



WORLD TRADE
ORGANIZATION

The WTO Agreement on Fisheries Subsidies

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**TRADE AND
ENVIRONMENT
WEEK 2022** 17-21
OCTOBER



Outline

Overview of the Agreement

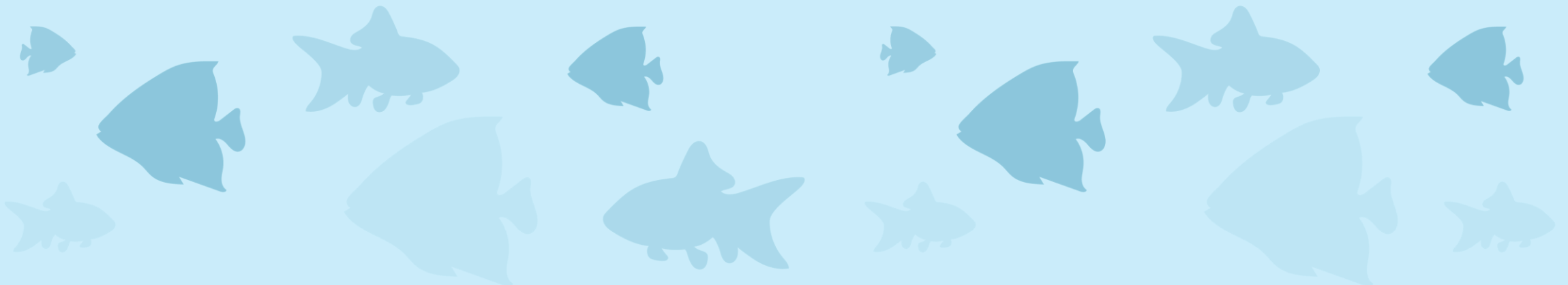


- ❖ Scope
- ❖ Prohibitions
- ❖ Cross-cutting rules

What Members need to do?



- ❖ Deposit an instrument of acceptance so the Agreement enters into force
- ❖ Upon entry into force:
 - Establish a Committee
 - Notify fisheries-related information
 - Adopt comprehensive disciplines





The Agreement on Subsidies and Countervailing Measures (ASCM) and fisheries subsidies



ASCM

Disciplines **trade-distortive effects** of subsidies

- › **Prohibition** of export subsidies and import substitution subsidies (presumed trade distortive)
- › **Adverse trade effects** disciplines on other specific subsidies (trade distortion proved based on evidence)

