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THE NATIONAL ASSEMBLY


THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DIRECTORATE OF DEPARTMENTAL COMMITTEES

**DEPARTMENTAL COMMITTEE ON BLUE ECONOMY, WATER AND
IRRIGATION**

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REPORT ON THE AGREEMENT ON FISHERIES SUBSIDIES

 THE NATIONAL ASSEMBLY PAPERS LAID		NATIONAL ASSEMBLY RECEIVED 16 APR 2025 SPEAKER'S OFFICE P. O. Box 41842, NAIROBI.
DATE: 17 APR 2025		
DAY. <i>Thursday</i>		
TABLED BY:	<i>Hon. Kargogo Bowen MP</i> <i>Chairperson</i>	
CLERK-AT THE-TABLE: <i>A. Shibuoka</i>		

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

APRIL 2025

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LIST OF ABBREVIATIONS AND ACCRONYMS

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

CHAIRPERSON'S FOREWORD

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

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

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

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

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

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

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

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

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

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

Chairperson, Departmental Committee on Blue Economy, Water and Irrigation

PART I

I.0 PREFACE

I.1 Establishment of the Committee

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

I.2 Subjects of the Committee

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

1.3 Committee Membership

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

Chairperson

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

United Democratic Alliance Party

Vice- Chairperson

Hon. Kemero Maisori Marwa, MP
Kuria East Constituency

United Democratic Alliance Party

Hon. Mohamed Abdikadir Hussein, MP
Lagdera Constituency

Orange Democratic Movement

Hon. Tandaza Kassim Sawa, MP
Matuga Constituency

Amani National Congress

Hon. Chepkwony Charity Kathambi, MP
Njoro Constituency

United Democratic Alliance Party

Hon. William Kamket, MP
Tiaty Constituency

KANU

Hon. Buyu Rozaah Akinyi, MP
Kisumu West Constituency

Orange Democratic Party

Hon. Eng. Paul Nzengu, MP
Mwingi North Constituency

Wiper Democratic Party

Hon. Were Charles Ong'ondo, MP
Kasipul Constituency

Orange Democratic Party

Hon. Dorothy Muthoni Ikiara, MP
Nominated

United Democratic Alliance Party

Hon. Nebart Bernard Muriuki, MP
Mbeere South Constituency

Independent Member

Hon. Mnyazi Amina Laura, MP
Malindi Constituency

Orange Democratic Movement

Hon. Adow Mohamed Aden, MP
Wajir South Constituency

Orange Democratic Party

Hon. Eric Wamumbi, MP
Mathira Constituency

United Democratic Alliance Party

Hon. George Gachagua, MP
Ndaragwa Constituency

United Democratic Alliance Party

I.4 Committee Secretariat

5. The Committee is facilitated by the following staff:

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

Ms. Ivy Kageha
Clerk Assistant III

Dr. Benjamin Ngimor
Principal Fiscal Analyst

Ms. Lynette A. Otieno
Senior Legal Counsel

Ms. Veron D. Aluoch
Research Officer III

Ms. Joyce Wachera
Hansard Officer

Mr. Allan Gituku
Sergeant-At-Arms

Ms. Fridah Ngari
Media Relations Officer

Mr. Eugene Luteshi
Audio Officer

PART II

2.0 CONSIDERATION OF THE PROTOCOL

2.1 Background information

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

2.2 Legal and Institutional Framework

2.1.1 Constitutional and Legal Basis

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

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

2.1.2 Role of the National Assembly

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

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

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

2.2 Overview of the Agreement on Fisheries Subsidies

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

2.3 Key Provisions of the Agreement

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

PART III

3 PUBLIC PARTICIPATION/ STAKEHOLDER ENGAGEMENT

3.1 Call for submission of memoranda from public

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

3.2 State Department for Blue Economy and Fisheries

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

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

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

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

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

3.3 State Department for Trade

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

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

(FAO), posed a global threat to food security, poverty reduction, and marine sustainability. Sustainable Development Goal (SDG) 14, emphasizes conservation and sustainable use of oceans and marine resources. It was noted that the 11th WTO Ministerial Conference in 2017 had tasked members with eliminating fisheries subsidies contributing to overfishing, overcapacity, and illegal, unreported, and unregulated (IUU) fishing.

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

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

3.4 State Department for Foreign and Diaspora Affairs

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

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

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

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

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

3.5 The National Treasury

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

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

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

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

3.6 Office of the Attorney-General and Department of Justice

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

60. The Agreement was said to apply to subsidies within the meaning of Article I.1 of the Agreement on Subsidies and Countervailing Measures, specifically to marine wild capture fishing, related activities at sea, while aquaculture and inland fisheries were excluded from its scope.
61. The Agreement had originated from the recommendations made at the 11th WTO Ministerial Conference in 2017, where members had been mandated to prohibit fisheries subsidies that contributed to overcapacity and overfishing, eliminate subsidies that supported illegal, unreported, and unregulated (IUU) fishing, and refrain from introducing new such subsidies.
62. The main objectives of the Agreement were outlined as safeguarding the world's seas, oceans, and maritime resources by promoting sustainable and responsible fishing practices to prevent overfishing and overcapacity. The Agreement aims to create a level

playing field in international fisheries trade by ensuring that subsidies did not distort competition or create unfair advantages for certain countries or fishing fleets. Additionally, the Agreement seeks to balance support for the livelihoods of fishing communities while ensuring the long-term health of the world's seas, oceans, and marine resources.

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

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

PART IV

4.0 COMMITTEE OBSERVATIONS

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

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

PART V

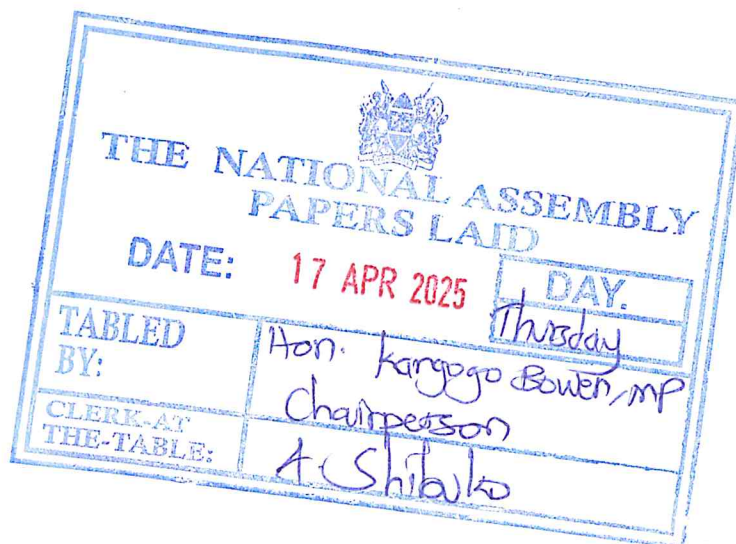
COMMITTEE RECOMMENDATIONS

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

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

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

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





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

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

VENUE: COMMITTEE RM. 18/19, 3RD FLOOR, BUNGE TOWER, PARLIAMENT BUILDINGS

AGENDA: CONSIDERATION AND ADOPTION OF THE COMMITTEE REPORTS ON SESSIONAL PAPER NO. 7 OF 2024 ON NATIONAL SANITATION MANAGEMENT POLICY AND PROTOCOL AMENDING MARRAKESH AGREEMENT (AGREEMENT ON FISHERIES SUBSIDIES)

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

Forwarded by:

Signed: Date: 15/4/2025
Mr. Nicodemus K. Maluki
First Clerk Assistant – Committee Clerk

Approved by:

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

