by way of cooperation, institutional

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<sup>62</sup> Memorandum of Understanding between the Food and Agriculture Organization of the United Nations ("FAO") and the Secretariat of the Convention on International Trade in Endangered Species ("CITES"), art. 9, Sept. 29, 2006.

<sup>63</sup> PETER SUTHERLAND ET AL., *THE FUTURE OF THE WTO: ADDRESSING INSTITUTIONAL CHALLENGES IN THE NEW MILLENNIUM* 40, Report by the Consultative Board to the Director-General Supachai Panitchpakdi (2004).

<sup>64</sup> UNITED NATIONS GENERAL ASSEMBLY, *REPORT ON THE WORK OF THE UNITED NATIONS OPEN-ENDED INFORMAL CONSULTATIVE PROCESS ON OCEANS AND THE LAW OF THE SEA AT ITS NINTH MEETING*, U.N. Doc. A/63/174 (July 25, 2008).

<sup>65</sup> Young, *supra* note 3, at 257.

<sup>66</sup> *Id.*

interaction, and shared governance mechanisms. This scholarly opinion paves the way for an in-depth discussion in the following sub-part C.

*C. The Necessity of Integration in International Fishery-Regulation Regimes*

International legal regimes have rapidly grown in size and number since 1945, but the unity of these regimes has remained more of a goal than a reality, though progress has been made.<sup>67</sup> Further, both the competing interests and the opposing views of these regimes have resulted in a vast array of fragmented rules governing the fishery sector.<sup>68</sup> The author views this fragmentation as a largely normative matter; that is, as a matter of competing ‘oughts’ reflective of the respective interests of the various legal regimes in question. Hence, one legal regime will prioritise international trade law, another will prioritise international environmental law, and yet another will prioritise the international law of the sea. As presently construed, the target of fishery sustainability, under international law, suffers from a substantial lack of coherence regarding such basic matters as definitions of key terms and formulas for determining key parameters.<sup>69</sup>

International environmental law is an increasingly prominent legal regime that can be categorised partly under the international law of the sea.<sup>70</sup> Notably, the research of Bradnee Chambers focuses on the robustness of environmental treaties and shows that many have “built-in...scientific mechanisms or effectiveness review systems” and “additional built-in systems that allow treaty renegotiation [to] take on deeper commitments”.<sup>71</sup> Leary and Pisupati focus their research on the complex interconnections between international environmental law and other fields of law, such as international trade law. A failure to account for this complexity, the researchers worry, has “undermined the effectiveness of international law” generally.<sup>72</sup> A particular obstacle to the effective execution of international environmental law is ‘the pernicious influence of the pervasive concept of State

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<sup>67</sup> *Id.*

<sup>68</sup> Gregory Messenger, *Sustainable Development and the Commodities Challenge: The Eventual ‘Greening’ of the World Trade Organisation?*, 9(2) TRADE, L. & DEV. 179 (2017).

<sup>69</sup> *Id.* at 183.

<sup>70</sup> See, e.g., THE EFFECTIVENESS OF INTERNATIONAL ENVIRONMENTAL AGREEMENTS: THEORY AND PRACTICE (Peter H Sand ed., 1992); DANIEL M. BODANSKY, THE ART AND CRAFT OF INTERNATIONAL ENVIRONMENTAL LAW (2010); ELLI LOUKA, INTERNATIONAL ENVIRONMENTAL LAW: FAIRNESS, EFFECTIVENESS AND WORLD ORDER (2nd ed., 2025); Jürg Vollenweider, *The effectiveness of international environmental agreements*, 13(3) INT’L ENV’T. AGREEMENTS: POL., L. & ECON. 343, 343–367 (2013).

<sup>71</sup> W. BRADNEE CHAMBERS, INTERLINKAGES AND THE EFFECTIVENESS OF MULTILATERAL ENVIRONMENTAL AGREEMENTS 128–129 (2008).

<sup>72</sup> THE FUTURE OF INTERNATIONAL ENVIRONMENTAL LAW, 8 (David Leary & Balakrishna Pisupati eds., 2010).

sovereignty in international law'. Leary and Pisupati warn that rigid adherence to this principle "is to deny the reality that a range of non-state actors now shape world affairs and responses to the major global environmental challenges of our times".<sup>73</sup> Lakshman D. Guruswamy takes a different tack in analysing fragmentation not between fields of law or between legal regimes but within international environmental law itself: institutions representing this field are fragmented and in many cases lack even a fraction of the WTO's global authority, organisational strength, financial assets, and impressive legal status.<sup>74</sup>

A common thread throughout the above research is a pronounced concern with the problem of effectiveness: Is international environmental law effective? Are its treaties and other agreements effective? Are the institutions that operate under and in conformity with it effective?<sup>75</sup> As of 2026, both the international law of the sea and international environmental law, as they pertain to the regulation of fisheries, have had limited effectiveness in establishing sustainability globally.

An early objective of UNCLOS was to facilitate international agreement among disparate stakeholders through the organisation's adoption of an institutional mechanism that can serve as a forum for multi-level, multi-faceted collaboration and collective decision-making.<sup>76</sup> This focus on collaboration really amounted to a focus on an intervening variable, one that typically arises somewhere between problem categorisation and outcome assessment. Of course, a major obstacle to this focus on multi-level collaboration is the extent of the differences separating major stakeholders from one another: too much disagreement among them might preclude any collaboration, and even if some collaboration is possible, how substantive will it be? Research has found that multi-level collaboration in international environmental regimes is partly a function of the problem-solving capacity of the regimes. Factors that weaken this capacity include stakeholder distrust, poor organisational communication (e.g., ineffective interdepartmental information-sharing), and impractical or vaguely defined goals. Nevertheless, if these negative factors can be managed, "the higher the level [of collaboration] achieved, the more likely it would be to contribute to the ultimate effectiveness of the regime".<sup>77</sup>

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<sup>73</sup> *Id.* at 9–10; Edith Brown Weiss, *International Law in a Kaleidoscopic World*, 1 *ASIAN J. INT'L L.* 21–32 (2011).

<sup>74</sup> Guruswamy, *supra* note 6, at 287.

