

WORKING PAPER

**INTERNATIONAL TRADE RELATED DISCIPLINES ON FOSSIL FUELS –**  
**A DEVELOPING COUNTRY PERSPECTIVE**

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## INTERNATIONAL TRADE RELATED DISCIPLINES ON FOSSIL FUELS –

### *A Developing Country Perspective*

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## A. Introduction

1. Fossil fuels are a class of hydrocarbons that are formed from fossilized, remains of organic matter over a period of millions of years. The primary use for fossil fuels is energy production but on account of their origins, fossil fuels have a high carbon content. Currently, fossil fuels account for 75 - 80% of global energy use and three quarters of humanity's total carbon dioxide emissions.<sup>1</sup> Therefore, fossil fuels are a subject of several discussions at the international level in the context of environmental protection.
2. As countries are increasingly seeking to address environmental concerns through alternate means including through the international trade regime, it is critical to examine the trend of potential international trade related disciplines regarding fossil fuels and its implications. In this context, the paper will first examine the state of play with respect to the international disciplines regarding fossil fuels. Accordingly, in section B, the paper discusses fossil fuel related developments at multiple different international forums including the G7, G20, OECD, etc.
3. In Section C, this paper seeks to analyse the implications of such future disciplines in the context of developing countries by looking at comparative statistics related to fossil fuels between developing and developed countries. Specifically, section C also examines the case of India and the possible impact of fossil fuel related disciplines may have on India's energy framework. Thereafter, in section D, we provide recommendations for the way forward for both developing countries generally, and India, specifically.

## B. State of play regarding disciplines pertaining to fossil fuels

4. A wide array of international institutions influence state and non-state actors in the fossil fuel sector. These include the International Energy Agency (IEA) and the Organisation for Economic Co-operation and Development (OECD), the Organization of Petroleum-Exporting Countries (OPEC), the International Monetary Fund (IMF), the World Trade Organization (WTO) and the United Nations Framework Convention on Climate Change (UNFCCC). In addition, summit processes such as the G7 and G20 also play a key role in global climate change and energy governance.
5. This section examines the development of discussions and disciplines related to fossil fuels at a variety of forums. The disciplines developed at these forums primarily deal with issue of fossil fuel subsidies (FFS), which has been explored in greater detail in this paper.

### B.1. Historical overview of forums discussing fossil fuels

6. The first intergovernmental organization in the energy field was the European Coal Organization, but it had a rather short lifespan of two years (1945–47).<sup>2</sup> Thereafter, in the backdrop of multinational companies such as British Petroleum and ExxonMobil dominating the oil industry, several major oil-exporting states (Iran, Iraq, Kuwait, Saudi Arabia and Venezuela) founded the

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<sup>1</sup> 'Fossil Fuels: The Dirty Facts', Natural Resources Defense Council (NRDC), Accessed at: <<https://www.nrdc.org/stories/fossil-fuels-dirty-facts>>, Last accessed: 3 March 2022.

<sup>2</sup> Thijs Van de Graaf, 'The Politics and Institutions of Global Energy Governance', Palgrave Macmillan, New York, (2013), Available at: <<http://www.palgrave.com/page/detail/the-politics-and-institutions-of-global-energy-governance-thijs-van-de-graaf>>, Last accessed: 3 March 2022.

OPEC in 1961, so as to have more influence on oil prices.<sup>3</sup> However, during the oil-crisis of the early 1970s, certain oil-importing countries such as European Union (EU) countries, United Kingdom (UK) and the United States (U.S.) formed the IEA in 1974 to help address supply shortages and counteract OPEC's influence under the OECD framework (which had been created 13 years earlier).<sup>4</sup>

7. During the late 2000s, a range of institutions took up the challenge of addressing fossil fuels more directly, particularly the Bretton Woods institutions such as the World Bank, IMF, the G20 and the OECD, all created for broader purposes than just energy governance.<sup>5</sup> While for the World Bank (as well as other multilateral and regional development banks), the focus had been primarily on the investments made in fossil fuel development, the focus of the G20, OECD, WTO and IEA (as well as OPEC) was towards addressing FFS. More recently, the UNFCCC featured discussions pertaining fossil fuels in the context of reducing carbon emissions.

## B.2. Key forums discussing fossil fuel related disciplines pertaining to international trade

8. In order to understand the international trade related disciplines on fossil fuels, we examine the recent developments at G7, G20, OECD, the WTO and certain other forums below.

### a) G 7

9. The G7 comprises seven members (UK, U.S., Canada, Japan, Germany, France and Italy, plus the EU) that identify as being bound by shared values such as open, democratic and outward-looking societies.<sup>6</sup>
10. In the recent G7 summit hosted by the UK in May 2021, members undertook renewed commitments pertaining to fossil fuels. In particular, the *Carbis Bay G7 Communique* noted that members will “phase out new direct government support for international carbon-intensive fossil fuel energy as soon as possible, with limited exceptions consistent with an ambitious climate neutrality pathway, the Paris Agreement, 1.5°C goal and best available science”.<sup>7</sup>
11. Further, specifically in the context of FFS, the members reaffirmed their existing commitment to eliminating inefficient subsidies on fossil fuels by 2025, and called upon all countries to join them in recognising the substantial financial resource this could unlock globally to support the transition and the need to commit to a clear timeline.<sup>8</sup>
12. However, it is relevant to note that G7 communiqués are not in the nature of binding obligations. In fact, in a recent report published by International Institute for Sustainable Development (IISD) along with some other organizations, found that G7 nations have committed more than US\$189 billion to support coal, oil and gas, while clean forms of energy received only \$147 billion

<sup>3</sup> Harro van Asselt, “Governing the transition away from fossil fuels: The role of international institutions”, Stockholm Environment Institute, Working Paper 2014-07, Accessed at <<https://mediamanager.sei.org/documents/Publications/Climate/SEI-WP-2014-07-Fossil-fuels-intl-institutions.pdf>>, Last accessed: 3 March 2022.

<sup>4</sup> *Ibid*

<sup>5</sup> *Ibid*

<sup>6</sup> “What is the G7?”, Accessed at: <<https://www.g7uk.org/what-is-the-g7/>>, Last accessed: 3 March 2022.

<sup>7</sup> Carbis Bay G7 Summit Communique, para. 39, Accessed at: <<https://www.g7uk.org/wp-content/uploads/2021/06/Carbis-Bay-G7-Summit-Communique-PDF-430KB-25-pages-1-2.pdf>>, Last accessed: 3 March 2022.

<sup>8</sup> *Ibid*

between January 2020 and March 2021.<sup>9</sup> In other words, fossil fuels received more than half of the total support to energy-intensive sectors despite repeated pledges by G7 countries to eliminate FFS.

## b) G20

13. The “Group of 20” (G20), a larger group, was formed by the G7 Finance Ministers in the wake of the 1997 economic crisis in order to include more countries in their discussions related to global economics and finance.<sup>10</sup> Argentina, Australia, Brazil, Canada, China, France, Germany, Japan, India, Indonesia, Italy, Mexico, Russia, South Africa, Saudi Arabia, South Korea, Turkey, the UK, the U.S., and the EU are part of the G20.<sup>11</sup>
14. As early as September 2009, G20 members in their Communiqué agreed to phase out and rationalize over the medium-term inefficient FFS while providing targeted support for the poorest.<sup>12</sup> At the G20 Energy-Climate Ministerial held in July 2021, the G20 members reaffirmed their 2016 call for the need to use the best available technologies and practices in order to address the environmental impacts, including greenhouse gas (GHG) emissions, of their production, transport and consumption and noted that phasing out inefficient fossil fuel subsidies that encourage wasteful consumption is one of the key policies to reform harmful incentives and align finance flows with the Paris Agreement.<sup>13</sup> The G20 members also recalled their 2009 Pittsburgh and 2013 Saint Petersburg commitments to phase-out and rationalize, over the medium term, inefficient FFS while providing targeted support for the poorest.<sup>14</sup> At the recent G20 Heads of State and Government Summit held on 30 - 31 October 2021 in Rome, G20 leaders declared that they will increase efforts to implement their 2009 Pittsburgh commitment.<sup>15</sup>
15. Similar to the G7, the G20 communiqués are also not binding commitments but reveal the direction that G20 members are working towards in terms of disciplines on fossil fuels.

## c) Organisation for Economic Co-operation and Development (OECD)

16. The OECD was formed in 1961 and currently has 37 member countries including the U.S., EU member states, Canada, Mexico, Australia, Japan, South Korea and New Zealand.<sup>16</sup> As mentioned above, in September 2009, the G20 members committed to phase out and rationalize over the medium-term inefficient FFS. To follow up on this commitment, members of the G20 have since engaged in a voluntary process of periodically reporting their FFS. In an effort to further facilitate the sharing of experience and mutual learning among G20 members, a voluntary

<sup>9</sup> Lucile Dufour, Tom Moerenhout, Angela Picciariello and Estan Beedell, “Cleaning up their act? G7 fossil fuel investments in a time of green recovery”, Accessed at: <<https://learn.tearfund.org/-/media/learn/resources/reports/2021-tearfund-consortium-cleaning-up-their-act-g7.pdf>>, Last accessed: 3 March 2022.

<sup>10</sup> *Ibid*

<sup>11</sup> “About the G20”, Accessed at: <<https://www.g20.org/about-the-g20.html>> Last accessed: 3 March 2022.

<sup>12</sup> “G20 Leaders Pittsburgh Declaration”, 24 – 25 September 2009, Accessed at: <<https://www.oecd.org/g20/summits/pittsburgh/G20-Pittsburgh-Leaders-Declaration.pdf>>, Last accessed: 3 March 2022.

<sup>13</sup> Joint G20 Energy-Climate Ministerial Communiqué, July, 23 2021, para. 24, Accessed at <[https://www.g20.org/wp-content/uploads/2021/07/2021\\_G20-Energy-Climate-joint-Ministerial-Communique.pdf](https://www.g20.org/wp-content/uploads/2021/07/2021_G20-Energy-Climate-joint-Ministerial-Communique.pdf)>, Last accessed: 3 March 2022.

<sup>14</sup> *Ibid*, para. 38.

<sup>15</sup> G20 Rome Leaders’ Declaration, 30 – 31 October 2021, para. 27, Accessed at <<https://www.g20.org/wp-content/uploads/2021/10/G20-ROME-LEADERS-DECLARATION.pdf>>, Last accessed: 3 March 2022.

<sup>16</sup> “Key Information about the OECD”, Accessed at: <<https://www.oecd.org/general/Key-information-about-the-OECD.pdf>>, Last accessed: 3 March 2022.

peer review framework was developed under the OECD for rationalising and phasing out inefficient fossil-fuel subsidies that encourage wasteful consumption.<sup>17</sup>

17. In December 2013, a joint announcement was made by China and the U.S. that they would undertake a reciprocal peer review of their FFS under the G20.<sup>18</sup> The OECD Secretariat chaired the review process and led the drafting of the final reports for the six countries that participated in the peer reviews *viz.* China and the U.S. (completed 2016), Germany and Mexico (completed 2017), and Indonesia and Italy (completed 2019).<sup>19</sup> France and India have also signalled their intent to follow suit as the next peer review pair during an official visit to France by Prime Minister Narendra Modi in August 2019.<sup>20</sup>
18. The OECD review process consists of the following steps<sup>21</sup>:
  - (i) The terms of reference on the scope of measures to be reviewed, the review timeline, and the review panel is selected.
  - (ii) The country under review produces an initial self-report to provide context of the implementation of the measures under review and potential avenues for reform.
  - (iii) The draft is exchanged with the review team through written comments and in-person meetings.
  - (iv) The final report is developed with the agreement on the country under review and includes suggestions by the peer review panel.
19. The OECD also maintains an Inventory of Support Measures for Fossil Fuels, which catalogues budgetary and tax expenditures towards fossil fuels of around 50 governments.<sup>22</sup> Further, under the OECD framework some countries have entered into an Arrangement on Officially Supported Export Credits (“[Arrangement](#)”), which has detailed sectoral annexes including one on coal fired electricity generation.<sup>23</sup> The Arrangement first came into existence in 1978 and includes Australia, Canada, the European Union, Japan, Korea, New Zealand, Norway, Switzerland, Turkey, UK and the U.S. It seeks to provide a framework for the orderly use of officially supported export credits by fostering a level playing field for exporters based on quality and prices of goods and services exported rather than on the most favourable officially supported export credits.<sup>24</sup> The Arrangement is referred to in Annex I paragraph (k) of WTO’s Agreement on Subsidies and Countervailing Measures (ASCM) as an exception to prohibited export credits.
20. In February 2016, the participants of the Arrangement entered into the Coal-Fired Electricity Generation Sector Understanding (CFSU) provided for in Annex VI, which specifies stricter

<sup>17</sup> “OECD Work on Support for Fossil Fuels”, Accessed at: <<https://www.oecd.org/fossil-fuels/>> Last accessed: 3 March 2022.