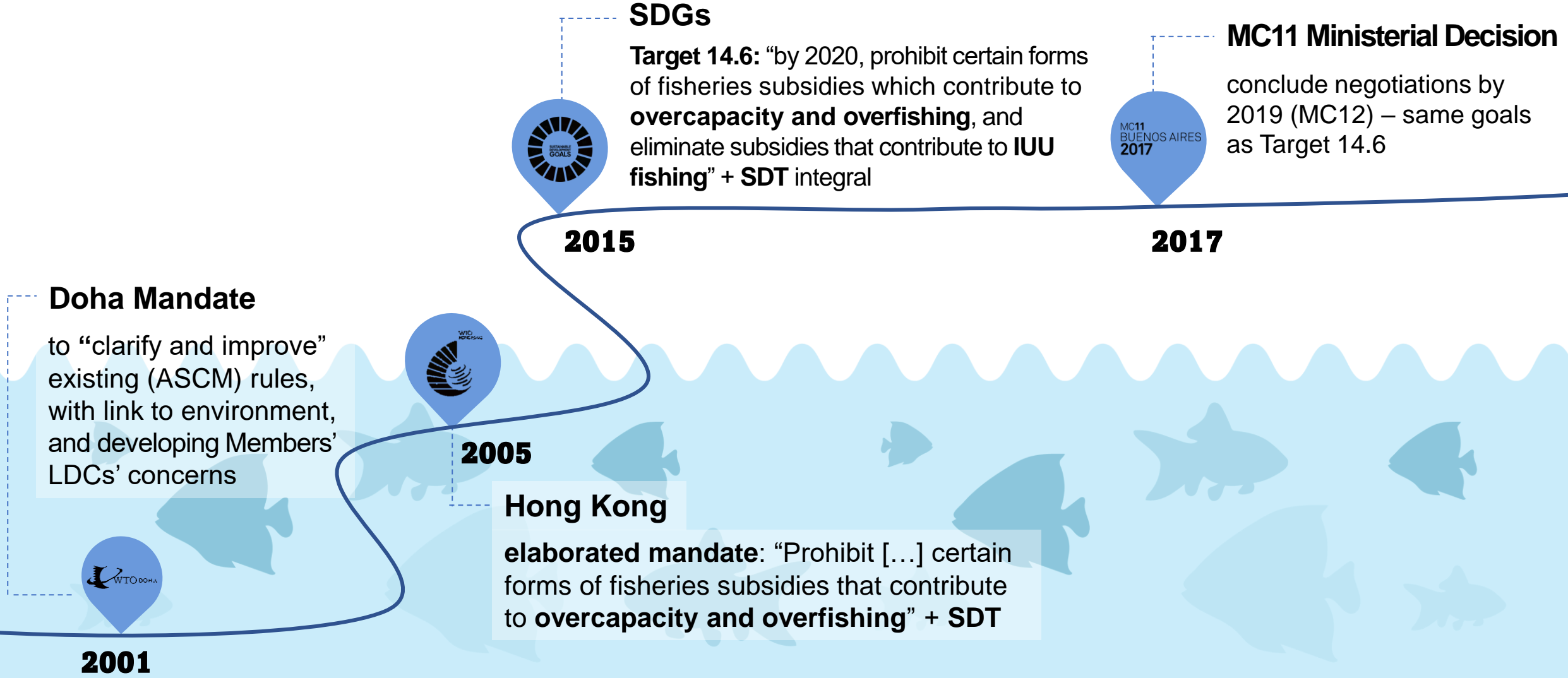


Subsidies' negative **effects on sustainability of natural resources**

- › **Not addressed** (by ASCM or other WTO rules)



From Doha mandate to MC11 decision

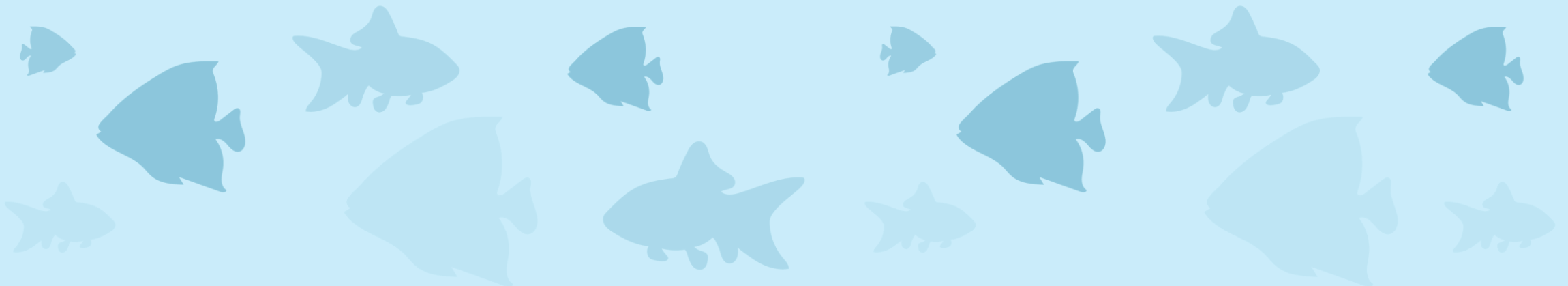


MC12 Outcome on Fisheries Subsidies

- ❖ 17 June 2022, **MC12 Decision** (MIN(22)/W/33) to:
 - Open for acceptance a protocol to amend the Marrakesh Agreement by the insertion of **the Agreement on Fisheries Subsidies**; and
 - Continue negotiations on outstanding issues

Historic achievement

- ❖ The Agreement represents a historic achievement because it is:
 - The first **WTO agreement** to focus on **the environment**; and
 - Only **the second agreement reached** at the WTO since its inception.