<sup>75</sup> OWEN MCINTYRE, *Changing Patterns of International Environmental Law-Making: Addressing Normative Ineffectiveness*, in *THE EFFECTIVENESS OF ENVIRONMENTAL LAW* 187, 189 (Sandrine Maljean-Dubois ed., 2018).

<sup>76</sup> Miles, *supra* note 7, at 44.

<sup>77</sup> *Id.*

It is worth noting that some themes important to international fishery regulation are relevant to all stakeholders: among these themes are the North–South divide, the size and complexity of domestic fishing operations, bureaucratic politics, and non-oceanic economic concerns. These and other themes cut across the decision-making procedures and shape outcomes to varying degrees. Taking into account, as a whole, what was at stake regarding global fishery depletion between 1973 and 1982 (when the third stage of UNCLOS was being negotiated), the various stakeholders participating in ‘UNCLOS III’ not surprisingly viewed the international treaty as a package deal: “the whole effort was a deliberate attempt to transform the world ocean regime in all its aspects”.<sup>78</sup> With this weight on their shoulders, caucusing groups, though they managed to negotiate with one another, ‘were often dysfunctional’ because of various divisions rooted in national economic status (developing vs. developed economies), agendas (issues important to some participating countries were of little relevance to others), intra-governmental disagreement (two agencies representing a single country might clash with each other, and may even have personality conflict).<sup>79</sup>

Young claims that the current legal environment, where more than one international regime is responsible for ensuring fishery sustainability, has had the following unique effects: the first has been not just a growing multilateral effort but indeed a multi-regime effort to discipline fishery subsidies with the aim of mitigating their harmful environmental effects; the second has been the willingness of participating states, in some circumstances, to restrict trade involving certain endangered marine species and to impose these restrictions primarily through CITES, which went into effect in 1975 and is thus one of the oldest international sustainable development agreements; third, many countries participating in various international environmental regimes glean information from these regimes but then resort to unilateral trade measures for the preservation of marine species.<sup>80</sup> Although, as Young suggests, increasing communication and coordination between international legal regimes in the context of fishery regulation has provided distinct benefits, the author’s overview of these regimes, provided above, suggests that they have a range of internal and relational weaknesses that have consistently hindered efforts to achieve fishery sustainability. These vulnerabilities imply that the regimes—including the WTO’s FSA—merit rigorous analysis that accounts for how their current structures and norms may run counter to the goal of fishery sustainability.

International environmental law regulating oceans and specifically fisheries is limited in its functionality owing to the inherent structural nature of the law’s constitutive legal regimes. Accession to the regimes is typically voluntary, but once a state

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<sup>78</sup> *Id.* at 43.

<sup>79</sup> *Id.* at 49.

<sup>80</sup> Young, *supra* note 3, at 5–6.

becomes a member of a regime such as UNCLOS, the regime's rules may become mandatory rather than discretionary. Thus, a principal factor leading to the finite effectiveness of these regimes is the thorny issue of state compliance. In circumstances governed by the legal principle *pacta sunt servanda* ('agreements must be kept' and performed in good faith), signatories to an international treaty are obliged to comply with it, and further by transposing the binding provisions of the treaty into domestic laws and regulations. Successful transposition should, in theory, result in the intended, desirable outcomes.

However, the transposition process can take a long time or might even end in the member state's rejection of the proposed changes. Additionally, international environmental regimes neither grant rights to, nor impose binding obligations on, third-party (i.e., non-signatory) states. And yet another obstacle faced by the international law of the sea concerns the fact that most fishery disputes take place within a state's exclusive economic zones (EEZs), which are not normally subject to dispute settlement mechanisms in international legal regimes. All these factors go far in explaining why the international law of the sea and international environmental law have heretofore had only a limited—and admittedly deficient—effect on fisheries.

#### **IV. THE WTO FISHERIES SUBSIDIES AGREEMENT 2022–2025: BACKGROUND, ASSESSMENTS, AND SUGGESTIONS FOR CHANGE**

##### *A. History of the development of the FSA*

In this section, the author describes in detail the evolution of the WTO FSA, from its early pre-adoption days in 2021 to its entrance into full force in September 2025. This period was a time of intense negotiations that seemed to make little progress. Following the description of its history, the author describes the central provisions of the current FSA. This is then followed by an assessment of the agreement's strengths and weaknesses and offers suggestions for its future improvement. The FSA explicitly prohibits its signatories from subsidising enterprises engaged in IUU fishing and overfishing.<sup>81</sup> Flag State Members (i.e., WTO members that authorise fishing vessels to operate under the members' flag), Coastal Members (i.e., WTO members that exercise jurisdiction over high seas, usually in the form of EEZs), and relevant RFMOs are obligated to affirmatively determine whether or not certain vessels have engaged in IUU fishing, a mechanism that strengthens the enforcement end of the FSA.<sup>82</sup>

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<sup>81</sup> Agreement on Fisheries Subsidies, *supra* note 1, art. 3.1.

<sup>82</sup> *Id.* art. 3.2.

Many WTO members, some of which are not signatories to the FSA, subsidise IUU-fishing enterprises, specifically through surreptitious measures that offer these enterprises indirect funding for shipbuilding, exemptions for fuel taxes, and the like.<sup>83</sup> Interestingly, FSA signatories and participating RFMOs can usually determine the existence of IUU fishing and overfishing by conducting environmental-impact observations.<sup>84</sup> Once such prohibited fishing is confirmed, the FSA's novel enforcement scheme permits WTO members, regardless of whether they are FSA signatories, to take prompt action against those states, regardless of their FSA-signatory status, that benefit from IUU fishing or overfishing, provided that the members executing the enforcement measures do so both transparently and in accordance with correct FSA procedures. In cases where a dispute proves to be initially intractable, the FSA provides a scheme for further review by a WTO dispute settlement body. This rigorously considered process thus assures the WTO membership that they will have access to a full and proper review mechanism subject to checks and balances, fair-trade rules, and sensible environmental protections.<sup>85</sup> In June 2022, and in line with several goals articulated in the United Nations' SDGs, members of the WTO agreed to adopt (but not yet put into force at that time) the FSA. This agreement was historic, as it was the first WTO multilateral treaty to focus on environmental concerns in the context of trade. The FSA, which finally went into force in September 2025, carries the promise of effectively addressing harmful fishery subsidies and perhaps even other root causes of overfishing.<sup>86</sup>

#### B. Overview of the FSA 2025

The current version of the FSA (entering into force since September 2025) prohibits the state subsidisation of any 'fishing-related activities outside of the jurisdiction of a coastal Member or non-member and outside the competence of a relevant RFMO'.<sup>87</sup> This provision is quite strict, as it pertains to any fishing, not just to IUU fishing and to overfishing. Moreover, the FSA imposes on its members the responsibility to take 'special care and exercise due restraint' when (1) subsidising fishing vessels that are not operating under the members' flag or when (2) subsidising a fishing operation at a fishery whose stocks are not clearly known.<sup>88</sup> It is worth noting that the FSA's enforcement mechanism targeting the state

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<sup>83</sup> Hoekman, *supra* note 44.