<sup>18</sup> *Ibid*

<sup>19</sup> OECD, *OECD Companion to the Inventory of Support Measures for Fossil Fuels 2021* (OECD 2021), Accessed <[https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021\\_e670c620-en](https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021_e670c620-en)>, Last accessed: 3 March 2022, p. 32.

<sup>20</sup> India-France Joint Statement on Visit of Prime Minister to France (22-23 August 2019), 22 August 2019, para. 16, Accessed <<https://www.mea.gov.in/bilateral-documents.htm?dtl/31755/IndiaFrance+Joint+Statement+on+Visit+of+Prime+Minister+to+France+2223+August+2019>> Last accessed: 3 March 2022.

<sup>21</sup> OECD, *OECD Companion to the Inventory of Support Measures for Fossil Fuels 2021* (OECD 2021), Accessed <[https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021\\_e670c620-en](https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021_e670c620-en)>, Last accessed: 3 March 2022, p. 32.

<sup>22</sup> <https://www.oecd.org/fossil-fuels/data/>

<sup>23</sup> Arrangement on Officially Supported Export Credit, Trade and Agricultural Directorate, OECD, TAD/PG(2021)6, 30 June 2021, Accessed at: <[https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cite=tad/pg\(2021\)6](https://www.oecd.org/officialdocuments/publicdisplaydocumentpdf/?doclanguage=en&cite=tad/pg(2021)6)>, Last accessed: 3 March 2022.

<sup>24</sup> ‘Arrangement on Officially Supported Export Credits’, Arrangements and Sector Understanding, OECD, Accessed at: <<https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/>>, Last accessed: 3 March 2022.



terms and conditions for the provision of officially supported export credits relating to coal-fired electricity generation projects.<sup>25</sup> This CFSU is meant to encourage both exporters and buyers of coal-fired power plants to move away from low-efficiency towards high-efficiency technologies by limiting export credit support for coal-fired power plants.<sup>26</sup> Recently, the EU has sought to team up with other OECD countries to propose a ban on export credits to unabated international coal-fired electricity generation projects including phasing out unabated coal in energy production and end all financing of new coal infrastructure in third countries.<sup>27</sup>

21. In terms of legal effect, OECD's efforts of reviewing a countries' FFS framework are on a voluntary basis and the recommendations provided do not have any binding value in terms of obligations for members taking part in the process. OECD's efforts of maintaining inventory of support for fossil fuels granted by governments and conducting the aforementioned peer reviews are laudable and allows for an assessment as to the manner in which reform of FFS can be undertaken. However, these resulted in collection of significant data that may lead to the development of future disciplines in other forums such as the WTO.

#### d) Friends of Fossil Fuel Subsidy Reform (FFFSR)

22. The FFFSR is an informal group of non-G20 countries aiming to build political consensus on the importance of fossil fuel subsidy reform.<sup>28</sup> FFFSR was established in June 2010 and its members are Costa Rica, Denmark, Ethiopia, Finland, New Zealand, Norway, Sweden, Switzerland and Uruguay.<sup>29</sup> The FFFSR Communique notes that there is an urgent need to convert the high-level commitment made by the G20 members into practical action utilising the following principles<sup>30</sup>:
  - **Communication and Transparency** about the merits of subsidy policies and reform timetables, including through engagement and communications with the general public and civil society stakeholders to ensure a smooth, inclusive, bottom-up approach to reform;
  - **Ambition** in the scope and timeframe for implementing reforms; and
  - **Targeted support** to ensure reforms are implemented in a manner that safeguards the poorest.
23. In terms of the pathway for reform of FFS, the FFFSR note that “Strong progress has been made, but much still remains to be done and further global action towards successful implementation of the reforms is needed.” The FFFSR argue that fossil fuel subsidy reform (FFSR) is a trade issue falling within the scope of the WTO and have accordingly put forth certain proposals therein, which is discussed in the following section.<sup>31</sup>

<sup>25</sup> ‘Arrangement on Officially Supported Export Credits’, Arrangements and Sector Understanding, OECD, Accessed at: <https://www.oecd.org/trade/topics/export-credits/arrangement-and-sector-understandings/>, Last accessed: 3 March 2022.

<sup>26</sup> *Ibid*

<sup>27</sup> ‘EU teams up with other OECD countries to propose ban on export credits for coal-fired electricity projects’, European Commission, Brussels, 14 September 2021, Accessed at: <https://trade.ec.europa.eu/doclib/press/index.cfm?id=2299>, Last accessed: 3 March 2022.

<sup>28</sup> ‘Fossil Fuel Subsidies and Trade: Understanding the linkages’, Briefing Note, Accessed at: <http://fffsr.org/wp-content/uploads/2017/12/fossil-fuel-subsidies-trade3.pdf>, Last accessed: 3 March 2022.

<sup>29</sup> *Ibid*.

<sup>30</sup> ‘The Communique’, Accessed at: <http://fffsr.org/communique/>, Last accessed: 3 March 2022

<sup>31</sup> ‘Fossil Fuel Subsidies and Trade: Understanding the linkages’, Briefing Note, Accessed at: <http://fffsr.org/wp-content/uploads/2017/12/fossil-fuel-subsidies-trade3.pdf>, Last accessed: 3 March 2022.

## e) World Trade Organization (WTO)

24. The preamble of the Marrakesh Agreement Establishing the WTO recognizes that trade relations between WTO Members should allow “*for the optimal use of the world’s resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and enhance the means for doing so in a manner consistent with the respective needs and concerns at different levels of economic development*”.<sup>32</sup> Further, countries finalised the Decision on Trade and Environment in 1994 and created the WTO Committee on Trade and Environment (CTE).<sup>33</sup> The CTE’s mandate is exploratory and broad. It has contributed to identifying and understanding the relationship between trade and the environment in order to promote sustainable development.
25. With respect to trade and environment, the WTO Membership agreed to the following in the 2001 Doha Ministerial Declaration:<sup>34</sup>

“31. With a view to enhancing the mutual supportiveness of trade and environment, we agree to negotiations, without prejudging their outcome, on:

- (i) *the relationship between existing WTO rules and specific trade obligations set out in multilateral environmental agreements (MEAs). The negotiations shall be limited in scope to the applicability of such existing WTO rules as among parties to the MEA in question. The negotiations shall not prejudice the WTO rights of any Member that is not a party to the MEA in question;*
- (ii) *procedures for regular information exchange between MEA Secretariats and the relevant WTO committees, and the criteria for the granting of observer status;*
- (iii) *the reduction or, as appropriate, elimination of tariff and non-tariff barriers to environmental goods and services.*

***We note that fisheries subsidies form part of the negotiations provided for in paragraph 28.***

32. We instruct the Committee on Trade and Environment, in pursuing work on all items on its agenda within its current terms of reference, to give particular attention to:

- (i) *the effect of environmental measures on market access, especially in relation to developing countries, in particular the least-developed among them, and those situations in which the elimination or reduction of trade restrictions and distortions would benefit trade, the environment and development;*
- (ii) *the relevant provisions of the Agreement on Trade-Related Aspects of Intellectual Property Rights; and*
- (iii) *labelling requirements for environmental purposes....”*

26. Thereafter, negotiations at the CTE focused on three main themes *viz.* (i) the relationship between the WTO rules and multilateral environmental agreements (MEAs), (ii) the collaboration between the WTO and MEA secretariats; and (iii) the elimination of tariffs and non-tariff barriers on environmental goods and services.<sup>35</sup> Interestingly, as noted from the relevant paragraphs extracted above, an explicit mandate was issued under paragraph 28 of the Doha Ministerial Declaration to negotiate on the issue of fisheries subsidies, which is currently being negotiated. Whereas, no such similar mandate exists with respect to FFS.

<sup>32</sup> Marrakesh Agreement Establishing the World Trade Organization, Preamble, para. 1.

<sup>33</sup> 1994 Marrakesh Decision on Trade and Environment,

<sup>34</sup> Doha Ministerial Declaration, WT/MIN(01)/DEC/1, 20 November 2001, paras. 31 and 32.

<sup>35</sup> ‘Negotiations on trade and the environment’, Accessed at: <[https://www.wto.org/english/tratop\\_e/envir\\_e/envir\\_negotiations\\_e.htm](https://www.wto.org/english/tratop_e/envir_e/envir_negotiations_e.htm)> , Last accessed: 3 March 2022.

27. Nevertheless, the former WTO Director General Pascal Lamy during a speech to the Workshop on the Role of Intergovernmental Agreements in Energy Policy organized by the Energy Charter Secretariat on 29 April 2013 stated as follows:<sup>36</sup>

*“... [T]he on-going political debate on reforming fossil fuel subsidies has largely bypassed the WTO. The surge in world energy prices in recent years has drawn high-level attention to fossil fuel subsidies, including by the G-20. The link between subsidies, consumption of energy and climate change has added a new dimension to the debate. Given that WTO members have decided to tackle the issue of environmentally harmful subsidies in the fisheries sector as part of the Doha Round, the absence of this topic from the WTO radar screen can be considered as a missed opportunity.”*

28. Although the WTO does not specifically seek to address the issue of FFS, the WTO Agreements have a detailed framework for regulating trade distorting subsidies. The ASCM provides multilateral disciplines regulating the provision of subsidies by WTO Members. In fact, the ASCM regulates subsidies on all products while, the Agreement on Agriculture (AoA) has certain special disciplines regulating subsidies granted to agricultural products.
29. The ASCM provides a comprehensive definition of the term ‘subsidy’. It is defined as any measure which involves a financial contribution that confers a benefit to a specific enterprise or industry. The ASCM also prohibits certain kinds of subsidies *viz.* (i) subsidies that are contingent on exports and (ii) local content subsidies (subsidies that are paid for utilizing domestic goods). All other subsidies under the ASCM specific to certain enterprises are considered to be actionable, in the sense that WTO Members can apply a countervailing duty against the same based on the degree of subsidization.
30. Despite such strict rules governing subsidies, no FFS have been the subject of a dispute before a WTO panel or the Appellate Body, though there have been a few disputes challenging renewable energy subsidies.<sup>37</sup> The only issue regarding FFS that arose was during the GATT, where Australia in a communication to the European Community (EC) alleged that EC’s coal production subsidies were hurting Australian coal producers.<sup>38</sup> This issue was resolved mutually by the parties through the bilateral EC - Australian Coal Agreement.<sup>39</sup>
31. In 2017, at the 11<sup>th</sup> WTO Ministerial Conference (MC-11) held at Buenos Aires, 12 WTO Members (Chile, Costa Rica, Iceland, Liechtenstein, Mexico, Moldova, New Zealand, Norway, Samoa, Switzerland, Chinese Taipei and Uruguay) put forth a Ministerial Statement on FFSR where they sought to reach a shared understanding on<sup>40</sup>:

<sup>36</sup> ‘Lamy calls for dialogue on trade and energy in the WTO’, Statement of Pascal Lamy, former Director General of the WTO, 29 April 2013, Accessed at: <[https://www.wto.org/english/news\\_e/sppl\\_e/sppl279\\_e.htm](https://www.wto.org/english/news_e/sppl_e/sppl279_e.htm)>, Last accessed: 3 March 2022.

<sup>37</sup> Cleo Verkuijl, Harro van Asselt, Tom Moerenhout, Liesbeth Casier, Peter Wooders (2017), Tackling Fossil Fuel Subsidies through International Trade Agreements, Climate Strategies, Accessed at: <[https://climatestrategies.org/wp-content/uploads/2017/11/CS-Report\\_FFS-2017.pdf](https://climatestrategies.org/wp-content/uploads/2017/11/CS-Report_FFS-2017.pdf)>, Last accessed: 3 March 2022.

<sup>38</sup> GATT Committee on Subsidies and Countervailing Measures, Questions Submitted by Australia on the Legislation of the European Communities, GATT Doc. SCM/W/247 and L/6630/Add.20 (Oct. 22, 1991)

<sup>39</sup> Ronald Steenblik, Jehan Sauvage and Christina Timiliotis, ‘Fossil Fuel Subsidies and the Global Trade Regime’ in Jakob Skovgaard (ed), Harro van Asselt, The Politics of Fossil Fuel Subsidies and their Reform (1st edn, Cambridge University Press 2018), p. 153.