SCOPE



Prohibitions



S&DT in the Agreement

Subsidies to IUU fishing



Fishing in the unregulated high seas

Subsidies to overfished stocks



Enforceable through the WTO dispute settlement system

Other disciplines
To take special care and exercise due restraint when subsidizing:
› **Vessels not flying that Member's flag**
› **Fishing on unassessed stock**
...except for disaster relief

Subject to termination clause

CROSS-CUTTING RULES

- Institutional arrangements
- Notification and Transparency
- Technical Assistance



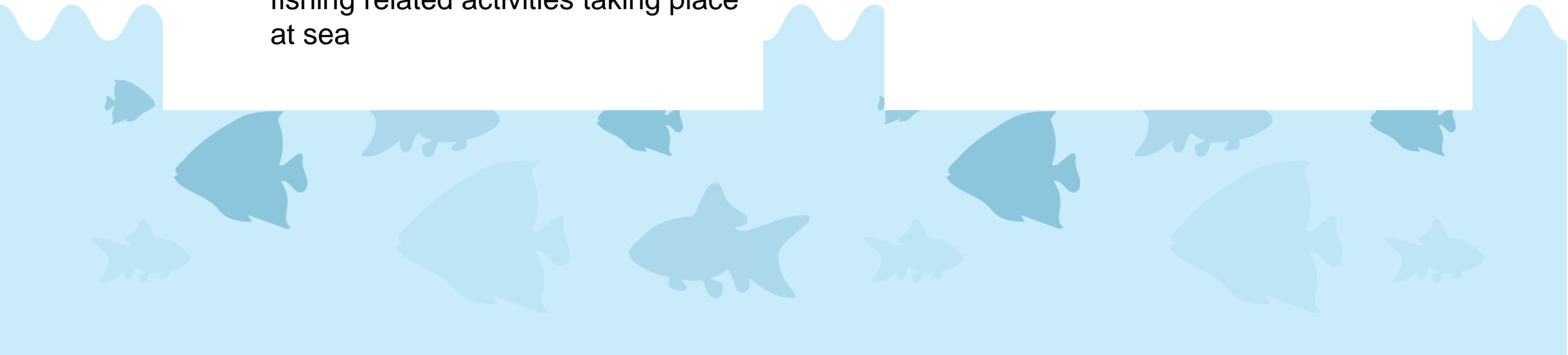
Within the scope:

- Subsidies (as defined in the ASCM)
- That are specific (also as defined in the ASCM)
- To wild marine capture fishing and fishing related activities taking place at sea

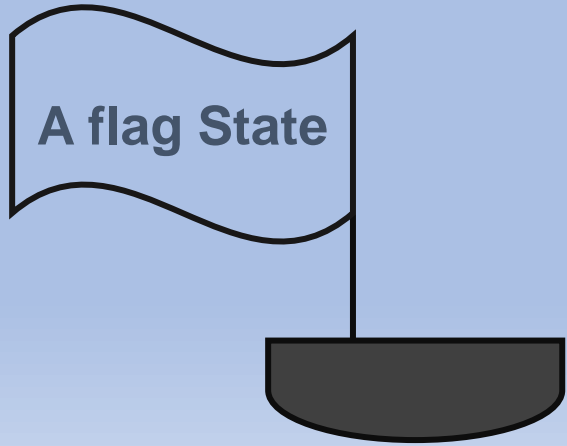


Outside the scope:

- Aquaculture
- Inland fishing
- Onshore activities



Fisheries jurisdiction



A flag State

The High Seas



A Regional Fisheries Management Organization or Arrangement (RFMO/A)

Exclusive Economic Zone (EEZ)



A coastal State



Who can make an IUU determination?

Coastal Member

Flag State Member

RFMO/A

Where?

❖ for activities in areas under its jurisdiction

❖ for activities by vessels flying its flag

❖ in areas and for species under its competence

When will it trigger the subsidy prohibition?

- ❖ if it is a final IUU determination
- ❖ if it is based on relevant factual information
- ❖ If the opportunity to exchange information with the flag State requirement is satisfied

- ❖ if it is a final listing
- ❖ if it is based on applicable procedures of that RFMO/A and international law, including notification and provision of information



Subsidies to IUU fishing

Subsidizing Member

- ❖ Must stop any subsidy to such a vessel or operator
- ❖ But also, it must:
 - Take into account the nature, gravity and repetition of the IUU fishing committed when setting the duration of the prohibition
 - Give due regard as it deems appropriate to the information received from the **Port State**
 - Notify measure taken to remove subsidies



When is the stock overfished?