<sup>84</sup> Julian Eduardo Becerra Sanchez, *The Present and Future of the 2022 WTO Agreement on Fisheries Subsidies*, 55 N.Y.U. J. INT'L. L. & POL., 165, 171–175 (2022) [hereinafter Sanchez].

<sup>85</sup> *Id.*

<sup>86</sup> The Sunken Billions Revisited, *supra* note 51.

<sup>87</sup> Agreement on Fisheries Subsidies, *supra* note 1, art. 5.1.

<sup>88</sup> Sanchez, *supra* note 84.

subsidisation of IUU fishing and overfishing is similar to the enforcement mechanism under Article VI of the GATT for combating unfair trade practices.<sup>89</sup>

**Table 1: Demonstrates the text of FSA and comments<sup>90</sup>**

| Article | Topic                                              | Content                                                                                                                                                                                                                                                                                                                                | Comments                                                                                                                                                                                                                                  |
|---------|----------------------------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1       | Scope                                              | ‘Applies to subsidies, within the meaning of Article 1.1 of the Agreement on Subsidies and Countervailing Measures that are specific within the meaning of Article 2 of that Agreement, to marine wild capture fishing and fishing-related activities at sea’.                                                                         | Article 1 of the agreement ties it to the SCM Agreement and its language regarding ‘specificity’. The draft agreement had extended the application to fuel subsidies in bracketed text, but this was not included in the final agreement. |
| 2       | Definitions                                        | Definitions are provided for the terms ‘fish’, ‘fishing’, ‘fishing-related activities’, ‘vessel’, and ‘operator’.                                                                                                                                                                                                                      | Fishing-related activities are given a relatively large scope that spans the fishing value chain.                                                                                                                                         |
| 3       | Subsidies Contributing to IUU Fishing (Pillar One) | 3.1: ‘No Members shall grant or maintain any subsidy to a vessel or operator engaged in illegal, unreported, and unregulated (IUU) fishing or fishing related activities in support of IUU fishing.<br>3.2 to 3.6: Definition of IUU fishing stated in terms of ‘affirmative determination’ and the details of such determinations and | Articles 3.1 to 3.7 are the result of significant progress on what is widely regarded as a critical issue in fisheries sustainability.<br>Article 3.8 on special and differential treatment had been bracketed in the draft agreement.    |

<sup>89</sup> *Id.*

<sup>90</sup> Y.S. Lee & Kenneth A. Reinert, *The WTO Agreement on Fisheries Subsidies: An Assessment and Prospects*, 60(1) J. WORLD TRADE 115, 120–134 (2026).

|   |                                                    |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |                                                                                                                                                                                                                                                                                                                        |
|---|----------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                                    | <p>notification procedures to a newly formed Committee on Fisheries Subsidies (Article 9). This process involves RFMOs.</p> <p>3.7: 'Each Member shall have laws, regulations and/ or administrative procedures in place to ensure that subsidies . . . are not granted or maintained'.</p> <p>3.8: Special and differential treatment in the form of a two-year transitional period for 'developing' and 'least developed' WTO members within their EEZs.</p>                       |                                                                                                                                                                                                                                                                                                                        |
| 4 | Subsidies Regarding Overfished Stocks (Pillar Two) | <p>4.1: 'No member shall grant or maintain subsidies for fishing or fishing-related activities regarding an overfished stock'.</p> <p>4.2: Definition of 'overfished' that includes the involvement of RFMOs and 'best scientific evidence'.</p> <p>4.3: 'A Member may grant or maintain subsidies . . . if such subsidies or other measures are implemented to rebuild the stock to a biologically sustainable level' as determined by a Member of a RFMO and involving maximum</p> | <p>Article 4 addresses the sustainability issue in a reasoned fashion, bringing environmental considerations into WTO deliberations in a real way and involving RFMOs and scientific evidence. In this sense, it is a landmark article long envisioned by those advocating that the WTO address fishing subsidies.</p> |

|   |                                     |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                        |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
|---|-------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                     | <p>sustainable yield (MSY) measures.</p> <p>4.4: Special and differential treatment in the form of a two-year transitional period for 'developing' and 'least developed' WTO members within their EEZs.</p>                                                                                                                                                                                                                                                                                                                                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| 5 | Other Subsidies (Pillar Three)      | <p>5.1: 'No Member shall grant or maintain subsidies provided to fishing or fishing related activities outside of the jurisdiction of a coastal Member or a coastal non-Member outside the competence of a relevant RFMO'.</p> <p>5.2: 'A Member shall take special care and exercise due restraint when granting subsidies to vessels not flying that Member's flag'.</p> <p>5.3: 'A Member shall take special care and exercise due restraint when granting subsidies to fishing or fishing related activities regarding the status of stocks which is unknown'.</p> | <p>Even though Article 5.1 was not bracketed in the draft text, the final text differs from the bracketed text. The draft text had identified nine types of subsidies that contribute to overcapacity and overfishing and provided definitions of overcapacity and overfishing.</p> <p>The draft text of Article 5.2 had been stated in terms of 'no Member shall grant', but this has been changed to 'take special care and exercise due restraint'.</p> |
| 6 | Specific Provisions for LDC Members | <p>'A Member shall exercise due restraint in raising matters involving an LDC Member and solutions explored shall take into consideration the specific situation of</p>                                                                                                                                                                                                                                                                                                                                                                                                | <p>The draft agreement included Articles 6.1 to 6.3, some of which were bracketed. The final text is much simpler.</p>                                                                                                                                                                                                                                                                                                                                     |