<sup>40</sup> Fossil Fuel Subsidy Reform Ministerial Statement, Ministerial Conference Eleventh Session, Buenos Aires, 12 December 2017, WT/MIN(17)/54

- *rationalisation and phase out of inefficient fossil fuel subsidies that encourage wasteful consumption, and encourage the international community to join us in those efforts;*
  - *take fully into account the specific needs and conditions of developing countries and minimize the possible adverse impacts on their development in a manner that protects the poor and the affected communities;*
  - *advance discussion in the WTO aimed at achieving ambitious and effective disciplines on inefficient fossil fuel subsidies that encourage wasteful consumption, including through enhanced WTO transparency and reporting that will enable the evaluation of the trade and resource effects of fossil fuel subsidies programmes.*
32. At the July and November 2020 meetings of the CTE, New Zealand, on behalf of the signatories of the Statement on FFSR, presented recent developments on FFSR. New Zealand recalled the MC-11 statement on FFSR and its signatories' position that the WTO was the forum uniquely positioned to address the issue.<sup>41</sup> Prior to the COVID-19 outbreak, the signatories had been actively engaging with WTO Members to renew the MC-11 statement for delivery at the upcoming 12th WTO Ministerial Conference (MC-12).<sup>42</sup>
33. In both the meetings, several delegations such as Switzerland, Norway, Japan, EU acknowledged the importance of FFSR and recognized the role of the WTO to assess the trade effects of FFS.<sup>43</sup> Some other delegations including Venezuela, Saudi Arabia, Indonesia and Russia objected to discussing FFSR at the CTE. Specifically, these Members noted that the issue of FFSR is being dealt with at other forums such as the G20.<sup>44</sup>
34. The signatories of the MC-11 FFSR Statement continue to actively engage with other WTO Members regarding a new Ministerial Statement on FFSR for MC12 focused on sharing information and experiences at the WTO as a key next step. New Zealand has proposed a draft FFS Ministerial Statement for MC-12 in order to develop a supportive international setting for addressing these subsidies and to assist domestic reform.<sup>45</sup> The proposed FFS Ministerial Statement is also being supported by Chile, Costa Rica, EU, Fiji, Iceland, Liechtenstein, Moldova, Norway, Switzerland and Uruguay.<sup>46</sup>

#### f) Other forums

35. Other international organizations or forums involved in discussions pertaining to fossil fuels, including the following:
- **International Monetary Fund (IMF):** Although not specifically mandated to look into the issue of fossil fuels, the IMF measures FFS provided by countries and maintains a comprehensive database regarding the same. The IMF follows a calculation which includes

<sup>41</sup> Draft Report of the Committee on Trade and Environment (2020), Committee on Trade and Environment, JOB/TW/69, 2 December 2020, para. 1.18;

<sup>42</sup> *Ibid*

<sup>43</sup> Report of the Meeting held on 30 March 2021, Committee on Trade and Environment, WT/CTE/M/71, 16 June 2021, paras 1.5 – 1.9.

<sup>44</sup> *Ibid*; Report of the Meeting held on 16 and 20 November 2020, Committee on Trade and Environment, WT/CTE/M/70, 17 March 2021.

<sup>45</sup> Proposed Fossil Fuel Subsidies Ministerial Statement, General Council, 16 July 2021, [JOB/GC/264](#).

<sup>46</sup> Proposed Fossil Fuel Subsidies Ministerial Statement, Revision, General Council, 27 October 2021, [JOB/GC/264/Rev.2](#).

pre-tax and post-tax subsidies, as well as the effect of environmental degradation and other associated costs when measuring FFS.<sup>47</sup>

- International Environment Agency (IEA):** As specified in the sub-section on historic overview, IEA was born to counteract OPEC’s influence during the 1973-1974 oil crisis. It is the main international forum for energy co-operation on a variety of issues such as security of supply, long-term policy, transparency, energy efficiency, sustainability, research and development, technology collaboration, and international energy relations.<sup>48</sup> The IEA has been systematically measuring FFS for more than a decade and estimates FFS that are consumed directly by end-users or consumed as inputs to electricity generation.<sup>49</sup> It uses a “price-gap approach”, which compares observed domestic energy prices versus international reference prices (import- or export-parity). Alongside these estimates of fossil-fuel consumption subsidies, the IEA also collaborates with OECD to produce a joint estimate that includes measures that provide a benefit or preference for fossil-fuel production.<sup>50</sup> In addition, the IEA provides regular inputs to G20 and other international FFS removal efforts since 2009. In a recent report laying out a road map to a world with net-zero carbon emissions, the IEA noted that “[i]the next few years, all governments need to eliminate fossil fuel subsidies and encourage switching to low- carbon technologies and fuels”.<sup>51</sup>
- United Nations Environment Programme (UNEP):** In the context of the United Nations Sustainable Development Goals (SDG) process, the importance of measuring FFS was recognized with a dedicated indicator on measuring FFS (12.c.1 – – “Amount of fossil fuel subsidies per unit of GDP”). The United Nations Environment Programme (UNEP) in close collaboration with the International Institute for Sustainable Development (IISD), Global Subsidies Initiative (GSI) and experts from OECD prepared a study regarding *Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals*. UNEP has developed a methodology to measure FFS to guide UN member countries on reporting on SDG indicator 12.c.1. This study has been identified as the first attempt to measure of FFS under SDG12.c.1 indicator using an internationally agreed methodology, which systemically monitors both consumption and production based subsidies from 193 UN member countries.<sup>52</sup> The UNEP has also been preparing annual *Production Gap Reports* that highlight the large discrepancies between countries’ planned fossil fuel production and the global production levels necessary to limit warming to 1.5°C and 2°C.<sup>53</sup>
- Organization of the Petroleum Exporting Countries (OPEC):** Thirteen (13) oil producing countries that are members of OPEC have noted that “the long-term outlook

<sup>47</sup> ‘Fossil Fuel Subsidies’, Climate Change, IMF, Accessed at: <https://www.imf.org/en/Topics/climate-change/energy-subsidies>, Last accessed: 3 March 2022.

<sup>48</sup> ‘History - *From oil security to steering the world toward secure and sustainable energy transitions*’, Accessed at: <https://www.iea.org/about/history>, Last accessed: 3 March 2022.

<sup>49</sup> ‘Energy subsidies: Tracking the impact of fossil-fuel subsidies’ Accessed at: <https://www.iea.org/topics/energy-subsidies>, Last accessed: 3 March 2022.

<sup>50</sup> *Ibid*

<sup>51</sup> ‘*Net Zero by 2050: A Roadmap for the Global Energy Sector*’, (IEA, 2021), p.3, Accessed at: <https://iea.blob.core.windows.net/assets/063ae08a-7114-4b58-a34e-39db2112d0a2/NetZeroBy2050-ARoadmapfortheGlobalEnergySector.pdf>, Last accessed: 3 March 2022.

<sup>52</sup> *Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals*. UN Environment, Nairobi, Kenya, UNEP, 2019, Accessed at: <https://wedocs.unep.org/bitstream/handle/20.500.11822/28111/FossilFuel.pdf?sequence=1&isAllowed=y>, Last accessed: 3 March 2022.

<sup>53</sup> ‘Production Gap Report 2020’, UNEP, 2 December 2020, Accessed at: <https://www.unep.org/resources/report/production-gap-2020>, Last accessed: 3 March 2022.

suggesting fossil fuels will continue to provide the bulk of global energy needs, [and] recognize[d] the need to protect the environment and support sustainable development”.<sup>54</sup> In September 2009, the G20 leaders requested OPEC, along with World Bank, OECD and IEA to provide an analysis of the scope of energy subsidies and offer suggestions for the G20 initiative.<sup>55</sup> Interestingly, in December 2019 the OPEC Secretary General made a statement at the UN Climate Change Conference, which highlighted the core elements of the Paris Agreement, particularly that historical responsibility and national circumstances must be followed.<sup>56</sup> Moreover, the Secretary General clarified that “[t]he oil industry must be part of the solution to the impacts of climate change... and reject[ed] the misleading narrative of an energy transition from one source to another.”<sup>57</sup>

- **UN Framework Convention on Climate Change (UNFCCC):** Article 2 of the Paris Agreement calls for “making finance flows consistent with a pathway towards low greenhouse gas emissions”. At present, fossil fuel supply is not a central focus of most Nationally Determined Contributions (NDCs), though some countries do communicate measures that would constrain fossil fuel development. An examination of NDCs from the top ten fossil-fuel producing nations reveals that it discusses fossil fuel extraction in terms of the impacts of climate mitigation measures on fossil-fuel-dependent economies, or future plans to make the industry greener or more efficient.<sup>58</sup> The recent COP26 decision also called upon the Parties to “*phase-out inefficient fossil fuel subsidies, while providing targeted support to the poorest and most vulnerable in line with national circumstances and recognizing the need for support towards a just transition;*”<sup>59</sup>
- **Asia-Pacific Economic Cooperation (APEC):** The APEC, a regional economic forum comprising of 21 Members, was established to leverage the growing interdependence of the Asia-Pacific region. Since 2009, APEC and G20 Leaders have committed to rationalize and phase out inefficient fossil-fuel subsidies that encourage wasteful consumption, while recognizing the importance of providing those in need with essential energy services.<sup>60</sup> The APEC Energy Working Group has initiated FFS peer reviews and capacity building activities to support the APEC Leaders’ mandate.<sup>61</sup>

### B.3. Evaluation of the multiplicity of discussions related to fossil fuels

36. It is evident from discussions in the previous sub-section that fossil fuel governance has a fragmented and multi-faceted international framework, which may even lead to conflicting objectives and policies. However, it has been noted that the influence of international institutions

<sup>54</sup> ‘Member countries - About Us’, OPEC, Accessed at: <[https://www.opec.org/opec\\_web/en/about\\_us/25.htm](https://www.opec.org/opec_web/en/about_us/25.htm)>, Last accessed: 3 March 2022.

<sup>55</sup> ‘OPEC, IEA, OECD, WB Joint Report’, OPEC, Accessed at: <[https://www.opec.org/opec\\_web/en/publications/1834.htm](https://www.opec.org/opec_web/en/publications/1834.htm)>, Last accessed: 3 March 2022.

<sup>56</sup> OPEC Statement to the UN Climate Change Conference (COP 25/CMP 15/CMA 2), Delivered by HE Mohammad Sanusi Barkindo, OPEC Secretary General, at the UN Climate Change Conference (COP 25/CMP 15/CMA 2), 10 December 2019, Madrid, Spain, Accessed at: <[https://www.opec.org/opec\\_web/en/5812.htm](https://www.opec.org/opec_web/en/5812.htm)>, Last accessed: 3 March 2022.

<sup>57</sup> *Ibid.*

<sup>58</sup> “Addressing fossil fuel production under the UNFCCC: Paris and beyond”, Georgia Piggot, Peter Erickson, Michael Lazarus, and Harro van Asselt, Working Paper No. 2017-09, Accessed at: <<http://www.indiaenvironmentportal.org.in/files/file/addressing-fossil-fuel-production.pdf>>, Last accessed: 3 March 2022.

<sup>59</sup> ‘Glasgow Climate Pact’, Decision -/CP.26, COP26, Glasgow, para. 37, Accessed at: <[https://unfccc.int/sites/default/files/resource/cop26\\_auv\\_2f\\_cover\\_decision.pdf](https://unfccc.int/sites/default/files/resource/cop26_auv_2f_cover_decision.pdf)> Last accessed: 3 March 2022.

<sup>60</sup> APEC Energy Working Group, Accessed at: <<https://www.apec.org/groups/som-steering-committee-on-economic-and-technical-cooperation/working-groups/energy>>, Last accessed: 3 March 2022.

<sup>61</sup> *Ibid.*

on fossil fuel development remains opaque, and there is a lack of clarity in the interactions of these international institutions with one another.<sup>62</sup>

37. FFSR is being discussed at multiple overlapping forums. However, unlike the WTO, other forums such as G7, G20 and OECD do not provide the option of a dispute settlement mechanism that can effectively implement such future disciplines on FFS. The G7, G20, OECD discussions on FFSR are in the nature of non-binding obligations and voluntary review mechanisms. Nevertheless, these processes have led to the collection of data that may be used to develop binding disciplines on FFSR at the WTO.
38. Overall, the discussions regarding international trade-related disciplines on fossil fuels are centred on FFSR. Although, these discussions are still evolving and no binding obligations have been undertaken, they are gaining traction. Particularly, the developments at the WTO are picking up pace and Members such as the signatories of the MC-11 FFSR Statement are keen on securing an FFS Ministerial Statement at MC-12, as well as elaborating upon the same at MC-13.

### **C. Implications on disciplines related to fossil fuels on developing countries**

39. As discussed in section B, countries are yet to take on binding disciplines on FFS, with the exception of certain countries that have included fossil fuel reduction and FFSR as part of its NDCs under the Paris Agreement. Irrespective of the legal nature of these disciplines, both developed and developing countries grant FFS. This section examines the implications of such possible disciplines on the Global South and provides a comparative assessment of certain fossil fuel related statistics from some countries, both developed and developing.
40. Prior to delving into this comparative analysis, it is important to point out that there are two key kinds of FFS – (1) production subsidies that are in the nature of tax breaks or direct payments that reduce the cost of producing coal, oil or gas and are commonly provided in developed countries and (2) consumption subsidies, which cut fuel prices for the end user, including by fixing the price at the petrol pump so that it is less than the market rate, primarily utilised by developing countries.<sup>63</sup>

#### **C.1. Overall impact on developing countries**

##### **a) Comparative assessment of fossil fuel subsidies granted by countries**

41. As noted in the previous section, different organizations measure FFS granted by different countries using different methodologies. For instance, the IMF notes Emerging and Developing Asia accounts for about 40% of global post-tax FFS, with advanced economies accounting for about one quarter.<sup>64</sup> Further, in percent of Gross domestic product (GDP), post-tax subsidies are

<sup>62</sup> “Addressing fossil fuel production under the UNFCCC: Paris and beyond”, Georgia Piggot, Peter Erickson, Michael Lazarus, and Harro van Asselt, Stockholm Environment Institute, Working Paper 2017-09, Accessed at: <<https://mediamanage.sei.org/documents/Publications/SEI-2017-WP-addressing-fossil-fuel-production.pdf>>, Last accessed: 3 March 2022.

