

G2 HACKATHON CHALLENGE

How to Make the WTO
Fit for Future Trade



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Geneva Trade
Platform

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2021 Hackathon Submission

Fossil fuel subsidies reform

BSOG

Simon Happersberger

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Watch the Video



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Question #1

Define the substantive issue that your team is addressing, why it's a problem, and why your team believes the WTO is the right forum to address it.

Fossil fuel subsidies (FFS) are undermining international efforts to combat climate change, burdening public budgets and hindering the transition to an environmentally sustainable global economy. According to the International Monetary Fund efficient fossil fuel pricing in 2015 would have lowered global carbon emissions by 28 %, fossil fuel air pollution deaths by 46 %, and increased government revenue by 3.8 % of GDP. FFS are in particular inconsistent with the goals of the Paris Agreement and the Sustainable Development Goals 13 on climate action, 7.2 on the transition to renewable energies and 12.c on fossil fuel subsidies. The International Renewable Energy Agency reports that FFS outnumbered support to renewable power generation by USD 319 billion in 2020. In addition, the current global trade system creates an implicit subsidy to CO₂ emissions in internationally traded goods as tariffs and non-tariff barriers are lower on polluting than on clean industries. While producer subsidies increase the profitability of producers, consumer subsidies are often justified with keeping energy prices low. Recent studies indicate though that energy subsidies reinforce income inequalities as the richest 20 % of households receive six times more in subsidies than the poorest 20 %. In short, FFS set incentives misaligned with the optimal use of the world's resources and the objective of sustainable development.

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The WTO is the right venue to advance an international reform on fossil fuel subsidies due to its expertise in trade-distorting subsidies and its experience with the negotiation of sectoral disciplines for certain types of subsidies for example in agriculture or fisheries. The current legal framework of the Agreement on Subsidies and Countervailing Measures (ASCM) inadequately safeguards against the use of FFS though. The ASCM prohibits "actionable" and "prohibited" subsidies, which are based on elements that are difficult to apply to FFS. The (i) specificity and (ii) adverse effect requirements for actionable subsidies create considerable leeway for member states to support FFS. For example, more than 90% of FFS are consumption-side subsidies which makes it difficult to satisfy the "specificity" threshold. Furthermore, FFS do not typically use "local content requirements", which take them out from the ambit of "prohibited subsidies" under Art. 3 of the ASCM. There is thus a need to address this gap in the WTO framework.

A multilateral fossil fuel subsidies reform is urgently needed in regard to the renewed misallocation of recovery funds in the context of the Covid-crisis. According to the International Institute on Sustainable Development, more than half of recovery funds committed to energy in G20 countries (235 USD billion) target fossil fuels. A FFS reform within the WTO would not only allow WTO members to agree on a common standard on how to measure FFS and avoid free rider problems with regard to the international competitiveness of domestic industries. It would further give a positive example for the mutually supportive relation between the WTO and Multilateral Environmental Agreements envisioned in the Doha Development Agenda and underline the WTO commitment to make the multilateral trading system work for sustainable development.

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Question #2

Propose a specific treaty text, or more informal commitment/declaration text, that addresses either the concern or a particular, detailed aspect of it.

Joint Intergovernmental Statement

1. Emphasising the opportunity to efficiently use public funds to cultivate green and sustainable transitions after the COVID-19 pandemic taking into account the needs of disadvantaged households,
2. Acknowledging the 2017 Ministerial Declaration on Fossil Fuel Subsidy Reform, the 2020 CTE Communication on Trade and Environmental Sustainability, and other recent developments in international fora;

We have reached the following shared understandings:

- We call for the expedited discontinuation of producer fossil fuel subsidies that damage the transition into sustainable energy grids, and encourage the gradual phase-out of consumer fossil fuel subsidies, highlighting the necessity to address the essential needs of disadvantaged households and to ensure the proportionality of such subsidies;
- We urge WTO Members to avoid, in accordance with the goals of the Paris Agreement, the adoption of new producer fossil fuel subsidies and consider the need to reduce emissions and trade-distortions when designing consumer fossil fuel subsidies;
- We urge all WTO Members to boost transparency through increased notification and TPRM reporting and to develop common standards for measuring fossil fuel subsidies;
- We seek to proliferate discussion in the WTO utilising the above proposals, and encourage other WTO members to join these efforts.

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Question #3

Suggest a legal/technical or institutional way to implement your textual proposal within the broader WTO framework (500 words)

The strategy proposes the following steps: (1) adopt a Joint Statement led by like-minded WTO Member States, including those responsible for providing the biggest fossil fuel subsidies (FFS); and (2) work towards a binding plurilateral agreement and eventually a multilateral agreement as the ultimate goal. The conclusion of the Government Procurement Agreement serves as a successful precedent for this strategy.

The proposal needs to be adopted in the form of a Joint Statement by the 12th Ministerial Conference in November. The Joint Statement serves as a soft instrument indicating the political commitments of its signatories. Defining and imposing a categorical prohibition on FFS under the Agreement on Subsidies and Countervailing Measure will trigger the amendment procedure under Art. X of the Marrakesh Agreement. This procedure calls for the amendment to be approved by $\frac{2}{3}$ of the member states. Such a vote requirement can significantly delay its adoption while also risking an extensively negotiated “amendment” with diluted commitments. Thus, while the legislative route could provide a strong deterrence against the use of FFS, the adoption procedure makes it an unsuitable response to the urgent climate change challenge. Furthermore, invoking the remedies under this new prohibition may require a recourse to the Dispute Settlement Body, which has currently an incapacitated Appellate Body.

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By contrast, the joint statement route is proposed as a starting point for a possible plurilateral, and eventually a multilateral agreement. The joint statement will build from and go beyond the 2017 Ministerial Statement on Fossil Fuel Subsidies Reform and the 2020 CTE Communication on Trade and Environmental Sustainability by seeking for the (i) prohibition and expedited action on producer subsidies, (ii) gradual elimination of consumer subsidies taking into account the need to provide access to energy for low-income household; (iii) standstill obligations on new producer subsidies; (iv) mechanism to monitor progress in FFS reduction and strengthen transparency to provide the proverbial “nudge”; and (v) develop common standards for measuring FFS. These measures are expected to further political momentum, set high standards and facilitate experimentation for a binding commitment later on.

To have significant environmental impact, the joint statement should be signed by the G20 members building on their FFS commitments during the Pittsburgh Summit and can include signatories to the Friends of Fossil Fuel Subsidy Reform and other similar coalitions. The International Monetary Fund reported in 2019 that China, United States, Russia, the EU and India provided the top 5 biggest FFS in 2015. Yet, most have recently confirmed ambitious commitments against FFS. Both the European Green Deal and the US’ Made in America Tax Plan (2021) communicated clear support to end FFS. Russia and China made the same commitment as G20 and APEC members, with China aiming for climate neutrality by 2060. Russia is poised to benefit by aligning its industries towards a global economy with diminishing demand for fossil fuels. These developments signal a strong political momentum to support an ambitious initiative to eliminate FFS under the WTO framework.