|   |                                            |                                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                                                                                                                                                                       |
|---|--------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|   |                                            | the LDC Member involved, if any.’                                                                                                                                                                                                                                                                                                                                                                                                                 |                                                                                                                                                                                                                                       |
| 7 | Technical Assistance and Capacity Building | ‘Targeted technical assistance and capacity building assistance to developing country members, including LDC members shall be provided . . . A voluntary WTO funding mechanism shall be established’.                                                                                                                                                                                                                                             | This is standard for WTO agreements, but the entire text was bracketed in the draft agreement.                                                                                                                                        |
| 8 | Notification and Transparency              | 8.1: Notification requirements under Article 25 of the SCM Agreement with details.<br>8.2: IUU reporting requirements.<br>8.3: Implementation and administration of the agreement.<br>8.4: Description of the fisheries legal regime.<br>8.5: Information requests from other members.<br>8.6: Information on RFMO membership with additional details.<br>8.7: Relationship to GATT 1994 and the SCM Agreement.<br>8.8: Confidential information. | The stated purpose here in Article 8.1 is the ‘effective surveillance of the implementation of fisheries subsidies commitments’. Linking FSA notifications to the SCM Agreement is notable, as it is the informational link to RFMOs. |
| 9 | Institutional Arrangements                 | 9.1: ‘There is hereby established a Committee on Fisheries Subsidies composed of representatives from each of the Members’.<br>9.2: ‘The Committee shall examine all information pursuant to                                                                                                                                                                                                                                                      | The establishment of a committee to oversee the FSA is notable. Article 9.2 gives special importance to IUU fishing in Article 3.                                                                                                     |

|    |                                                                      |                                                                                                                                                                                                                     |                                                                                                                                                                                                              |
|----|----------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|    |                                                                      | Articles 3 and 8 and this Article’.<br>9.3: Annual review.<br>9.4: Review of operation of the FSA.<br>9.5: Relationships with other organisations.                                                                  |                                                                                                                                                                                                              |
| 10 | Dispute Settlement                                                   | Linkage to the DSM under both GATT94 and the SCM Agreement.                                                                                                                                                         | Standard for nearly all WTO agreements and exactly the same as the draft agreement.                                                                                                                          |
| 11 | Final Provisions                                                     | 11.1: Subsidies under disaster relief.<br>11.2: Territorial claims.<br>11.3: Relationship to the Law of the Sea.<br>11.4: Relationship to RFMOs.<br>11.5: Relationship to SCM Agreement.                            | Relatively close to the draft agreement and quite standard.                                                                                                                                                  |
| 12 | Termination of Agreement if Comprehensive Discipline Are Not Adopted | ‘If comprehensive disciplines are not adopted within four years of the entry into force of this Agreement, and unless otherwise decided by the General Council, this Agreement shall stand immediately terminated’. | Article 12 was not part of the draft text and appears to function as something of a threat mechanism to ward against WTO Members not taking it seriously enough and to give impetus to further negotiations. |

*C. Assessment of the FSA's strengths and weaknesses*

The FSA has attracted support from other organisations, including international organisations such as the United Nations and its agencies (e.g., FAO, UNCTAD) and RFMOs such as the Inter-American Tropical Tuna Commission (IATTC) and the South Pacific Regional Fisheries Management Organisation (SPRFMO). The FSA will be dependent on this collective effort to address the problem of overfishing in the long-term.<sup>91</sup> The collective effort additionally reflects the increasingly popular

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<sup>91</sup> Hoekman, *supra* note 44, 266.

view that national fishery jurisdictions and their fishery-subsidy policies should be subject to binding, environmentally sound regulations that have a global scope.<sup>92</sup>

The analysis of the FSA, as presented in this paper, coupled with current scholarship on the document (some of which pre-dates the FSA's entrance into force in September 2025), reveals several FSA provisions that merit our attention.<sup>93</sup> First of all, drawing upon Akshaya Venkataraman's assessment,<sup>94</sup> the author evaluates the omission of fuel subsidies in the scope, which is one of the most controversial and unresolved issues in the negotiations of the FSA. Since the topic of regulating the fuel subsidies is heavily politically oriented, it has been uneasy for WTO members to include the fuel subsidies in the FSA. Nevertheless, the author agrees that, given the WTO's institutional capacity, its existing legal framework as well as the robust political momentum it constantly carries, the FSA remains to be a most suitable forum for including fuel subsidies regulations.<sup>95</sup> The conclusion of the FSA negotiations shows several lessons for the potential fuel subsidies reform considered in the second phase of the FSA negotiation, i.e., MC14 held in Yaoundé, Cameroon.

The MC14, which re-addressed the fossil fuel subsidy reform initiative,<sup>96</sup> was organised around three practical workstreams. This means that WTO members involved in the initiative agreed to continue work under three pillars: (a) enhanced transparency; (b) crisis support measures, and (c) identifying and addressing harmful fossil fuel subsidies. They also formally adopted new tools, including updated transparency questions for WTO trade policy reviews and guidelines for emergency energy-crisis subsidies.<sup>97</sup>

The author acknowledges the initiatives aimed at reflecting on the necessity of reforming fossil fuel subsidies within the WTO framework since MC13. However, several concerns arise from the initiative. Firstly, the initiative broadens the nexus beyond what environmentalists have advocated for in trade liberalisation since the Doha Round. By contrast, the initiative's statement avoids precisely defining what constitutes a harmful fossil fuel subsidy. This definitional issue has been politically sensitive, and thus, the absence of a binding definition in the FSA does provide the

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<sup>92</sup> He, *supra* note 5, 5–9.

<sup>93</sup> See, e.g., Mitchell Lennan & Stephanie Switzer, *World Trade Organization Agreement on Fisheries Subsidies*, SSRN (2020) [hereinafter Lennan & Switzer].

<sup>94</sup> Akshaya Venkataraman, *From Fisheries to Fossil Fuel: (More) Lessons for WTO'S Role in Subsidy Reform*, QUEBEC J. INT'L L. (SPECIAL ISSUE) 377 (2025).

<sup>95</sup> *Id.* at 379.

<sup>96</sup> World Trade Organization, Fossil Fuel Subsidy Reform (FFSR) Initiative: Ministerial Statement of 26 March 2026, WT/MIN(26)/23.