<sup>63</sup> Jocelyn Timperley, Why fossil fuel subsidies are so hard to kill, 20 October 2021, Nature, Accessed at: <<https://www.nature.com/articles/d41586-021-02847-2>>, Last accessed: 3 March 2022.

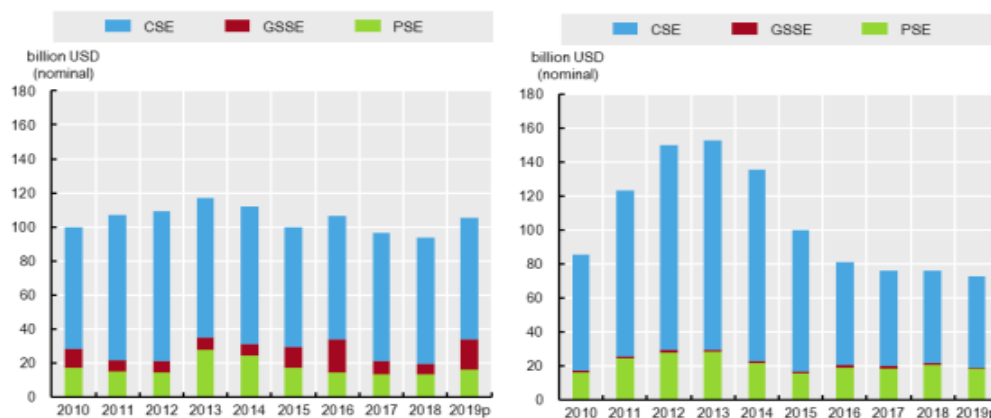
<sup>64</sup> “Fossil Fuel Subsidies”, Accessed at: <<https://www.imf.org/en/Topics/climate-change/energy-subsidies#Energy%20Subsidies>>, Last accessed: 3 March 2022.

highest in Emerging and Developing Asia, Middle East, North Africa, Afghanistan, and Pakistan and Commonwealth of Independent States (CIS), at over 12 percent of regional GDP.<sup>65</sup>

42. As per IEA estimates of FFS, consumed directly by end-users or consumed as inputs to electricity generation for the years 2010 – 2020, the top 10 countries that provide the highest total subsidy as share of GDP include Libya, Uzbekistan, Iran, Kazakhstan, Angola, Azerbaijan, Egypt, Argentina, India and Bolivia.<sup>66</sup> However, the IEA Fossil Fuel Subsidies Database assessed FFS provided by 42 countries only, which incidentally does not include any developed countries.
43. The OECD Inventory of Support Measures for Fossil Fuels records government spending that provides a benefit or preference for production or consumption of fossil fuels over other alternatives.<sup>67</sup> The latest edition of the OECD Inventory Report documents more than 1300 budgetary transfers and tax expenditures in fifty (50) countries including thirteen (13) non-OECD countries such as Brazil, Russia, India, China, South Africa (BRICS) and EU Eastern Partnership (EaP) countries.
44. The OECD Inventory Report also notes that total FFS across these fifty (50) countries rose by 5% in 2019, reversing a five-year downward trend.<sup>68</sup> The Report noted that on account of 30% rise in direct and indirect support for fossil fuel production by OECD members, the cleavage in overall support figures between OECD countries and the 13 non-OECD G20 and EaP countries has deepened.<sup>69</sup>

**Figure 1.1. Rising OECD country fossil fuel production support drives increase in total support levels**

Total support in OECD member countries (left) and selected non-OECD G20 and EaP economies (right) by year and type of support



Note: CSE = consumer support estimates. GSSE = general services support estimates. PSE = producer support estimates. The OECD Inventory Methodology attributes GSSE support as benefiting producers at a 3:1 ratio when compared with consumers, so increases in both PSE and GSSE are relevant. Figure 1.1 sets out the arithmetic sum of the individual support measures identified in the Inventory. . Because they focus on budgetary costs and revenue forgone, the estimates for G20 and EaP economies do not reflect the totality of support provided by way of fuel price control measures (see Figure 1.3).  
Source: (OECD, 2020[1]).

<sup>65</sup> *Ibid*

<sup>66</sup> “Fossil Fuel Subsidies Database”, Fossil fuel consumption subsidies for select countries, 2010-2020, Accessed at: <<https://www.iea.org/data-and-statistics/data-product/fossil-fuel-subsidies-database>>, Last accessed: 3 March 2022.

<sup>67</sup> OECD, *OECD Companion to the Inventory of Support Measures for Fossil Fuels 2021* (OECD 2021), Accessed <[https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021\\_e670c620-en](https://www.oecd-ilibrary.org/environment/oecd-companion-to-the-inventory-of-support-measures-for-fossil-fuels-2021_e670c620-en)>, Last accessed: 3 March 2022..

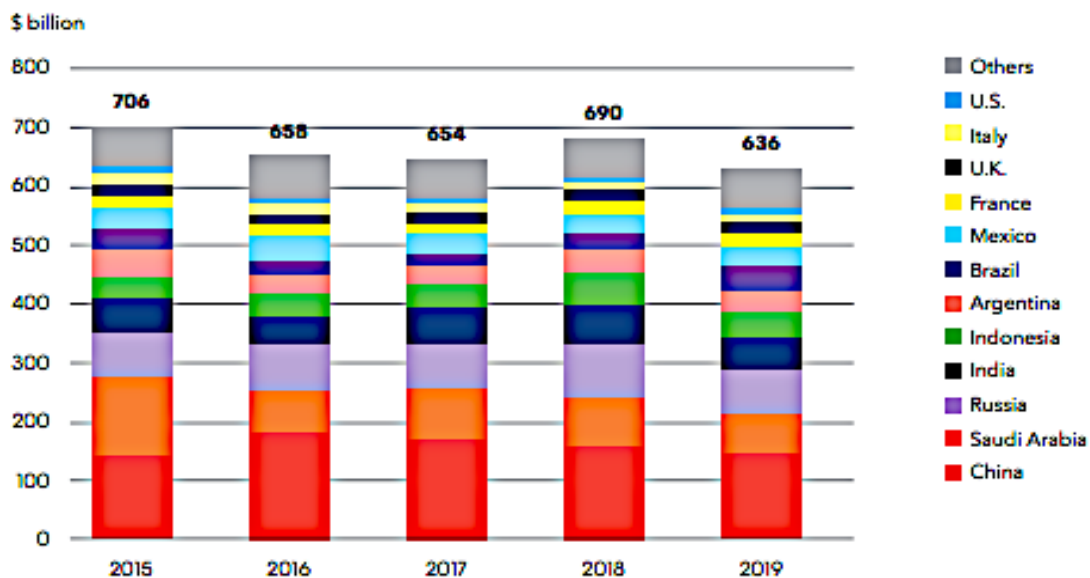
<sup>68</sup> *Ibid*, p. 16

<sup>69</sup> *Ibid*, p. 17.



45. It appears from the above figure that OECD member countries, which primarily include developed countries, have increased the amount FFS they provide particularly in 2019. Whereas, during the same period non-OECD G20 and EaP countries have decreased the amount of FFS. It also appears that total nominal amount spent on fossil fuel support by OECD countries has also been higher in the past few years compared to the non-OECD, G20 and EaP countries.
46. Interestingly, the OECD Inventory Report also notes that the picture of consumption support changes considerably when combined OECD-IEA data are taken into consideration, as opposed to just using the OECD’s cataloguing of budgetary and tax expenditure measures or simply IEA’s “price gap” approach.<sup>70</sup> This is because the IEA derives its estimates of consumption subsidies by comparing observed, in-country energy prices with international reference prices (import-or export-parity). On the other hand, combined OECD-IEA figures end up being far more closely tied to global oil price fluctuations.<sup>71</sup> The OECD-IEA combined estimates of government support for fossil fuels across 81 economies fell by 19% in 2019, to USD 468 billion, with support for consumption representing 89% of the overall figure. The combined OECD-IEA data also notes that countries such as Argentina, India and Indonesia increased support for fossil-fuel consumption during 2018-19.<sup>72</sup>
47. On similar lines, it was noted that several G-20 countries continue to provide significant amount of support to fossil fuels, with countries such as Australia, Canada and the U.S. increasing its FFS by 48%, 40% and 37% respectively during 2015 – 2019.<sup>73</sup> Further, it notes that the largest FFS came from China, Saudi Arabia, Russia and India, which together accounted for about half of all subsidies.<sup>74</sup>

### Fossil-fuel support by G-20 countries



Source: BloombergNEF Climate Policy Report

<sup>70</sup> *Ibid*, p. 19.

<sup>71</sup> *Ibid*.

<sup>72</sup> *Ibid*, p. 20

<sup>73</sup> BloombergNEF Climate Policy Report, Accessed at: <[https://assets.bbhub.io/professional/sites/24/BNEF-Climate-Policy-Factbook\\_FINAL.pdf](https://assets.bbhub.io/professional/sites/24/BNEF-Climate-Policy-Factbook_FINAL.pdf)>, Last accessed: 3 March 2022.

<sup>74</sup> *Ibid*

48. In view of the above, it can be concluded that an assessment of the amount of FFS being granted will be dependent on the methodology adopted to calculate this amount and the scope of the term “fossil fuel subsidies”. Nevertheless, an overall assessment of the databases maintained by IMF, IEA and OECD as well as secondary sources, indicate that developing countries provide a significant amount of FFS, especially, when compared to developed countries.

**b) Comparative assessment of fossil fuel production by countries and production gap**

49. The U.S. is the largest overall producer of fossil fuels, producing around 20% of all global fossil fuels, followed by Russia, Iran and Canada.<sup>75</sup> Specifically, the table below provides the top 10 countries producing the fossil fuels such as oil, natural gas, and coal.

**Table 1: Top 10 Country-wise ranking of fossil fuel production**

Rank	Oil	Natural Gas	Coal
1 <sup>st</sup>	U.S.	U.S.	China
2 <sup>nd</sup>	Saudi Arabia	Russia	India
3 <sup>rd</sup>	Russia	Iran	U.S.
4 <sup>th</sup>	Canada	Canada	Australia
5 <sup>th</sup>	China	Qatar	Indonesia
6 <sup>th</sup>	Iraq	China	Russia
7 <sup>th</sup>	Iran	Norway	South Africa
8 <sup>th</sup>	UAE	Australia	Germany
9 <sup>th</sup>	Brazil	Saudi Arabia	Poland
10 <sup>th</sup>	Kuwait	Algeria	Kazakhstan

Source: 911metallurgist<sup>76</sup>

50. With the exception of a few developed countries such as U.S., Canada, Australia and certain EU countries, the primary countries producing fossil fuels are developing countries from Asia such as Russia, China, Iraq, and India.

51. Further, the UNEP has noted in its Production Gap Report that countries seem to plan to produce far more fossil fuels by 2030 than is consistent with limiting warming to 1.5°C or 2°C under the Paris Agreement.<sup>77</sup> The report notes that developing countries have borne the brunt of the fossil fuel industry’s fragility during the Covid-19 pandemic, with lost revenue. The report also notes G20 countries have committed more public funds to fossil fuels than to clean energy as part of Covid-19 recovery efforts, particularly developing countries identified have prioritised support provided to fossil fuels.<sup>78</sup> In fact, as noted in the United Nations Conference on Trade and Development (UNCTAD) Trade and Development Report 2021, some countries attracted polluting industries from countries with more stringent environmental standards and regulations.<sup>79</sup>

<sup>75</sup> Fossil fuel production by country, mapped, accessed at <<https://www.911metallurgist.com/fossil-fuel-production-by-country-mapped/>>, last accessed: 3 March 2022.

<sup>76</sup> *Ibid*

<sup>77</sup> UNEP Production Gap Report, Executive Summary, Available at: <[https://productiongap.org/wp-content/uploads/2020/12/PGR2020\\_ExecSum\\_web.pdf](https://productiongap.org/wp-content/uploads/2020/12/PGR2020_ExecSum_web.pdf)>, Last accessed: 3 March 2022.

<sup>78</sup> *Ibid*

<sup>79</sup> Trade and Development Report 2021 - *From recovery to resilience: the development dimension*, 28 October 2021, (UNCTAD/TDR/2021), Accessed at: <<https://unctad.org/webflyer/trade-and-development-report-2021>>, Last accessed: 3 March 2022.