- ❖ When its biomass is under a biologically sustainable level (BSL)



Who can determine that?

Coastal Member

RFMO/A



Where?

- ❖ for activities in areas under its jurisdiction

- ❖ in areas and for species under its competence



Based on what?

- ❖ Best scientific evidence available
- ❖ Using reference points such as maximum sustainable yield (MSY) or other reference points, commensurate with the data available for the fishery

- ❖ Best scientific evidence available



Subsidies to overfished stocks

Subsidizing Member

- ❖ Must stop any subsidy to fishing regarding an overfished stock
- ❖ Unless...
 - the subsidy is for rebuilding the stock to a BSL
 - other measures are implemented for rebuilding the stock to a BSL

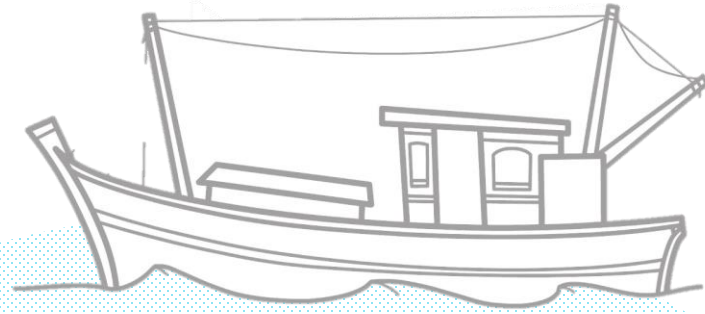


- ❖ **No Member shall grant or maintain subsidies for fishing in unregulated high seas!**

- ❖ Unregulated high seas are the areas:
 - outside the jurisdiction of a coastal Member or a coastal non-Member; and
 - outside the competence of a relevant RFMO/A



**Fishing in the
unregulated
high seas**



Other disciplines

Members must take special care and exercise due restraint when subsidizing:

- › **Vessels not flying that Member's flag**
- › **Fishing on unassessed stock**

*...except for disaster relief **

** By virtue of Article 11.1, this exemption does not apply to Articles 3 and 4. Exemption is also limited to the geographic area affected by a particular disaster, which makes it inapplicable outside the jurisdiction of a coastal Member. Thus, this exemption only applies to disciplines concerning vessels not flying the flag of the subsidizing Member and regarding fishing on unassessed stocks*



Special and Differential Treatment in the Agreement

❖ Flexibilities for developing and LDC Members



Peace clause

- ❖ Dispute settlement will not apply for two years
- For disciplines on IUU fishing and overfished stocks
- Within exclusive economic zones (EEZ)



Notification of fisheries-related information

- ❖ Every four years instead of every two years
- If a developing Member a share of the volume of global fish catch is not more than 0.8%



Technical assistance and capacity building

- ❖ Targeted technical assistance and capacity building assistance for the purpose of implementation of the disciplines under this Agreement.
- ❖ Establishment of a voluntary WTO funding mechanism (Fish Fund)

❖ Flexibilities for LDC Members only



Due restraint

- ❖ Members must exercise due restraint in raising matters involving an LDC Member



Establish a Fish Fund

❖ Upon entry into force, the Agreement envisages the creation of a voluntary WTO funding mechanism

❖ **The Fund will assist with:**

Integrating fisheries sustainability elements into fisheries subsidies policies and practices

