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

SDGs

Target 14.6: “by 2020, prohibit certain forms of fisheries subsidies which contribute to **overcapacity and overfishing**, and eliminate subsidies that contribute to **IUU fishing**” + **SDT** integral

2015

MC11 Ministerial Decision

conclude negotiations by 2019 (MC12) – same goals as Target 14.6

2017

Doha Mandate

to **“**clarify and improve” existing (ASCM) rules, with link to environment, and developing Members’ LDCs’ concerns

2001

2005

Hong Kong

elaborated mandate: “Prohibit […] certain forms of fisheries subsidies that contribute to **overcapacity and overfishing**” + **SDT**

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

- Subsidies to IUU fishing
- Subsidies to overfished stocks
- Fishing in the unregulated high seas

S&DT in the Agreement

Enforceable through the WTO dispute settlement system

Subject to termination clause

CROSS-CUTTING RULES

- **Institutional arrangements**
- **Notification and Transparency**
- **Technical Assistance**

Other disciplines

To take special care and exercise due restraint when subsidizing:

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

…except for disaster relief

SCOPE

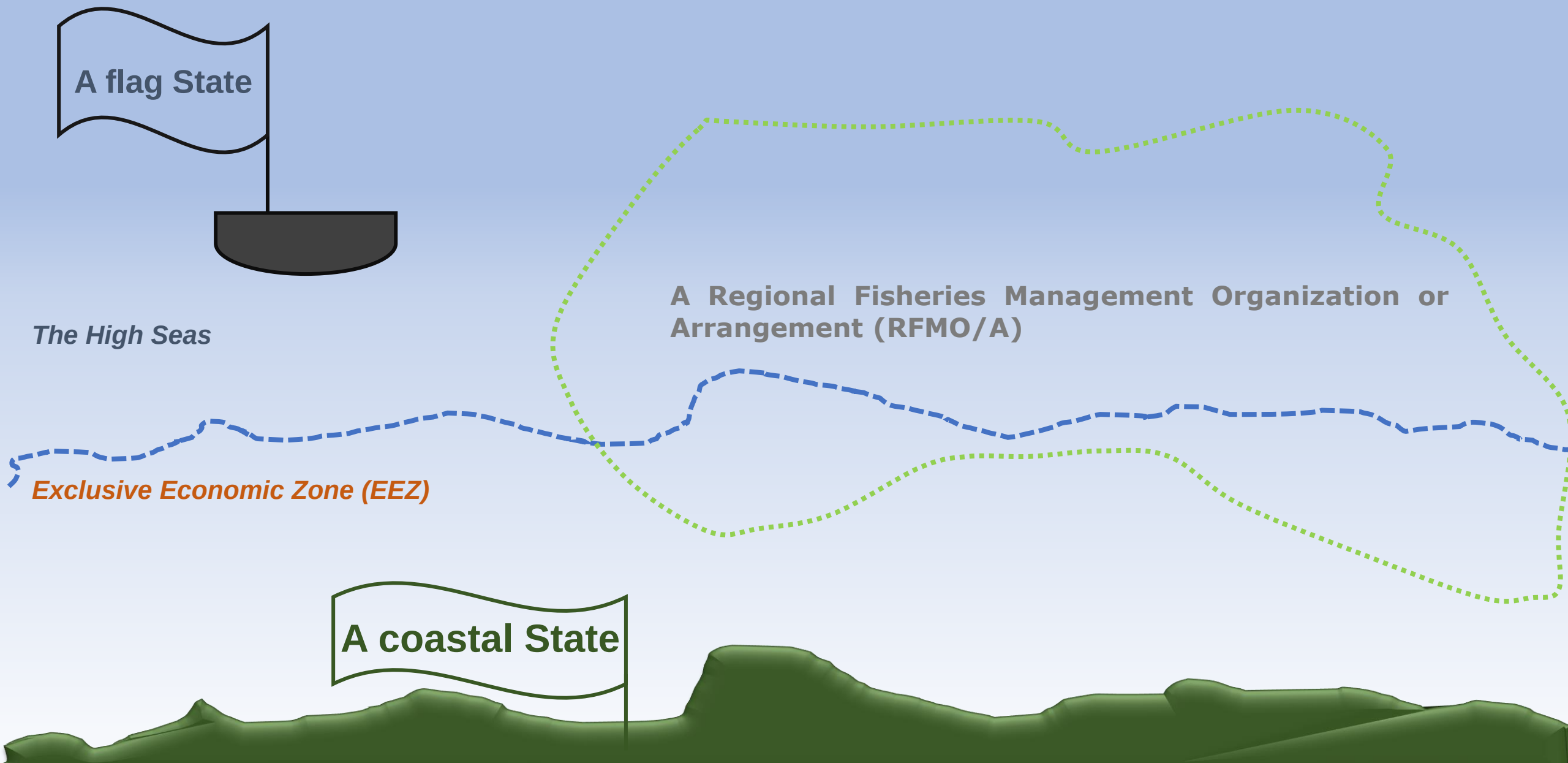
Within the scope:

- 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



	Coastal Member	Flag State Member	RFMO/A
Who can make an IUU determination?			
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?