### c) Comparison of energy mix of certain countries

52. In order to understand how critical use of fossil fuels is for certain countries, it is relevant to assess the role that fossil fuel plays in a country's total energy supply (TES). The IEA has noted the following key indicators:

- **OECD countries<sup>80</sup>:** OECD countries' 2020 TES represented almost two fifths of global energy supply. The use of coal and oil products declined more strongly (-14% and -10%, respectively) than that of gas and renewables (-2% and +2%). As coal continued to decline, renewables' share in electricity generation hit 30% for the first time.
- **Africa<sup>81</sup>:** The production and consumption of biofuels (mainly fuelwood) is considerably higher across Africa and comprises 45% of TES in 2019. The share of natural gas in Africa's TES increased steeply from 1% in 1971 to 16% in 2019 and oil demand increased over the same period, and it is now the second fuel consumed in Africa.
- **Non-OECD Americas<sup>82</sup> and Asia<sup>83</sup>:** In Non-OECD Americas, oil comprised 39% of the TES, followed by natural gas at 22%, biofuels and waste also at 22%, and renewables at a relatively small share. The Non-OECD Asia region accounts for 37% of global TES but primarily consumes coal. Though coal TES grew less strongly (3%) than nuclear (18%) and renewables (wind, solar, geothermal) (10%), it still represented more than half (51%) of the Non-OECD Asia's TES in 2019.

53. The IEA data clarifies that the share of fossil fuels in the TES of OECD countries is far lower than that of its non-OECD American and Asian counterparts. Specifically, coal accounts for more than 50% of non-OECD Asia's TES, while on the other hand, OECD countries rely more on other sources of energy, for instance renewable energy, which accounts for 30 % of OECD countries' TES.

54. This is even more evident while comparing the share of primary energy from coal, oil, natural gas, nuclear power, and renewable energy in a country's energy mix as provided in the statistics calculated by 'Our World in Data' website. This website calculates primary energy based on the 'substitution method' which takes into account the inefficiencies in fossil fuel production.<sup>84</sup> We have sought to represent the energy mix of certain developed and developing countries during 2019 as provided in the graph below:

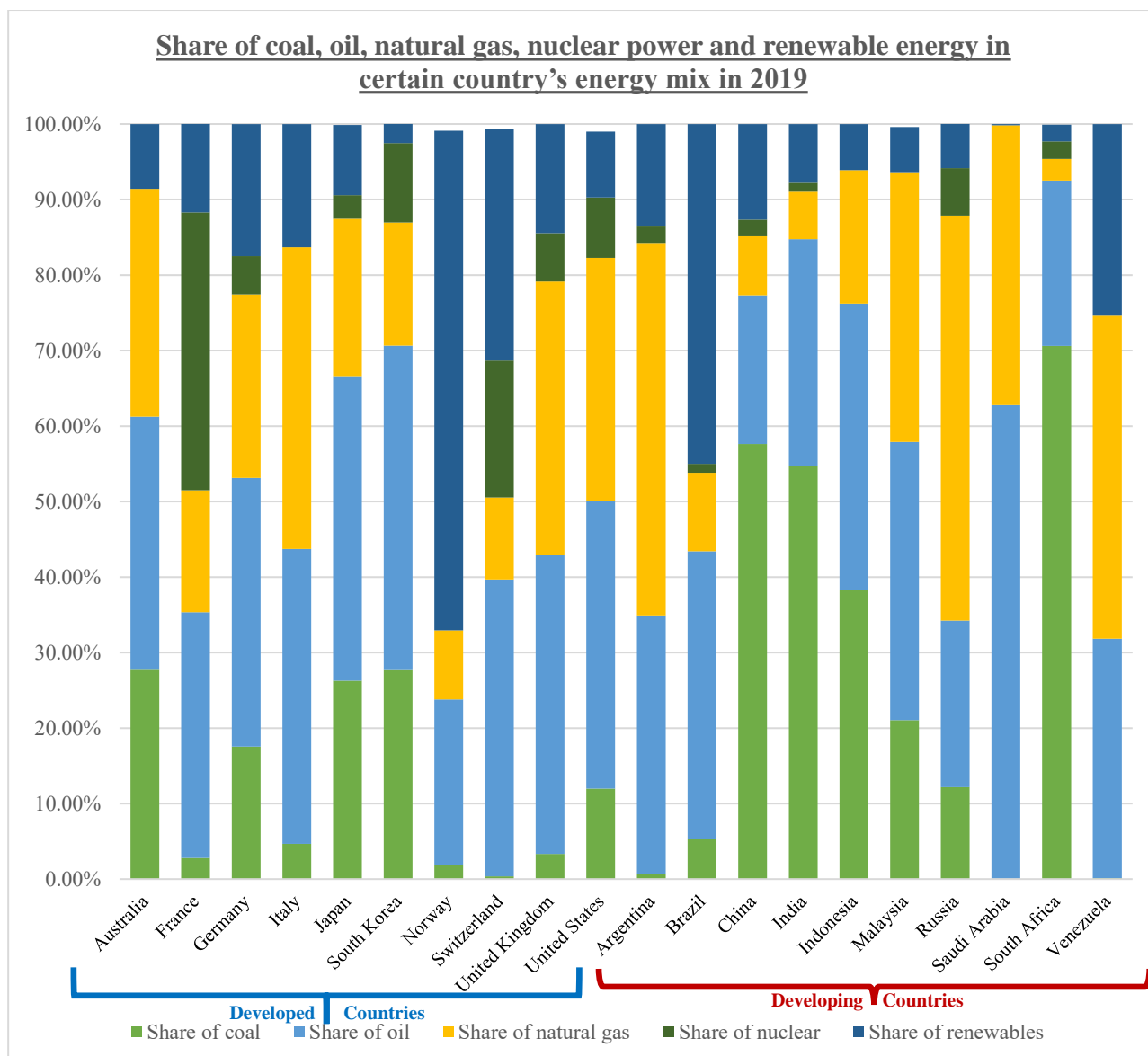
<sup>80</sup> World Energy Balances: Overview, OECD, Accessed at: <<https://www.iea.org/reports/world-energy-balances-overview/oecd>> , Last accessed: 3 March 2022.

<sup>81</sup> World Energy Balances: Overview, Africa, Accessed at: <<https://www.iea.org/reports/world-energy-balances-overview/africa#abstract>>, Last accessed: 3 March 2022.

<sup>82</sup> World Energy Balances: Overview, Non-OECD Americas, Accessed at: <<https://www.iea.org/reports/world-energy-balances-overview/non-oecd-americas#abstract>>, Last accessed: 25 September 2021.

<sup>83</sup> World Energy Balances: Overview, Non-OECD Asia, Accessed at: <<https://www.iea.org/reports/world-energy-balances-overview/non-oecd-asia#abstract>>, Last accessed: 3 March 2022.

<sup>84</sup> Hannah Ritchie and Max Roser (2020) - "Energy". Published online at OurWorldInData.org. Accessed at: <<https://ourworldindata.org/energy>>, Last accessed: 3 March 2022.



Source: Data from <https://ourworldindata.org/>

55. It is evident from the above graph that the identified developed countries rely on renewable energy for more than developing countries. With the exception of a few developing countries such as Argentina, Brazil and China, all the other developing countries identified in the graph rely primarily on fossil fuels for their energy needs.

56. Overall, the energy mix data and the data regarding certain countries' TES reveals that compared to the developed countries, developing countries are far more reliant on fossil fuels for their energy requirements.

## C.2. Developing country position on disciplines related to fossil fuels

57. Although many developing countries are primarily reliant on fossil fuels for their energy needs and are major grantors of FFS, there has been no consolidated position put forth by such countries on the issue FFSR at the multiple international forums.

58. In fact, certain developing countries, such as India have even undertaken commitments pertaining to FFSR as part of its NDCs to the Paris Agreement. Specifically, India has agreed to reduce subsidies on diesel, kerosene and domestic LPG and quadruple the applicable coal cess from INR 50 to INR 200 per tonne to help finance clean energy projects.<sup>85</sup> However, it has been noted that this is the exception rather than the norm among countries.<sup>86</sup>
59. Further, some developing countries have also supported FFSR, including at the WTO. For instance, 5 out of the 12 countries that signed the MC-11 FFSR Statement were developing countries *viz.* Chile, Costa Rica, Mexico, Samoa and Uruguay. However, certain other developing countries such as Indonesia, Venezuela and Saudi Arabia have objected to the same. Thus, at least some developing countries are keen on supporting FFSR at the WTO.
60. A preliminary assessment of the figures related fossil fuels appears to suggest that major fossil fuel producing countries as well as developing countries belonging to the OPEC are not proponents of FFSR. However, this may be an oversimplification of a complicated issue and there are usually a variety of reasons for which countries, whether developed or developing, have sought to support or object to disciplines pertaining to fossil fuels.
61. In order to better understand the impact of disciplines pertaining to fossil fuels on developing countries, the following section will provide a case study analysis of the impact of such possible disciplines on India.

### C.3. Case study: Impact on India

#### a) **Brief overview of India's fossil fuel industry**

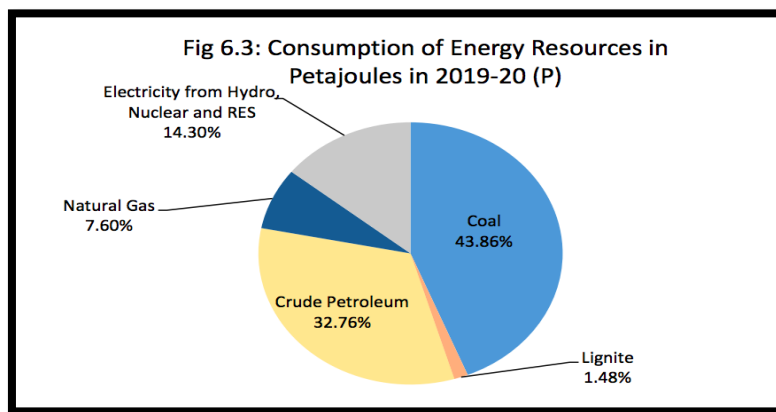
62. India's primary energy consumption has had a 10-year growth average of 5.4% from 2008 to 2018, compared to the global average of 1.5%.<sup>87</sup> The consumption of energy resources in petajoules from Coal and Lignite was highest which accounted for about 45.34% of the total consumption during 2019-20(P) followed by Crude Oil (32.76%) and electricity generated from renewable sources (14.3%) as depicted in the figure below:<sup>88</sup>

<sup>85</sup>India's Intended Nationally Determined Contribution, Accessed at: <<https://www4.unfccc.int/sites/ndcstaging/PublishedDocuments/India%20First/INDIA%20INDC%20TO%20UNFCCC.pdf>> Last accessed: 3 March 2022.

<sup>86</sup> *Ibid*

<sup>87</sup> Vibhuti Garg, Balasubramanian Viswanathan, Danwant, Narayanaswamy, Christopher Beaton, Karthik Ganesan, Shruti Sharma and Richard Bridle, "Mapping India's Energy Subsidies 2020: Fossil fuels, renewables, and electric vehicles", April 2020, Accessed at <<https://www.iisd.org/publications/mapping-indias-energy-subsidies-2020-fossil-fuels-renewables-and-electric-vehicles>>, Last accessed: 3 March 2022.

<sup>88</sup> "Energy Statistics 2021", National Statistical Office Ministry of Statistics and Programme Implementation, Government of India, Accessed at: <[http://www.mospi.nic.in/sites/default/files/reports\\_and\\_publication/ES/Energy%20Statistics%20India%202021.pdf](http://www.mospi.nic.in/sites/default/files/reports_and_publication/ES/Energy%20Statistics%20India%202021.pdf)> Last accessed: 3 March 2022.



Source: Energy Statistics 2021

63. Further, as specified in Table 1 above, India is the second-largest coal producer in the world on a volumetric basis, however, there has been an increasing trend in net import of coal in recent years. Over the last ten years, net import of coal steadily increased from 67.04 MTs in 2010-11 to 210.87 MTs in 2014-15 followed by a marginal decline in the succeeding two years. It again started increasing however, the increase in 2019-20(P) 2018-19 was only 5% as compared to the 13% in 2018-19 over 2017-18.<sup>89</sup> The biggest consumer of raw coal and lignite in India is the electricity sector contributing as much as 64.86% of the total consumption of coal and 85.96% of total consumption of lignite during 2019-20(P).<sup>90</sup>
64. India is highly dependent on imports of crude oil to meet its domestic consumption and consequently, such imports have increased from 163.60 MTs during 2010-11 to 226.95 MTs during 2019-20(P).<sup>91</sup> India is an exporter of petroleum products and has experienced an increase in the export of such products from 59.08 MT during 2010-11 to 65.69 MT during 2019-20(P).
65. The consumption of major petroleum products has also seen an upward trend from 2010-11 to 2019-20 (P) with LPG and petrol consumption increasing. In terms of natural gas, the maximum use is in the fertilizer industry (25.12%) followed by power generation (17.19%). Industry wise off-take of natural gas shows that while 55.08% of natural gas has been used for energy purposes, 32.91% is used for non-energy purposes.<sup>92</sup>
66. Thus, India is heavily dependent on fossil fuels particularly coal and natural gas not just for its energy needs but also for several non-energy related purposes.