<sup>97</sup> *Id.*

initiative with flexibility. Yet, it also weakens the initiative's enforceability and accountability.

Secondly, following from the issue of enforceability, the three-pillar process established by the initiative creates further problems for the implementation of the reform. This is because subsidy reform within the WTO has historically been difficult: when it comes to subsidy regulation and market distortion governance, governments are often unwilling to relinquish their discretion over domestic energy policy. Nevertheless, the introduced transparency requirements - requiring members to justify subsidy objectives, explain reforms, and assess impacts on vulnerable groups - can generate reputational pressure on WTO members even in the absence of sanctions.

Finally, regarding the guidelines in Annex II of the initiative, which focus on transparent, targeted, and temporary fossil fuel subsidy measures, their motivation in response to energy crises is commendable. The guidelines focus heavily on consumer-side emergency support but are less confrontational towards structural producer subsidies in the energy sector. This creates the impression that the initiative is more comfortable disciplining crisis measures than confronting the broader political economy of fossil fuel dependence among WTO members.

Article 2 of the FSA addresses transshipment (i.e., the vessel-to-vessel movement of goods) and bunkering (i.e., the port- or water-based fuelling of vessels) against the backdrop of fishing-related activities. Both of these practices are key to distant-water fishing, and with this fact in mind, critics argue that future refinement of the FSA should address the potential benefits and drawbacks attached to the state subsidisation of these and other practices that enable distant-water fishing.<sup>98</sup> Several critics have taken a hardline approach to distant-water fishing, calling for immediate and substantive restrictions on high-seas fishing and fishing-related activities.<sup>99</sup> This approach has met with limited political support and faces immense difficulties with respect to implementation. Thus, sustainability advocates embracing a more gradualist, or incrementalist, approach have sought to negotiate feasible timeframes for meaningful phase-outs and caps on current levels of subsidisation.<sup>100</sup>

Article 3 of the FSA regulates subsidies for IUU fishing. Therein, Article 3.2 grants RFMOs, as well as flag states and coastal states, the right to make affirmative determinations about whether or not a vessel or other operator is engaging in IUU fishing. Cullis-Suzuki and Pauly found that although RFMOs overall perform

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<sup>98</sup> De Gama, *supra* note 17, at 680.

<sup>99</sup> Jessica F. Green & Bryce Rudyk, *Closing the high seas to fishing: A club approach*, 115 MARINE POL'Y. 1 (2020).

<sup>100</sup> *Id.*

reasonably well “on paper” to conduct fishery sustainability management, their practical outcomes however remain ineffective.<sup>101</sup> Their study concluded that approximately 67% of stocks managed by RFMOs were either overfished or depleted, despite the existence of regulatory frameworks.<sup>102</sup> Accordingly, this finding strengthens one criticism—if RFMOs already lack the scientific, monitoring, and enforcement capacity to manage stocks effectively, then requiring them to identify environmentally harmful subsidisation under the WTO framework may exceed their operational abilities. This is particularly an impact on regions in which many Global South countries are located. The WTO FSA may therefore be best understood not as a WTO members’ self-executing enforcement regime, but as part of a wider governance architecture whose effectiveness depends heavily on strengthening RFMOs, scientific monitoring systems, and developing countries’ participation.

Further, because such determinations in Article 3.2 can trigger punitive WTO-led actions against any states found to be subsidising illegal fishing activities, the determinative process laid out in Article 3.2 will likely result in contentious disagreements between flag and coastal states regarding the listing of alleged IUU fishing vessels.<sup>103</sup> Critics have warned that the FSA, owing to the influences it can exert beyond its signatories, will inevitably have an impact on state parties’ rights and obligations under UNCLOS.<sup>104</sup>

Article 4 prohibits members from offering or maintaining subsidies ‘for fishing or fishing-related activities regarding an overfished stock’. Article 5 pertains to other fishery subsidies—those falling under a broad scope. For example, states may subsidise fishing operations that target stocks whose depletion levels are understood either poorly or not at all—Article 5 covers these subsidies and, likewise, covers circumstances where a state may subsidise not its own flagged vessels but foreign-flagged vessels: in such cases, Article 5 advises that these states exercise ‘special care and due restraint’ in respect of fish stocks. Critics have argued that Articles 4 and 5, though well-intentioned, cannot, solely on their own terms, prevent overexploitation of fish stocks on the high seas.<sup>105</sup>

The provisions in Articles 6 and 7 address the FSA’s regulation of fishery subsidies in relation specifically to the vast disparities in the wealth and power of nations. For example, Article 6 advises FSA members to exercise ‘due restraint’ in their subsidy

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<sup>101</sup> Saarikka Cullis-Suzuki & Daniel Pauly, *Failing the high seas: A global evaluation of regional fisheries management organizations*, 34 MARINE POL’Y. 1036 (2010).

<sup>102</sup> *Id.* at 1041.

<sup>103</sup> Makoto Seta, *Impact of the WTO Agreement on Fisheries Subsidies on the Rights and Obligations under UNCLOS*, MAX PLANCK Y.B. UNITED NATIONS L. ONLINE, 452 (2025).

<sup>104</sup> *Id.*

<sup>105</sup> *Id.*

or fishery-related interactions with least-developed countries. Article 7 notes that any FSA member may voluntarily contribute to a fund dedicated to developing and Least Developing Countries (LDCs) (so long as they, themselves, are signatories to the FSA) and that the WTO, with assistance from other organisations, shall provide these vulnerable signatories with technical assistance capable of facilitating their implementation of the FSA.

The purpose of Article 8 is to foster a culture of openness among FSA signatories and, in turn, to foster trust and compliance. To this end, members are required to provide information on a specified list of topics.<sup>106</sup> A central topic concerns the status of stocks in the fishery sector. Members are advised to calculate this status on the basis of parameters defined and provided by the SCM Agreement or the FSA. These parameters enable regulators and member states alike, to determine whether or not a stock is being overfished, fished at a maximally sustainable level, or underfished. In some instances, fishery-stock information may have to be shared with or managed by an RFMO. Another important topic covered by Article 8 concerns the degree to which conservation and management measures are in place for a particular fish stock. A third topic is fleet capacity with respect to subsidisation. Fourth, Article 8 spells out how FSA signatories can acquire detailed information about subsidised fishing vessels. Finally, Article 8 calls for the categorisation of catch data by species. All of these information-related provisions in Article 8 of the FSA reflect an awareness, on the part of the FSA's drafters, that fishing activities in fishery sectors suffer from a serious lack of transparency. Thus, the FSA's decision to impose on FSA signatories a series of moderately stringent information requirements was considered vital to the interrelated aims of member transparency, member support for FSA provisions, and long-term income and food security.<sup>107</sup>

Each article in the FSA demonstrates just how groundbreaking the agreement is. However, as with most ground-breaking achievements, there is room for improvement, and this general principle is certainly the case with the FSA.<sup>108</sup> It is to the subject of the FSA's weaknesses that the paper now turns.