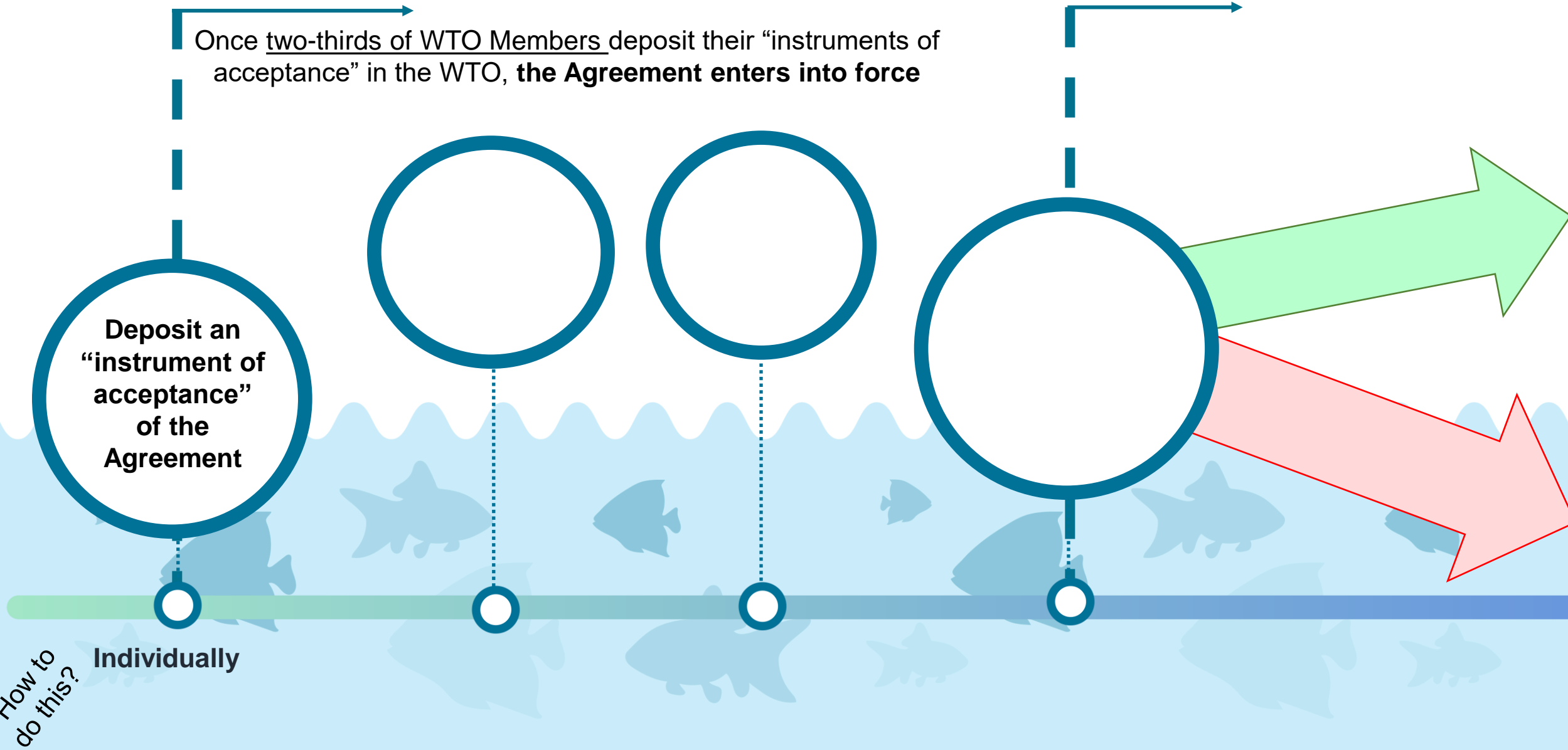
Strengthening sustainable fisheries management systems

Complying with notification and transparency obligations, particularly on fisheries related information policies and practices

❖ To operate in cooperation with other relevant international organizations – including FAO and IFAD

❖ Aims at integrating and creating coherence between subsidy policies and fisheries sustainability within the beneficiary governments

New steps



“Accepting” the Agreement

- ❖ Members should complete their domestic acceptance procedures and **deposit their “instruments of acceptance”***
- ❖ No single, uniform approach for drawing up an instrument of acceptance. But, in line with established depositary practice, **the instrument of acceptance must:**
 - clearly identify the Protocol by its full title and by the place and date of its adoption (i.e. “the Protocol Amending the Marrakesh Agreement Establishing the World Trade Organization, Agreement on Fisheries Subsidies, done at Geneva on 17 June 2022” or, alternatively, reproduce the Protocol as an attachment to the instrument of acceptance);
 - state that the Member concerned formally accepts the Protocol and expresses its consent to be bound by it;
 - state the date and the place of issuance of the instrument of acceptance;
 - be signed; and
 - state the name and title of the person signing the instrument.
- ❖ In accordance with paragraph 3 of Article X of the WTO Agreement, once **two-thirds of WTO Members** deposit their “instruments of acceptance” in the WTO, **the Agreement enters into force**