#### **b) India's subsidy regime for fossil fuels**

67. The Indian government support for fossil fuels has increased in the past two years while support for renewables declined as has been noted by the IISD in its report on [Mapping India's Energy Subsidies 2020](#) (IISD Report). The IISD Report follows the WTO definition of "subsidy" when measuring FFS, which includes<sup>93</sup>:
- Direct and indirect transfers of funds and liabilities (budget outlays)
  - Government revenue foregone (reduced tax rates and tax exemptions)
  - Provision of goods or services below market value (such as land or water)

<sup>89</sup> *Ibid*

<sup>90</sup> *Ibid*, p. 41.

<sup>91</sup> *Ibid*, p. 59.

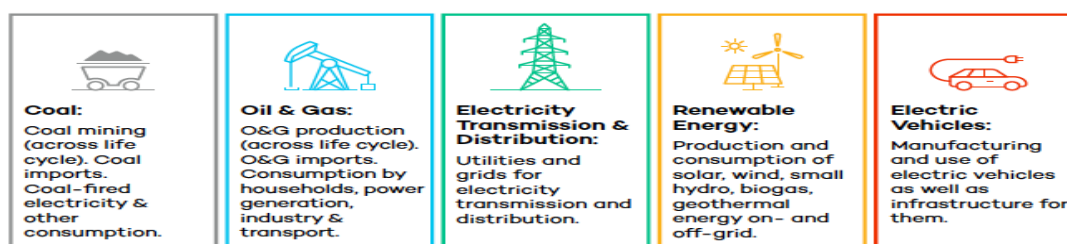
<sup>92</sup> *Ibid*, p. 78.

<sup>93</sup> *Ibid*, p. 6 and Annex 1.

- Income and price support through market regulations (including non-enforcement).

68. IISD Report also identifies the following types of energy subsidies as provided below:

Figure 3. Grouping of energy subsidies



Source: IISD Report

69. Based on the aforementioned scope and approach, the IISD Report notes that India’s subsidies to oil, gas and coal are valued at INR 83,134 crore or USD 12.4 billion in FY 2019 and remain more than seven times the value of subsidies to renewables and electronic vehicles (EVs), which is only INR 11,603 crore or USD 1.7 billion in FY 2019).<sup>94</sup>
70. Although the IISD Report specifies that it has utilised the WTO SCM Agreement definition of “subsidy”, it has relied on the definition under Article 1.1 of the SCM Agreement mechanically without considering whether these subsidies are even actionable under the scope of the SCM Agreement. The IISD Report has also failed to consider the variety of exclusions and flexibilities provided to WTO Members under the SCM Agreement. Thus, presenting a skewed picture of the nature of energy subsidies granted by the Indian government.
71. Based on such an assessment, the IISD Report made the following key observations regarding India’s fossil fuel subsidy regime:<sup>95</sup>
- Coal:** Quantified coal subsidies have remained stable since FY 2014, declining only marginally from INR 15,660 crore (USD 2.6 billion) to INR 15,456 crore (USD 2.3 billion) in FY 2019. The largest individual subsidy is a concessional tax rate, foregoing INR 13,681 crore (USD 2.0 billion) of revenue in FY 2019, equal to 7% of all energy subsidies and 87% of all coal subsidies.
  - Oil and gas:** From 2017 to 2019, support to oil and gas increased by two thirds, largely due to higher oil prices and growing Liquefied petroleum gas (LPG) use. The largest individual subsidy is granted for LPG cooking, worth INR 31,447 crore (USD 4.7 billion). All LPG policies together amount to INR 54,518 (USD 8.1 billion)—28% of all energy subsidies.
  - Transmission and distribution:** Transmission and distribution subsidies have doubled during the period 2014 to 2019, from INR 41,252 crore (USD 6.1 billion) to INR 79,671 crore (USD 11.9 billion). The largest subsidy is under-pricing of electricity, worth INR 63,778 crore (USD 9.5 billion), which constitutes 33% of all energy subsidies in India.
  - Renewable Energy:** Renewable Energy subsidies have increased three-fold between 2014 and 2019 from INR 3,224 crore (USD 533 million) to INR 9,930 crore (USD 1.5 billion). These subsidies fell by 35% from a high of INR 15,313 crore (USD 2.3 billion) in 2017.

<sup>94</sup> Vibhuti Garg, Balasubramanian Viswanathan, Danwant, Narayanaswamy, Christopher Beaton, Karthik Ganesan, Shruti Sharma and Richard Bridle, “Mapping India’s Energy Subsidies 2020: Fossil fuels, renewables, and electric vehicles”, April 2020, Accessed at <<https://www.iisd.org/publications/mapping-indias-energy-subsidies-2020-fossil-fuels-renewables-and-electric-vehicles>>, Last accessed: 3 March 2022.

<sup>95</sup> IISD Report, p. iii.

72. The IISD Report also notes that the following kinds of subsidies are provided for the different fossil fuels sectors<sup>96</sup>:
- **Coal:** Coal subsidies are largely provided by tax breaks (government revenue foregone), which make up around 90% of subsidies, while budgetary transfers accounted for the remainder.
  - **Oil and gas:** Oil and gas subsidies are made up of around 88% income or price support made in 2014 and 2015, when India controlled prices of diesel, PDS kerosene and household LPG. As these subsidies were reformed, policy shifted to direct and indirect transfers and revenue foregone which now make up 53% and 30% shares, respectively.
  - **Transmission and distribution:** 85% of transmission and distribution subsidies are for consumption in the form of income or price support.
  - **Renewable Energy:** 60% of total renewable energy subsidies are largely provided through tax breaks (government revenue foregone). Budgetary transfers account for another 38% and income or price support only account for 2% of total renewable energy subsidies.
73. It is interesting to note that the second largest form of FFS provided by India as per the IISD Report is transmission and distribution subsidies. However, many of these subsidies may not be specific and actionable under the SCM Agreement. For instance, the IISD Report identifies the following key transmission and distribution (T&D) subsidies:<sup>97</sup>
- Price support through subsidy provision by the state government, worth INR 63,778 crore (USD 9.5 billion).
  - Deendayal Upadhyaya Gram Jyoti Yojana (DDUGJY), a rural electrification scheme worth INR 3,800 crore (USD 565 million).
  - Pradhan Mantri Sahaj Bijli Har Ghar Yojana (Saubhagya), a household electrification scheme worth INR 2,750 crore (USD 409 million).
  - Integrated Power Development Scheme (IPDS), worth INR 3,970 crore (USD 591 million).
74. It is not clear from the identification of the aforementioned programs if the IISD has conducted a benefit analysis and whether such subsidies do in fact make the recipient “better off” than they would have been absent the subsidy. Further, many of these subsidies programs are not provided to specific enterprise or industry or group of enterprises or industries and thus, they would not constitute as actionable under the SCM Agreement.
75. In fact, the IISD Report also notes that the main beneficiaries of under-priced electricity provided at the state level are agricultural and residential consumers, which are considered FFS only because most of such electricity is generated from fossil sources.<sup>98</sup> In terms of under-pricing of electricity a benefit analysis may be difficult particularly since, the electricity market whether renewable or fossil fuel based is highly subsidised across the board and determining an accurate comparable market price for conducting a benefit analysis may be difficult. Nevertheless, the IISD Report justifies the inclusion of such sub-federal electricity schemes on the grounds that such programs exist across multiple states and an exclusion would be a serious omission. IISD’s approach of considering such sub-federal under-pricing of electricity seems an oversimplification

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<sup>96</sup> *Ibid*

<sup>97</sup> IISD Report, p. 17.

<sup>98</sup> IISD Report, p. 18.



of quantifying such FFS, failing to take into account the developmental context in which such subsidies are provided, particularly to rural areas that lack access to electricity.

76. Another important aspect with respect to these T&D subsidies identified by the IISD Report, which may need to be highlighted is that the scope of the term “subsidy” under the SCM Agreement is applicable only to goods only and not to services. The “transmission and distribution” subsidies as identified by the IISD Report appears to extend to “[u]tilities and grids for electricity transmission and distribution”.<sup>99</sup> However, “distribution services” is an identified service sector, which WTO Members have even committed to under the General Agreement on Trade in Services (GATS). Therefore, it is critical when quantifying FFS that it does not extend to any service-related subsidies because disciplines on subsidies under the WTO Agreements only extend to goods. It is also relevant to note that as subsidies to consumers cannot be treated as subsidies granted to certain enterprises, this is yet another reason why T & D subsidies to consumers would not be subject to the disciplines of SCM Agreement.
77. Another problem with the IISD Report is that it even identifies alleged concessional tax rates for coal as a FFS. In particular, it provides that India has greatly subsidised coal through a concessional 5% sales tax under the GST, against a benchmark of 18% applied to other minerals, worth INR 13,681 crore (USD 2 billion), which reduces input costs for coal-based electricity generation.<sup>100</sup> All such subsidies may be impacted once binding disciplines on FFS come into place and India may have to conduct an overhaul of its energy framework. Article 2.2. of the SCM Agreement, expressly notes that change of generally applicable tax rates by all levels of government shall not be deemed to be a specific subsidy. Thus, WTO Members such as India are free to tax as they deem fit and it is incorrect on part of the IISD Report to compare tax rate of coal with a benchmark rate of other products and consider it as a subsidy.
78. Therefore, the IISD Report fails to account for the definition of a subsidy, exceptions and flexibilities provided by the SCM Agreement. It also provides an inaccurate representation of level of FFS granted by India and provides a skewed picture of India’s FFS regime. The IISD Report also does not take into consideration the developmental context of India’s FFS framework.
79. Nonetheless, BloombergNEF’s Climate Policy Factbook has noted that although India has reduced its spending on consumer energy subsidies by 4% over 2015–19, it still provides significant support for oil consumption.<sup>101</sup> It has also been noted that state-owned enterprises play a key role in India’s energy sector and over half of electricity generation capacity is owned by national or subnational government, especially fossil-fuel-fired assets.<sup>102</sup>
80. India, much like other developing countries, provides a mixed bag of support towards the energy sector. However, the focus of the support granted by India pertains to fossil fuels as opposed to renewable energy subsidies. It is also relevant to reiterate that more than 50% of India’s energy needs is dependent on fossil fuels. In fact, it has been noted that India’s dependence on fossil

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<sup>99</sup> IISD Report, p. 6.

<sup>100</sup> IISD Report, p. 10

<sup>101</sup> Bloomberg NEF, Climate Policy Factbook, July 20, 2021, Accessed at: <[https://assets.bbhub.io/professional/sites/24/BNEF-Climate-Policy-Factbook\\_FINAL.pdf](https://assets.bbhub.io/professional/sites/24/BNEF-Climate-Policy-Factbook_FINAL.pdf)>, Last accessed: 3 March 2022.

<sup>102</sup> *Ibid*, p. 20.

fuels is expected to increase and that coal will continue to dominate India's energy mix till 2040.<sup>103</sup>

### c) Possible implications of disciplines pertaining to fossil fuels on India

81. At this juncture, it is difficult to determine the exact nature of the disciplines pertaining to fossil fuels that will be developed either at the WTO or at the other forums. However, it is evident from the discussions above that the objective of FFSR is phasing out of “*inefficient fossil fuel subsidies that encourage wasteful consumption*”.
82. Although the meaning of this phrase is yet to be clarified, it is clear that the intent is to reduce the amount of government support provided to the fossil fuel sector. While being heavily dependent on fossil fuels for its energy requirements, India is also in a unique situation where it is both an exporter as well as an importer of fossil fuels. Specifically, India is heavily reliant on imported oil and liquefied natural gas (LNG) and oil import dependence reached a high of 84% of the total domestic oil consumption in 2019.<sup>104</sup> Natural gas import dependence has also increased to 45% of total domestic consumption in 2019.<sup>105</sup>
83. Historically, the Indian government has protected consumers by providing substantial subsidies for petroleum products, shifting the risk onto government budgets but, from 2010 India has been gradually reforming such policies so as to set more rational prices and free up revenues for more effective policy tools.<sup>106</sup> India continues to provide subsidies for fossil fuels and is likely to increase the level of these subsidies depending on its energy needs as is evident from the IISD's assessment of India's fossil fuel subsidy framework.
84. For instance, the state-owned mining company National Mineral Development Corporation (NMDC) has been allocated two coal blocks in Tokisud North and Rohne Jharkhand on a nomination basis by the Government of India (GOI).<sup>107</sup> NMDC plans to start the Tokisud North Coal Mine in Jharkhand in 2022.<sup>108</sup> Incidentally, the United States Department of Commerce (USDOC) has already countervailed the NMDC's Captive Mining of Iron Ore and Coal Programmes because it conferred a benefit by providing goods for less than adequate remuneration.<sup>109</sup> Thus, it is likely that such coal projects in future may be vulnerable to

<sup>103</sup> Ragini Bhuyan 'Five charts that show how India's dependence on fossil fuels will increase', Mint, 13 Nov 2015, Accessed at: <<https://www.livemint.com/Opinion/Lc6lOXOiSwzSWPWF1yTvTI/Five-charts-that-show-how-Indias-dependence-on-fossil-fuels.html>>, Last accessed: 3 March 2022.

<sup>104</sup> "India's oil import dependence jumps to 84 per cent", Economic Times, 5 May 2019, Accessed at: <<https://economictimes.indiatimes.com/industry/energy/oil-gas/indiasoil-import-dependence-jumps-to-84pc/articleshow/69183923.cms?from=mdr>>, Last accessed: 3 March 2022.