The FSA covers many, but not all, critical long-standing issues concerning fishery subsidies. First of all, UN SDG 14.6 requires that states refrain from and ban the subsidisation of fishery operations when these operations result in overfishing, IUU

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<sup>106</sup> *Id.*

<sup>107</sup> Alice Tipping, *WTO Members Clinch a Deal on Fisheries Subsidies*, IISD: SDG KNOWLEDGE HUB (June 17, 2022) <https://sdg.iisd.org/news/wto-members-clinch-a-deal-on-fisheries-subsidies/>.

<sup>108</sup> Lennan & Switzer, *supra* note 93; See also Chen-Ju Chen, *Current Development of Fisheries Subsidies Regulations After the Failure of WTO Doha Round Negotiations with a Focus on the Asia-Pacific Region*, 17(1) *ASIAN J. WTO & INT'L HEALTH L. & POL'Y*. 41 (2022).

fishing, or the overcapacity of fishing fleets.<sup>109</sup> However, at the 12th WTO Ministerial Conference (MC 12), held in June 2022, WTO members complained that the proposed agreement's provisions addressing overcapacity and overfishing were excessively vague. Therefore, when the conference ended with the WTO's adoption of the FSA, the document explicitly prohibited the state subsidisation of fishing operations in overfished stocks but needed tangible improvements in its treatment of overfishing and overcapacity activities.<sup>110</sup>

A 2021 draft of the FSA listed the types of prohibited subsidies.<sup>111</sup> Items on this list included subsidies for fishing ships, fishing machinery, fuel, 'ice and bait', labour, taxes, and insurance.<sup>112</sup> Although a consensus on these listed items could not be reached at the MC 12, the attendees to this ministerial conference adopted the FSA and agreed that negotiations regarding the items would continue at the 13th WTO Ministerial Conference (MC 13) (held in February and March 2024). The aim was to achieve a holistic agreement targeting even more types of fishery subsidies that were currently contributing to overcapacity and overfishing. Many of these attendees also recognised that an integral part of these negotiations should be the topic of appropriate and effective special and differential treatment (SDT) for developing and least developed countries.<sup>113</sup> Despite high hopes and earnest efforts, WTO members could not achieve the hoped-for consensus at MC 13. This disappointing outcome meant that the WTO would have to host yet another round of fishery-subsidy negotiations.<sup>114</sup>

Between 2021 and 2022, the drafters of the FSA effectively streamlined various conditions and exemptions for fishery subsidies, established reasonably short and well-defined time periods for achieving compliance, clearly identified types of prohibited or discouraged subsidies, and placed an appropriate emphasis on efforts to minimise the environmental harm arising from distant-water and transboundary fishing fleets.<sup>115</sup> There were several essential places for improvement in the 2022 draft version of the FSA: it contained vague wording concerning such critical matters as subsidised incomes for fishermen, the uniform handling of IUU fishing, and transparency in distant-water fisheries. These language-based problems with the

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<sup>109</sup> United Nations G.A. Res. 70/1, Transforming Our World: The 2030 Agenda for Sustainable Development, Goal 14 (Oct. 21, 2015), <https://sdgs.un.org/goals/goal14>.

<sup>110</sup> Lennan & Switzer, *supra* note 93.

<sup>111</sup> *Agreement on Fisheries Subsidies: Draft Text*, WTO Doc. WT/MIN(21)/W/5 (adopted on Nov. 24, 2021).

<sup>112</sup> Lennan & Switzer, *supra* note 93, at 11.

<sup>113</sup> *Id.*

<sup>114</sup> De Gama, *supra* note 17, at 679.

<sup>115</sup> Cisneros-Montemayor, *supra* note 39.

2022 draft were derived partially from historical definitions that the WTO, in the early 2000s, had adopted for fishery-subsidy negotiations.

Seeking to avoid further delays, the WTO and many individual and organisational stakeholders around the globe urged WTO members to formalise their definitions of fishing practices. Research comparing various fishery-subsidy disciplines found important differences and commonalities among, for example, the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP), the United States-Mexico-Canada Agreement (USMCA), and several of the UK's free trade agreements with Australia and New Zealand.<sup>116</sup> Nevertheless, the types of subsidies covered in these trade agreements are similar to the types of subsidies covered in the WTO's: both regulatory schemes address IUU fishing, overcapacity fishing, overfishing, and overfished stocks. An exception to this rule is the UK–New Zealand free trade agreement, which came into force in May 2023. It prohibited several additional types of subsidies, such as the subsidised transfer of fishing vessels from one party to another, capacity-enhancing subsidies for vessels, and subsidies to vessels and operators that have been found implicated in convictions for serious violations of conservation and management measures. The latter agreement goes to show that broader and deeper regulatory goals can be met by multilateral free trade agreements amongst a small number of like-minded countries than by a single trade agreement encompassing, as the WTO's FSA does, a vast number of countries.<sup>117</sup>

#### *D. From MC12 to MC13 and Way Forward in MC14*

At the start of the MC 13, some of the most contentious issues concerned new rules governing fishery management and the subsidisation of overcapacity fishing and overfishing. Unfortunately, negotiations around these issues collapsed, so that, although a majority of WTO members ratified the 2024 draft version of the FSA, the most contentious issues remained unresolved and thus open to discussion. The decidedly inconclusive outcome of the MC 13 did not augur well for the future. Indeed, if further negotiations were to fail, the entire FSA would be at risk of cessation, especially if the drafters of the FSA could not establish a core set of subsidisation rules within four years of the WTO's adoption of the FSA. The only way out of this predicament was further, more effective negotiations.<sup>118</sup>

Hopes were not high for a desirable outcome. Ranja Sengupta, who has served as a

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<sup>116</sup> See Free Trade Agreement between the United Kingdom of Great Britain and Northern Ireland and New Zealand, 28 Feb. 2022, Gr. Brit.-N.Z., GR. BRIT. TS NO. 36/2023, art. 22.9.6.