Interested delegations are invited to contact the Depositary Assistant in the WTO Legal Affairs Division, with any further questions, in particular if further assistance is needed with drawing up a valid instrument of acceptance. In particular, delegations are encouraged to share with the Depositary Assistant an advance unsigned soft copy of their instrument of acceptance so that it can be reviewed by the WTO Legal Affairs Division before it is signed so as to facilitate the subsequent deposit of the signed original

***Further information** on how to accept the Protocol of Amendment to insert the Agreement on Fisheries Subsidies into Annex 1A of the WTO Agreement
https://www.wto.org/english/tratop_e/rulesneg_e/fish_e/agreement_fisheries_subsidies_e.htm

New steps

Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, **the Agreement enters into force**

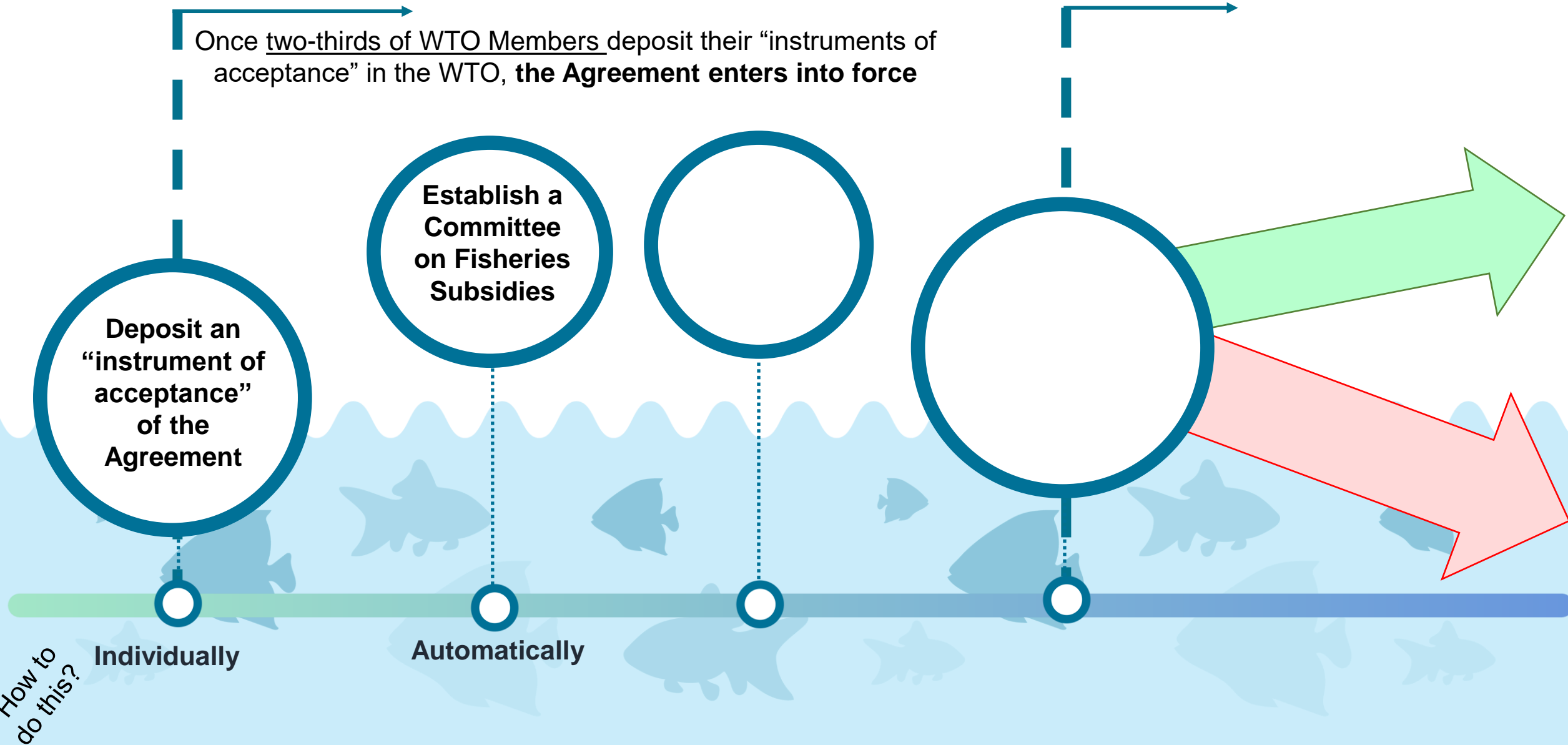
Establish a
Committee
on Fisheries
Subsidies