<sup>105</sup> Monthly report on natural gas production availability and consumption, Petroleum Planning and Analysis Cell, August 2019, Accessed at: <<https://www.ppac.gov.in/WriteReadData/Reports/201910011220033233495MonthlyGasReport-Aug2019Web V.pdf>>, Last accessed: 3 March 2022.

<sup>106</sup> IISD Report, p. 34.

<sup>107</sup> 63<sup>rd</sup> Annual Report 2020-2021, NMDC Ltd, p. 47, Accessed at: <<https://www.nmdc.co.in/Docs/NMDC-AnnualReport-FY-2020-21.pdf>>, Last accessed: 3 March 2022.

<sup>108</sup> *Ibid*, p. 53.

<sup>109</sup> Appellate Body Report, *US – Carbon Steel (India)*, footnote 15 (These "captive mining" programmes refer to those in respect of which the GOI provided iron ore and coal through the grant of the right to mine those minerals. The mining rights at issue were known as "captive mining rights" in that they allowed the beneficiary an exclusive right to mine iron ore or coal for their own use in the production of steel. With particular respect to the coal mining rights, these were granted under the Coal Mining Nationalization Act. The Panel addressed India's challenge of the USDOC's determination that Tata Iron and Steel Company Limited, which later became known as Tata Steel Limited (Tata), was a beneficiary of the Captive Mining of Coal Programme. *Also see*: Panel Report, *US – Carbon Steel (India)*, paras. 7.220, 7.233, 7.240, 7.242, and 7.245-7.252)

countervailing action under provisions of the ASCM, but may also need to be eliminated if the proponents of FFSR secure multilateral consensus on phasing-out inefficient fossil fuel subsidies.

85. Further, the BP Statistical Review of World Energy 2021 notes India is the third-largest energy consumer in the world after U.S. and China.<sup>110</sup> India is largely reliant on fossil fuels for its energy requirements and is also highly dependent on imports for fossil fuels exposing it to both fiscal and energy security risks. Thus, it is essential for India to subsidize certain fossil fuels such as coal and cooking gas, in order to meet the energy needs for its population.
86. Moreover, it should be noted that phasing out of FFS will not only impact the prices for end consumers but also have broad and multiplier effects on other sectors and industries. For instance, the production of steel and other metals is a large consumer of electricity<sup>111</sup>, to implement a phase out of FFS could be detrimental to many key primary industries for India.
87. Any obligations from possible FFSR disciplines whether under the WTO or elsewhere will lead to increased costs for India and adversely impact its interests. Thus, India must be mindful of the policy flexibility that it may desire as a fossil fuel reliant country.

## D. Way forward

### D.1. Position to be considered by developing countries.

88. Currently, disciplines concerning FFSR are in the nature of non-binding obligations specifically at the G7 or G20 and the OECD follows a voluntary peer review mechanism. Further, at the UNFCCC few countries have undertaken binding commitments on fossil fuel reduction and FFSR as part of their NDCs under the Paris Agreement.
89. Although discussions on FFSR are being considered at multiple international organisations, there is no agreement as to what constitutes a ‘fossil fuel’ and the term has been defined differently by each organization.<sup>112</sup> Further, there is also no common universally accepted definition of “fossil fuel subsidy”.<sup>113</sup> IEA, UNEP, OECD and IMF are the major organizations that have critically evaluated FFS and their costs. However, different parameters have been utilized by each of them to measure FFS.
90. Discussions at the WTO regarding FFSR and other environment related discussions picked pace during 2021 with MC-12 which was scheduled to be held at the end of 2021. However, MC-12 was postponed and is now scheduled to be held in June 2022. There were no particular developments on FFSR. It has been noted that the FFS group has discussed scope and definitional questions in detail, seeking to balance ambition with effective implementation of disciplines to

<sup>110</sup> Statistical Review of World Energy, 70<sup>th</sup> Edition, BP, Accessed at: <<https://www.bp.com/content/dam/bp/business-sites/en/global/corporate/pdfs/energy-economics/statistical-review/bp-stats-review-2021-full-report.pdf>>, Last accessed: 3 March 2022.

<sup>111</sup> ‘Fact Sheet: Energy use in the steel industry’, World Steel Association, Accessed at: <[https://www.worldsteel.org/en/dam/jcr:7152651c-5d29-4b8b-ae53-3259f02f7e13/fact\\_energy\\_2016#:~:text=The%20production%20of%20primary%20steel,to%20iron%20using%20reducing%20agents](https://www.worldsteel.org/en/dam/jcr:7152651c-5d29-4b8b-ae53-3259f02f7e13/fact_energy_2016#:~:text=The%20production%20of%20primary%20steel,to%20iron%20using%20reducing%20agents)>, Last accessed: 3 March 2022.

<sup>112</sup> “Analysis of the Scope of Energy Subsidies and Suggestions for the G20 Initiative”, OECD 2010 (<https://www.oecd.org/env/45575666.pdf>) and Koplow, (2009). Measuring energy subsidies using the price-gap approach: What does it leave out?. Geneva: Global Subsidies Initiative. [Koplow, 2009]

<sup>113</sup> Please refer to discussion on page 8, “Analysis of the Scope of Energy Subsidies and Suggestions for the G20 Initiative”, OECD 2010 (<https://www.oecd.org/env/45575666.pdf>) and Koplow, (2009). Measuring energy subsidies using the price-gap approach: What does it leave out?. Geneva: Global Subsidies Initiative. [Koplow, 2009]

eliminate harmful FFS and has also begun consideration of different categorization approaches to disciplines.<sup>114</sup>

91. At MC12 WTO Members achieved an outcome to eliminate subsidies for illegal, unreported and unregulated fishing. Although, there was an express mandate for fisheries subsidies negotiations, it is possible that negotiations on FFSR may follow a similar route as FFSR is also linked to a UN SDG Target 12.c pertaining to “[r]ationaliz[ing] inefficient fossil-fuel subsidies that encourage wasteful consumption by removing market distortions”.
92. At present, New Zealand has circulated a draft Ministerial Statement for MC-12.<sup>115</sup> The draft Ministerial Statement has also been supported by some other countries and seeks to achieve a “shared understanding” regarding the following<sup>116</sup>:
- *Rationalization and phase out of inefficient fossil fuel subsidies that encourage wasteful consumption along a clear timeline and encourage the remaining WTO Members to join us in those efforts, recognizing the substantial financial resource this could unlock globally to support the transition;*
  - *Reform needs to take fully into account the specific needs and conditions of developing countries and minimize the possible adverse impacts on their development in a manner that protects the poor and the affected communities;*
  - *Share information and experiences to advance discussion in the World Trade Organization aimed at achieving ambitious and effective disciplines on inefficient fossil fuel subsidies that encourage wasteful consumption, including through enhanced World Trade Organization transparency and reporting that will enable the evaluation of the trade, economic, and environment effects of fossil fuel subsidy programmes;*
  - *Elaborate concrete options to advance this issue at the World Trade Organization in advance of MC13.*

**a) Assessment of draft Ministerial Statement for MC-12**

93. At the outset, it is important to underscore that phasing out or rationalization of FFS will make the use of fossil fuels expensive. Accordingly, it will lead to increased costs primarily for developing countries, which are reliant on fossil fuels. Thus, these countries’ export competitiveness will also be impacted. Therefore, it is apprehended that disciplines emerging from FFSR at the WTO, may asymmetrically impact developing countries.
94. Even though the draft Ministerial Statement only seeks to develop a “shared understanding”, WTO Members must be mindful as to the manner in which such disciplines develop and ensure that legitimate policy space available to developing countries is not curtailed. The current language of the draft Ministerial Statement is vague and leaves much to speculation. Therefore, analysis of the proposed draft Ministerial Statement’s language is critical.
95. **First**, it is critical to ascertain the scope of “*inefficient fossil fuel subsidies that encourage wasteful consumption*”. Different organizations have sought to measure FFS using varied methodologies, which yield different results. For instance, IEA follows a price gap calculation to

<sup>114</sup> Unofficial Room Document, Statement by New Zealand, The Agreement on Climate Change, Trade and Sustainability, RD/CTE/196\*

<sup>115</sup> Proposed Fossil Fuel Subsidies Ministerial Statement, General Council, 16 July 2021, [JOB/GC/264](#)

<sup>116</sup> Proposed Fossil Fuel Subsidies Ministerial Statement, Revision, General Council, 27 October 2021, [JOB/GC/264/Rev.2](#).

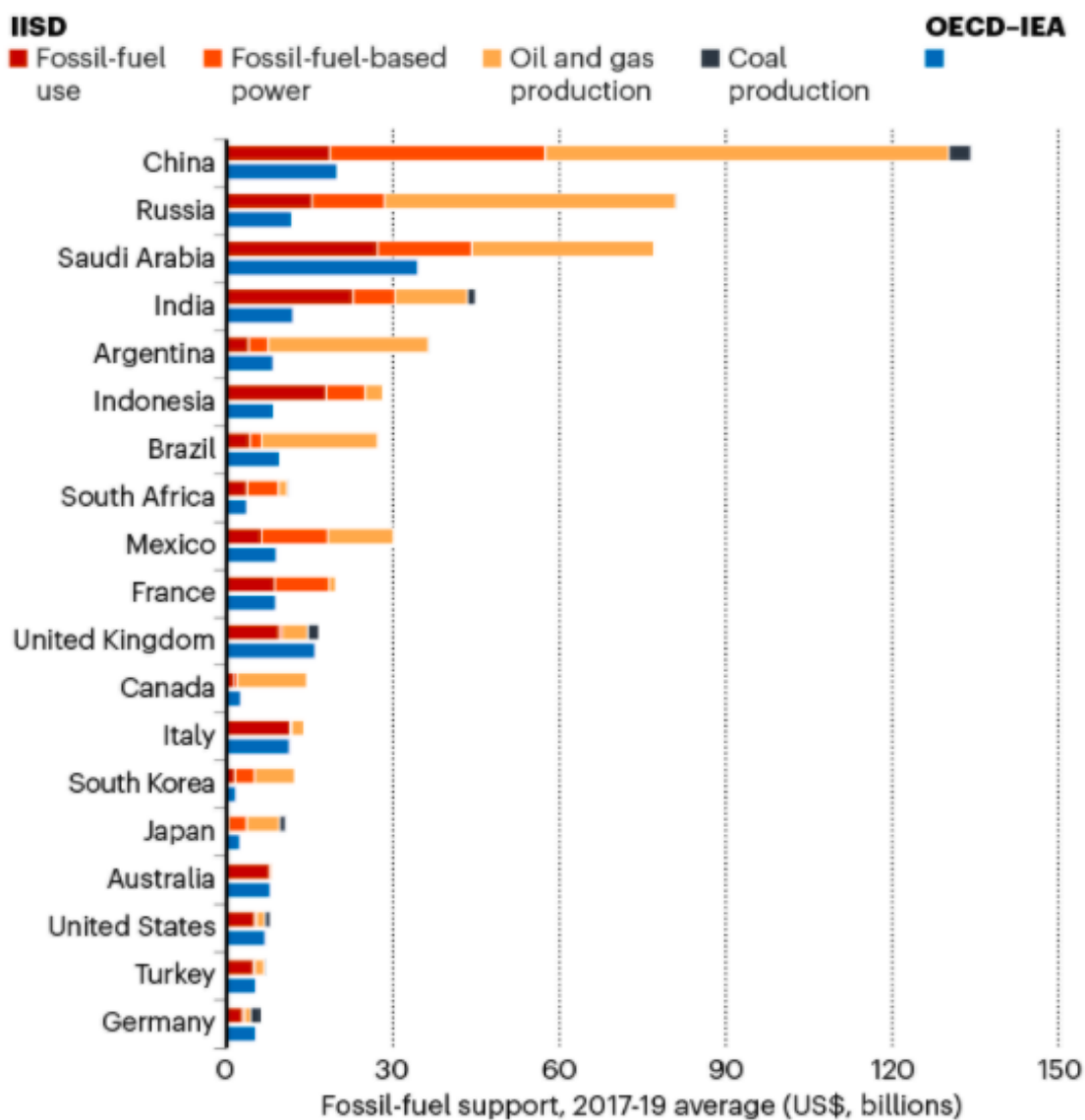
determine the level of FFS, which focuses on the positive difference between market price and subsidized prices paid by the consumers; whereas OECD provides an inventory of support measures and the IMF follows a consumer price estimated based on price gaps, in addition to OECD estimated producer subsidies.<sup>117</sup>

96. Additionally, the Joint UNEP - IISD Report on Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals measures FFS at the national, regional and global level based on three sub-indicators: (1) direct transfer of government funds; (2) induced transfers (price support); and as an optional sub-indicator (3) tax expenditure, other revenue foregone, and underpricing of goods and services. The report used definitions from the IEA Statistical Manual and the ASCM to define FFS and standardized descriptions from the United Nations Statistical Office's Central Product Classification to classify individual energy products. However, the report also notes that there is no uniform, internationally agreed methodology to monitor FFS.<sup>118</sup>
97. In fact, the different methodologies followed by different organizations to measure FFS lead to varying results on account of the scope of subsidy measures and estimation methods. For instance, it has been noted that IISD reports give larger estimates of fossil fuel support for some countries because it includes public financing from state-owned enterprises, unlike OECD-IEA estimates of FFS as depicted below:

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<sup>117</sup> *Measuring Fossil Fuel Subsidies in the Context of the Sustainable Development Goals*. (2019) Accessed at <<https://wedocs.unep.org/bitstream/handle/20.500.11822/28111/FossilFuel.pdf>>, Last accessed: 3 March 2022.