<sup>117</sup> Hoekman, *supra* note 44.

<sup>118</sup> Article 12 of the FSA states that “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”.

senior member of a non-profit international network advocating for Third World citizens, addressed some of the seemingly intractable disagreements over wording. She highlighted the fact that drafters of the FSA at the MC 13 had broadened the 2022 FSA draft's exemptions from mandated biologically sustainable levels. Thus, the outright ban on the subsidisation of distant-water fishing evolved into merely a recommendation that signatories to the FSA should avoid these subsidies 'to the greatest extent possible'. The result of this concession weakened the effectiveness of the clause and, more generally, of the FSA, but improved the likelihood that the agreement would be adopted.<sup>119</sup>

A major problem with the MC 13 was its failure to balance regulation of subsidies with the developmental priorities of nations.<sup>120</sup> Of course, such priorities are of particular concern for developing countries, including perhaps most notably India, whose economic growth is heavily dependent on the expansion of the nation's fishing capacity. The apparent irreconcilability of sustainability goals with economic imperatives added a layer of difficulty to the WTO's negotiation directive,<sup>121</sup> especially when consideration needed to be paid to the great differences between developing countries and developed countries regarding their fishing agendas.<sup>122</sup>

An attempted solution to this impasse was a hybrid strategy consisting of several general prohibitions with important exceptions and special provisions set aside for the regulation of developing countries' fisheries. This strategy sought to reconcile two previously debated strategies: one was a blanket ban on certain subsidies, and the other was a set of individual bans chiefly on subsidies negatively impacting fisheries. The strategy of reconciliation resulted in the aforementioned list of banned subsidies but with exceptions in place for developing countries. The list of bans was quite uncompromising in certain respects, as it included restrictions on subsidies for activities surpassing an FSA signatory's jurisdiction and for unflagged vessels receiving subsidisation from a signatory member.<sup>123</sup> FSA drafters proposed a 'two-tier' system that would impose a more stringent regulatory framework on

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<sup>119</sup> Elizabeth Fitt, *Stalemate: WTO talks again fail to end overfishing subsidies*, MONGABAY, (Mar. 05, 2024), <https://news.mongabay.com/2024/03/stalemate-wto-talks-again-fail-to-end-overfishing-subsidies/>.

<sup>120</sup> *Additional Provisions on Fisheries Subsidies*, WTO Doc. WT/MIN(24)/W/10, (Feb. 16, 2024).

<sup>121</sup> WORLD TRADE ORGANIZATION, *Ministerial Declaration: Annexes*, Annex D: Rules, WT/MIN/05/DEC (Dec. 25, 2005), [https://www.wto.org/english/thewto\\_e/minist\\_e/min05\\_e/final\\_annex\\_e.htm](https://www.wto.org/english/thewto_e/minist_e/min05_e/final_annex_e.htm).

<sup>122</sup> Alice Tipping, *Addressing the Development Dimension of an Overcapacity and Overfishing Subsidy Discipline in the WTO Fisheries Subsidies Negotiations* (Jan. 2020) (Discussion Paper, Int'l. Inst. for Sustainable Dev.), <https://www.iisd.org/system/files/publications/overfishing-discipline-wto-fisheries-subsidies.pdf>.

<sup>123</sup> *Negotiating Group on Rules-Fisheries Subsidies: Revised Draft Consolidated Chair Text*, WTO Doc. TN/RL/W/276/Rev.1 (June 30, 2021).

certain members than on other members. In this system, members are divided into two tiers, with stricter demonstration requirements applied to members in the first tier. That said, the first tier consists of developed members and developing country members that include the following characteristics: amongst the 10 largest providers of fisheries subsidies; significantly engage in fishing and fishing-related activities far from their territorial sea; or have committed not to use SDT provisions. On the other hand, the second tier pertains to developing country members that are not included in the first tier and that are not completely exempted from the rule under the SDT provisions.<sup>124</sup>

The tier of a member state would depend on three major factors: the state's involvement in distant-water fishing, the extent of the state's subsidisation of problematic fishing, and the state's level of economic development. While this tinkering with regulatory models yielded a flexible solution to both sustainability issues and development issues, these efforts again failed to produce a final agreement.

Eventually, this two-tier system did not work out due to several reasons.<sup>125</sup> The primary reason is members' disagreement regarding the differentiating criteria. For example, it has been a contention in relation to what counts as a developing country in the WTO and in which circumstances SDT provisions could be applied to those developing countries. The second reason is that even in the category of developing countries, their "large" or "small" fishing subsidisation determination is heterogeneous. This led to the unfortunate outcome of the two-tier system in the MC 13.

India responded to the impasse by proposing an overall solution consisting of two main parts: first, there should be a reduction in the stringent conditions and notification requirements that the current FSA draft was imposing on small-scale and artisanal fishers; second, the drafters of the FSA should exempt these fishers from regulations governing overfishing, overcapacity fishing, and EEZ fishing. Of course, the individuals representing the member state of India were hoping to craft a draft version of the FSA that would better accommodate India's fishers, but their efforts entailed benefits for the fishers of all developing countries. In any case, the revised draft had to distribute administrative burdens equitably and to uphold the sovereign rights of coastal states as laid out in UNCLOS. Moreover, drafters proposed that, for waters overseen by RFMOs, periods for signatories' transition from unsustainable to sustainable fishing practices should be longer for developing

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<sup>124</sup> TRISTAN IRSCHLINGER, INT'L INST. SUSTAINABLE DEV., WORLD TRADE ORGANIZATION TALKS ON ADDITIONAL FISHERIES SUBSIDY RULES (2025)

<sup>125</sup> Tristan Irschlinger, *Fisheries Subsidies: Will World Trade Organization members finish the job at MC13?*, IISD: Policy Analysis (Jan. 11, 2024), <https://www.iisd.org/articles/policy-analysis/fisheries-subsidies-wto-mc13?utm>.