Deposit an
“instrument of
acceptance”
of the
Agreement

Individually

Automatically

How to
do this?





Establish a Committee on Fisheries Subsidies

Establishment of a Committee on Fisheries Subsidies

- ❖ Composed of representatives from each of the Members
- ❖ Elects its own Chair
- ❖ Meets not less than twice a year
- ❖ Affords Members the opportunity to consult

“Annual review”

- ❖ Review and reporting on the implementation and operation of the Agreement
- ❖ Inform the CTG of developments during the period covered by such reviews

Examine all information provided pursuant to Articles 3 and 8 (Notifications)

“Periodic review”

- ❖ Review the operation of this Agreement with a view to identifying all necessary modifications to improve the operation of this Agreement
- ❖ Where appropriate, the Committee may submit to the CTG proposals to amend the text of this Agreement

Entry into force of the Agreement

Annually

Not less than every two years

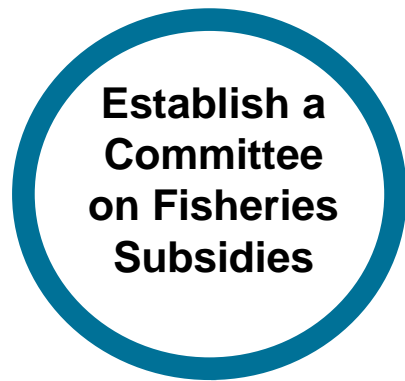
Not later than five years after the date of entry into force of this Agreement and every three years thereafter

New steps

Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, **the Agreement enters into force**



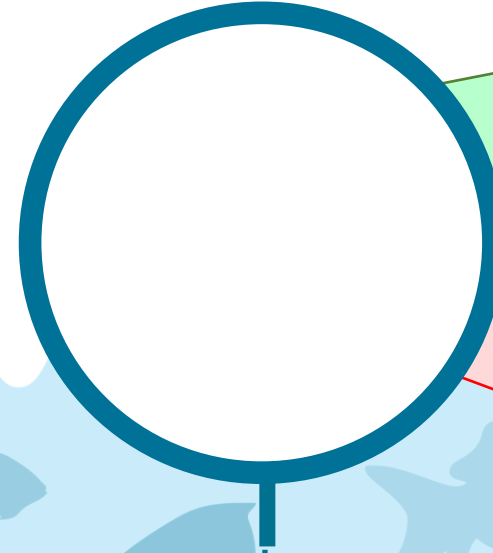
Individually



Automatically



Individually/
collectively



How to do this?

What Members need to do now? Transparency

Notification obligation under Article 25 of the SCM Agreement are applicable

❖ **Note: any confidential information does not have to be notified!**

Members must provide additional fisheries-related information

❖ Membership to any RFMO/As

❖ Measures concerning implementation and administration of the Agreement

❖ Descriptions of fisheries regimes

❖ List of vessels and operators determined to have engaged in IUU fishing

❖ Type or kind of fishing activity for which the subsidy is provided; and

❖ To the extent possible:

- ✓ Status of the fish stocks
- ✓ CMM
- ✓ Fleet capacity
- ✓ Vessel's name and number
- ✓ Catch data