Coastal Member	RFMO/A
for activities in areas under its jurisdiction	in areas and for species under its competence

Based on what?

Coastal Member	RFMO/A
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

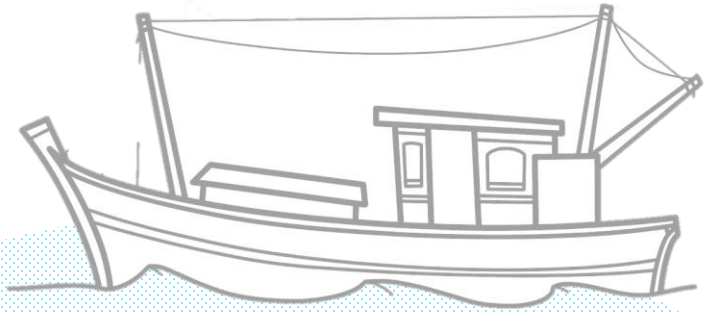
Subsidizing Member

- 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

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

- **Vessels not flying that Member's flag**
- **Fishing on unassesed 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:**

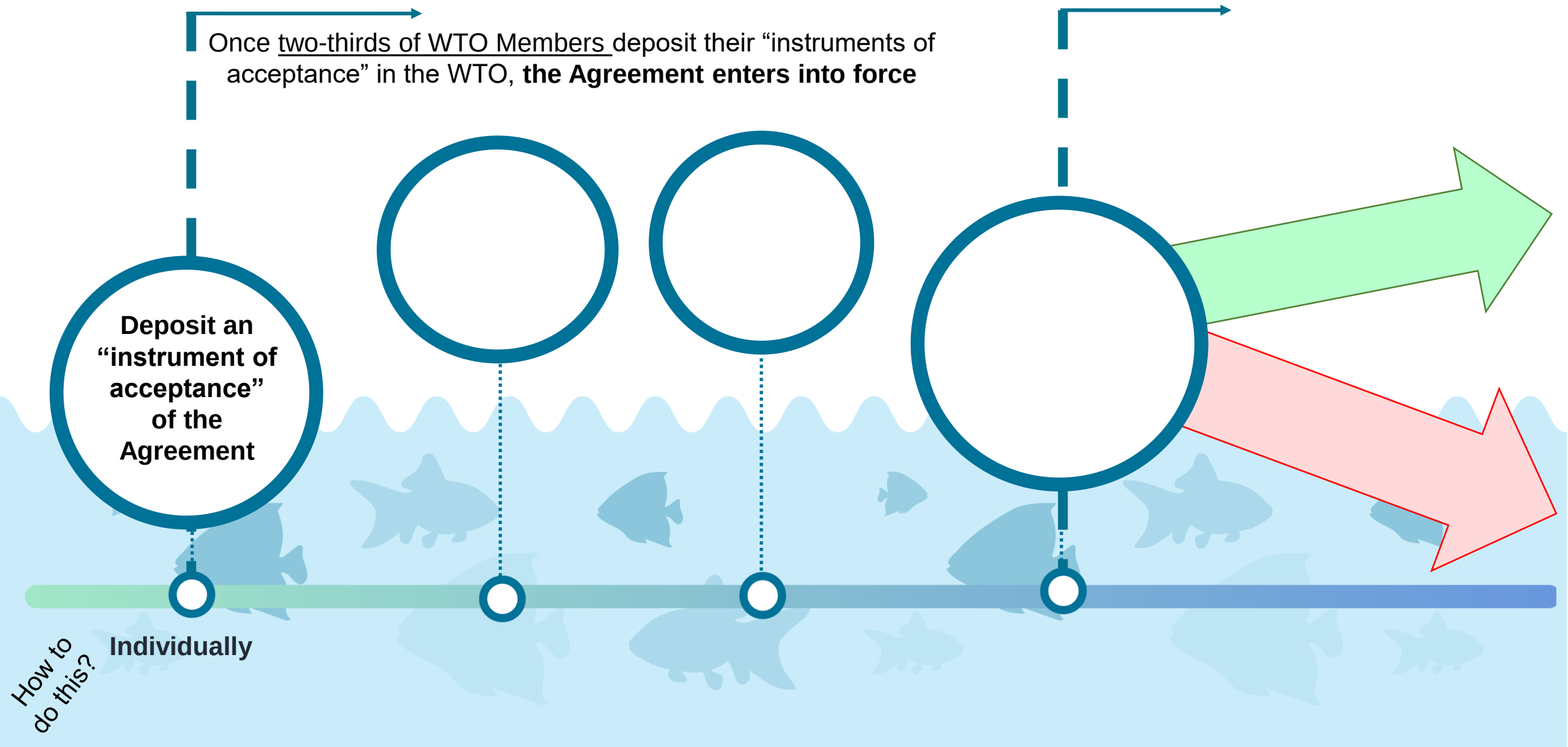
Integrating fisheries sustainability elements into fisheries subsidies policies and practices

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


Once two-thirds of WTO Members deposit their “instruments of acceptance” in the WTO, **the Agreement enters into force**
Deposit an “instrument of acceptance” of the Agreement
Individually
How to do this?