member countries than for developed ones. This nuanced flexibility would simplify compliance and would reduce the potential economic-development burdens on developing states.<sup>126</sup> These adjustments would allow for fairer practices, especially insofar as developed countries—unlike their developing counterparts—had enjoyed many regulation-free decades of subsidy-heavy maritime development.<sup>127</sup>

A critical yet problematic element concerning the special treatment of developing states still requires, as of February 2026, a thoughtfully negotiated resolution. Because it is the ‘policy space’ that will be available to developing countries and LDCs to sustainably exploit their own fisheries resources. ‘A recurring complaint from developing countries and LDCs is the issue of ownership of natural resources and their rights under international law to progressively take ownership of such resources in order to develop themselves’.<sup>128</sup>

An incorporated specific requirement indicates that each signatory to the FSA would have to report to the WTO three critical pieces of information: the recipients of the signatory’s fishery subsidies, the amount of these subsidies, and the state of the affected fish stocks. However, the current wording of the 2025 FSA suffers from non-specific language regarding critical subsidy-related matters, including most notably the subsidisation of fisher incomes, the uniform handling of IUU fisheries, and transparency in distant-water fisheries (i.e., fisheries that lie outside a country’s EEZs). Some scholars specialising in international trade law have argued that resolving the issue of non-specific wording would significantly increase the ability of the FSA to promote multilateral cooperation aiming for the eradication of harmful fishery subsidies, the resurrection of sustainable fisheries, the cultivation of healthy market dynamics, and the realisation of equitable outcomes.<sup>129</sup>

Despite weaknesses in the FSA, its global role in fishery sustainability is, as the author argues, quite likely more effective than the corresponding role of UNCLOS. The primary reason is that the FSA incorporates key international fishery regulations into a multilateral *trade* agreement. The keyword here is ‘trade’. UNCLOS is not a trade agreement. Nonetheless, the fish-market *trade* is *the* critical factor responsible for fishery depletion, and thus, an agreement whose regulations combine an acknowledgement of the importance of this trade with a focus on sustaining fisheries can offer signatories a much more comprehensive, encompassing

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<sup>126</sup> *Analyzing the impact of the chair’s proposed OCOF disciplines*, WTO Doc. WT/GC/W/945; TN/RL/W/282.

<sup>127</sup> *Implementing Appropriate and Effective Special and Differential Treatment under the Additional Provisions on Fisheries Subsidies: Communication from India*, WTO Doc. WT/GC/W/947; TN/RL/W/284 (July 11, 2024).

<sup>128</sup> De Gama, *supra* note 17, at 677.

<sup>129</sup> Hoekman *supra* note 44.

framework for the sustainable use of fisheries than can an agreement focused strictly on the environmental component of fishery sustainability.

Second, and unlike UNCLOS, the FSA contains essential provisions addressing IUU-fishing subsidies, overexploited-stock fishing, and fisheries on the high seas outside the competence of RFMOs.<sup>130</sup> Third, and again unlike UNCLOS, the FSA contains provisions guaranteeing SDT for signatories that fall under the category of developing or least-developed countries. The tailored treatment to which these countries are entitled includes flexible timelines, technical assistance, market assistance for small-scale fishing operations, and exemptions from otherwise binding rules. These special-and-differential-treatment provisions not only improve the equitability of fishery management outcomes but also encourage vulnerable countries that might view the FSA as a threat to view it instead as an asset.

Fourth, whereas UNCLOS neither requires its signatories to notify the organisation of their domestic fishery subsidies nor operates a system of surveillance ensuring the accuracy of these notifications, the FSA accomplishes both of these aims. Fifth, the FSA is better than UNCLOS at offering streamlined procedural frameworks for such thorny matters as dispute-resolution cases.

MC14 concluded on March 30, 2026. Whilst 116 members in the WTO have deposited their instrument of acceptance of the FSA as of March 11, 2026, much hope still lies with the remaining 50 members to give formal acceptance of the FSA. This author advocates that it is important for the WTO members to carry shared responsibilities and make the same commitments to protect fisheries and the ocean during trade liberalisation. Timely ratification will give human society a robust signal that multilateral cooperation continues to deliver concrete outcomes for people, livelihoods, and the planet.

## V. CONCLUSION

In this article, the author has explored a major international agreement addressing the worsening global crisis of unsustainable fishing practices. The FSA—adopted in June 2022 but not put into effect until September 2025—represents a major step forward in the effort to address the depletion of fishery stocks, which has been exacerbated by open access to the oceans' fishery resources and by states' heavy reliance on fishery subsidies. International fishery regulations, which are indisputably the primary regime of ocean governance, have contributed to fishery sustainability, especially through their adoption of rights and obligations governing the fishing activities of states and fishers, alike, within maritime zones around the world.<sup>131</sup>

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<sup>130</sup> Lennan & Switzer, *supra* note 93, at 38.

<sup>131</sup> Communication from the Secretariat of the International Commission for the

The author has attempted to demonstrate that current international fishery regulations, though multilateral, remain observably finite. A central reason for the restricted nature of these regulations is their voluntary structure. It is therefore suggested that, rather than establishing one overriding legal regime covering all possible maritime sustainability issues, the international community should work at establishing an array of international legal regimes, each possessing its own distinct objectives and mandates. These regimes can complement not only one another but also the existing international law of the sea. They permit a division of responsibilities conducive to the effective planning and execution of sustainability-oriented practices. The author's suggestion for an integrated network of maritime regimes echoes the proposed integration of international law laid out in UN SDG 14. The FSA, as it currently stands, strikes a balance between effective subsidy regulations and SDT for developing and least developed countries. This balance is traceable directly to the years-long negotiations that forged the current version of the FSA. This author is convinced that, because the WTO itself is focused primarily not on fishery sustainability but on effective free trade, the WTO's FSA is an excellent example of how environmental-sustainability goals can be integrated into existing international law. Nevertheless, the FSA in its current form fails to satisfactorily address several important issues in the realm of fishery subsidies. Future research would do well to examine how the WTO might strengthen the FSA in these respects.

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Conservation of Atlantic Tunas, WT/CTE/W/87 (July 16, 1998); Existing form of Cooperation and Information Exchange between UNEP and the WTO, *Note by the Secretariat*: Revision 4, TN/TE/S/2/Rev.2, (Jan. 16, 2007).