Entry into force of the Agreement

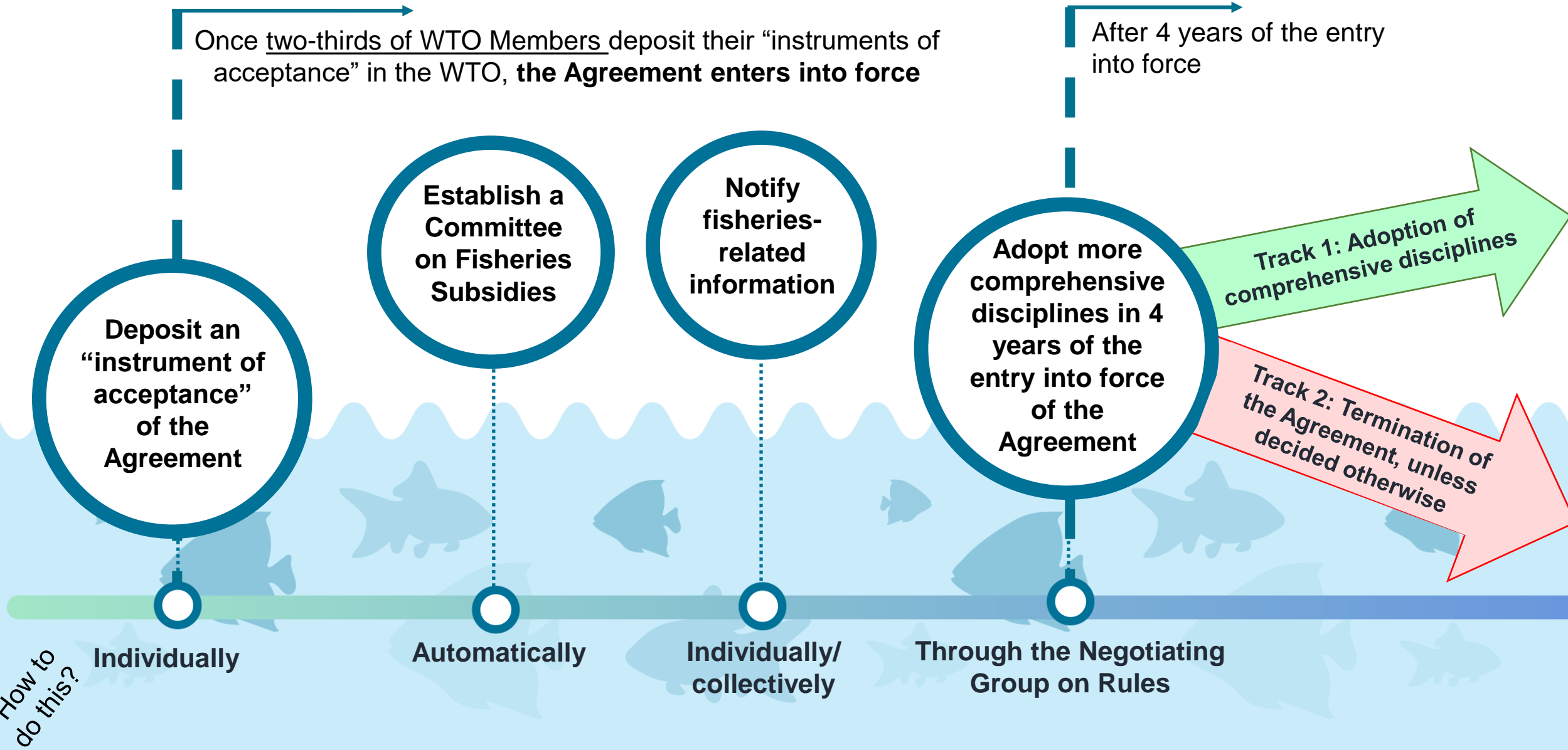
Upon entry into force and promptly notify and updates

Within one year

Annually

By 30 June of every second year (the odd numbered years)
**every 4 years for certain developing (<0.8%) and LDC Members*

New steps



Adopt comprehensive disciplines

- ❖ In the MC12 decision, Members agreed to **continue negotiations** on outstanding issues, with a view to making recommendations by MC13 for additional provisions that would further enhance the disciplines of the Agreement
- ❖ This includes further disciplines on certain forms of fisheries subsidies that contribute to **overcapacity and overfishing**, recognizing the appropriate SDT
- ❖ **“Termination clause”**
Termination of the Agreement if comprehensive disciplines are not adopted **within four years** after the entry into force, unless agreed otherwise