“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**

Deposit an "instrument of acceptance" of the Agreement

Establish a Committee on Fisheries Subsidies

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

Entry into force of the Agreement

"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

Annually

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

Not less than every two years

"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

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**

Deposit an "instrument of acceptance" of the Agreement

Establish a Committee on Fisheries Subsidies

Notify fisheries-related information

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

❖ Measures concerning implementation and administration of the Agreement

❖ Descriptions of fisheries regimes

❖ Membership to any RFMO/As

❖ 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

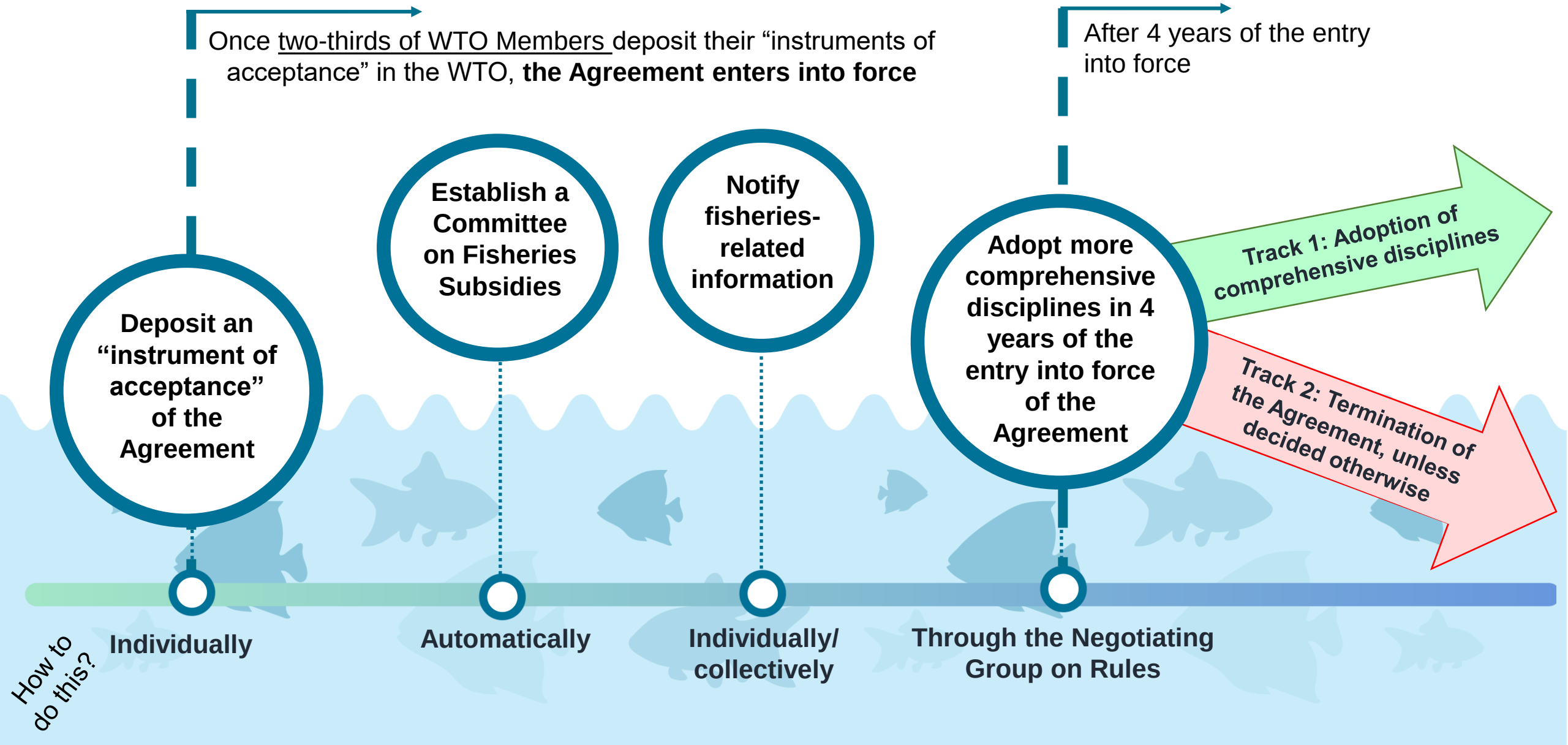
Upon entry into force and promptly notify and updates

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


Once two-thirds of WTO Members deposit their "instruments of acceptance" in the WTO, **the Agreement enters into force**
After 4 years of the entry into force
Deposit an "instrument of acceptance" of the Agreement
Establish a Committee on Fisheries Subsidies
Notify fisheries-related information
Adopt more comprehensive disciplines in 4 years of the entry into force of the Agreement
Track 1: Adoption of comprehensive disciplines
Track 2: Termination of the Agreement, unless decided otherwise
How to do this?
Individually
Automatically
Individually/ collectively
Through the Negotiating Group on Rules

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

THANK
YOU !