<sup>118</sup> *Ibid*, p. 2.



<sup>119</sup>IISD, International Institute for Sustainable Development.

<sup>120</sup>OECD-IEA, Organisation for Economic Co-operation and Development-International Energy Agency.

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Source: Nature Magazine Website<sup>119</sup>

98. It is evident from the above that there is a significant difference in the quantification of FFS by the different international institutions. Although, the top five countries that provide FFS are China, Russia, Saudi Arabia, India and Argentina as per both IISD and OECD-IEA database. This paper has not examined the economic implications of different methodologies that may be adopted to calculate FFS. However, there may be an asymmetric impact on developed and developing countries based on the methodology adopted to calculate FFS. For instance, the methodology adopted to calculate Aggregate Measurement of Support (AMS) for agricultural products under the AoA is considered to be especially unfair towards developing countries.<sup>120</sup> Therefore, developing countries must undertake assessments to understand which methodology would be the most equitable in the event of development of FFSR disciplines.

<sup>119</sup> Jocelyn Timperly, 'Why Fossil Fuel Subsidies Are so Hard to Kill', *Nature*, 20 October 2021, Accessed at: <<https://www.nature.com/articles/d41586-021-02847-2#ref-CR1>>, Last accessed: 3 March 2022.

<sup>120</sup> Sharma, S. K., and A. Das. 2018. "EU-Brazil Proposal on Farm Support: Strengthening Agricultural Reforms or Undermining Them?" *Agricultural Economics Research Review* 31 (1). doi:10.22004/ag.econ.274829.

99. Irrespective of the methodology that may be adopted for FFSR disciplines, the definition of the term “subsidy” provided under the ASCM is considered as a benchmark due to its wide acceptance and its legally binding nature.<sup>121</sup> Unlike the IEA definition, which excludes production subsidies and the IMF’s “post-tax subsidies” definition, which is not widely accepted, the ASCM definition is comprehensive and includes both producer and consumer subsidies.<sup>122</sup> However, the ASCM does not cover FFS as prohibited or actionable subsidies in light of the environmental regulations. In fact, it has been noted that many FFS may not even qualify as a subsidy under the ASCM, as they are not specific.<sup>123</sup> Therefore, FFSR may go beyond the scope of actionable subsidies under the ASCM and may even include non-specific subsidies.
100. It is also not clear whether the scope of FFSR under the WTO will be limited to subsidies as defined under the SCM Agreement or whether it will extend to subsidies granted to services related to the fossil fuel sector. Without any express understanding regarding the scope of possible FFS disciplines, it is safe to speculate that future FFSR may also extend to services subsidies, disciplines on which are yet to be successfully negotiated under the GATS.
101. Without an agreed upon definition of “*inefficient fossil fuel subsidies that encourage wasteful consumption*”, it is reasonable to rely on the ordinary meaning of the term in accordance with the principles of treaty interpretation under customary international law as specified under Articles 31 and 32 of the Vienna Convention of the Law of the Treaties (VCLT). The dictionary meaning of the term “inefficient” indicates that they are FFS that are not able to “work in a satisfactory way”.<sup>124</sup> This does not provide much clarity as to what kind of FFS would constitute as “inefficient”, begging us to ask the question whether there are certain types of “efficient” FFS and what those subsidies entail and how might they be structured. More importantly, whether developing countries have the capacity to grant or transition to such subsidies.
102. It has been noted that none of the other forums discussed above are yet to adopt a formal definition of any of the three elements of the mandate to reform “inefficient fossil-fuel subsidy that encourages wasteful consumption”.<sup>125</sup> Certain G20 countries as part of the OECD voluntary review mechanisms reviewed themselves and identified which policies were subject to review and which support measures would be reformed, consistent with a country-led process.<sup>126</sup> The challenge of defining what constitutes an “inefficient fossil-fuel subsidy that encourages wasteful consumption” is therefore a common issue emerging from discussion in the peer reviews and there have been cross-country differences.
103. For instance, Germany’s definition covered direct budgetary transfers and tax expenditures, while Mexico’s referred only to direct budgetary transfers – although its self-report included discussion on tax expenditures, identifying five additional measures providing fiscal incentives for fossil-fuel producers and consumers in the aim of transparency. On the other hand, China,

<sup>121</sup> *Ibid*, p. 15.

<sup>122</sup> *Ibid*, p. 19.

<sup>123</sup> Cleo Verjukil, Harro Van Asselt, Tom Moerehnout, Liesbeth Casier and Peter Wooders, “Tackling Fossil Fuel Subsidies Through International Trade Agreements: Taking Stock, Looking Forward”; *Virginia Journal of International Law*, Vol 58:309, 2019, p. 319.

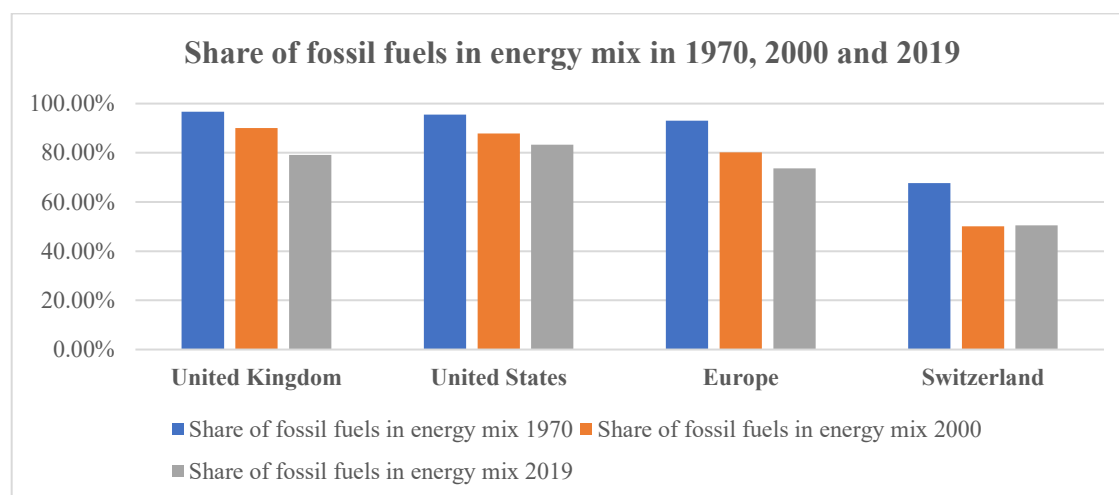
<sup>124</sup> ‘Meaning of inefficient in English’, Cambridge Online English Dictionary, Accessed at: <<https://dictionary.cambridge.org/dictionary/english/inefficient>>, Last accessed: 3 March 2022.

<sup>125</sup> OECD/IEA (2021), “Update on recent progress in reform of inefficient fossil-fuel subsidies that encourage wasteful consumption”, Accessed at: <[www.oecd.org/fossil-fuels/publicationsandfurtherreading/OECD-IEA-G20-Fossil-Fuel-Subsidies-Reform-Update-2021.pdf](http://www.oecd.org/fossil-fuels/publicationsandfurtherreading/OECD-IEA-G20-Fossil-Fuel-Subsidies-Reform-Update-2021.pdf)>, Last accessed: 3 March 2022, p. 36.

<sup>126</sup> *Ibid*

Germany and Italy included those FFS that provide support to fossil fuel-based electric power production and consumption, but Mexico and the U.S. did not.<sup>127</sup> Italy classified every subsidy to fossil fuel production and consumption as inefficient whereas, China and the U.S. signalled their intent to phase out specified measures benefiting fossil-fuel production.<sup>128</sup>

104. **Second**, it is relevant to note that the revised proposed FFSR Ministerial Statement for MC-12 ([JOB/GC/264/Rev.2](#)) add the phrase “*along a clear timeline*”, which was not part of the original text proposed by New Zealand. The addition of this phrase indicates that the future disciplines will seek to set a timeline by when WTO Members will have to phase out their FFS. By virtue of eliminating and/or phasing out FFS, countries will also have to reduce their dependence on fossil fuels and switch to other alternate sources of energy.
105. However, developed countries have already had the opportunity to reduce their share of fossil fuels in their energy mix at their own pace over a significant period of time. For instance, countries such as the EU, UK and the U.S. have managed to decrease the share of fossil fuels in their energy mix by 10 – 20 percentage over the course of about fifty years as is evident from the graph provided below:



Source: Data from <https://ourworldindata.org/>

106. In fact, it has also been noted by a Working Paper by the Quaker United Nations Office that developed countries have had the opportunity to gradually phase out their FFS.<sup>129</sup> It expressly notes that the Netherlands closed down its coal mines over the course of a decade; its last mine was shuttered in 1974 and France decided to close down all of its coal and lignite mines in 1994, a feat that was concluded ten years later.<sup>130</sup> Whereas, Germany although heavily subsidize its hard coal mines managed closed its last underground pit in 2018.<sup>131</sup>

<sup>127</sup> *Ibid*

<sup>128</sup> *Ibid*

<sup>129</sup> Joachim Monkelbaan and Ronald Steenbik, ‘Fossil Fuel Subsidy Reform: What role for the World Trade Organization?’, Working Paper No.3 in Trade and Environmental Sustainability Series, Accessed at: [https://quano.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform\\_A4\\_29\\_11.pdf](https://quano.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform_A4_29_11.pdf) Last accessed: 3 March 2022., p. 19.

<sup>130</sup> *Ibid*.

<sup>131</sup> *Ibid*.



107. The bulk of FFS is provided by only a small subset of the WTO membership.<sup>132</sup> Therefore, in the event FFSR disciplines are formulated, these developing countries, primarily reliant on fossil fuels for their energy needs will be required to phaseout such FFS ‘*along a clear timeline*’. Whereas many developed countries had the liberty to switch to cleaner energy in a manner that enabled such countries to reap the benefits of industrialisation and gradually phase out fossil fuel reliance. In effect, future FFSR disciplines may lead to developing countries being coerced to phase out fossil fuel reliance on the basis of an internationally dictated timeline, which may not adequately address their developmental needs. Therefore, disciplines on FFSR will not only fail to take into consideration historical context but also adversely impact certain developing countries as opposed to developed countries. It will lead to a reaffirmation of the status quo between developed and developing countries.
108. **Third**, the proposed Ministerial Statement seeks to take into account “*the specific needs and conditions of developing countries and minimize the possible adverse impacts on their development*”. This is an attempt to grant special and differential (S&D) to developing countries. However, it is important to underscore that the language specifies taking into account the **specific needs and conditions of developing countries**. This is unlike the language used in the WTO Agreements and prior Ministerial Declarations. The word ‘specific’ has the connotation of being particular as opposed to being general and is connected to a particular thing and even limited to one thing.<sup>133</sup> Thus, it appears that developing countries in the future FFSR disciplines may need to establish their specific needs and conditions in order to be granted S&D treatment.
109. Further, it appears that the S&D that is envisaged as part of the FFSR is also qualified with the language “*in a manner that protects the poor and the affected communities*”. This is going to be difficult for developing countries to establish that their existing support towards fossil fuels is such that it ‘*protects the poor and the affected communities*’. This language is vague and unclear. For instance, it is unclear who all may be considered as ‘affected communities’ and what is “affecting” such communities and why such communities are more suited to receive FFS as opposed to other communities.
110. Moreover, many developing countries, such as India China and South Africa, are heavily dependent on fossil fuels as their primary source of energy. In such cases, the FFS granted is necessary for that country’s energy needs and may not specifically target “poor and affected communities”. Therefore, the S&D treatment being envisaged in the FFSR process is qualified in a manner that may significantly curtail the flexibility available to developing countries under the WTO Agreements.
111. **Fourth**, in terms of sharing information through enhanced transparency at the WTO appears to be a repetitive and redundant obligation being sought by the proposed FFSR Ministerial Statement. WTO Members already have an obligation under the Article 25.2 of the ASCM to notify all specific subsidies every three years. Therefore, it is difficult to gauge the additional

<sup>132</sup> Joachim Monkelbaan and Ronald Steenbik, ‘Fossil Fuel Subsidy Reform: What role for the World Trade Organization?’, Working Paper No.3 in Trade and Environmental Sustainability Series, Accessed at: <[https://quno.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform\\_A4\\_29\\_11.pdf](https://quno.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform_A4_29_11.pdf)> Last accessed: 3 March 2022., p. 14.

<sup>133</sup> ‘specific’, Oxford Learner’s Dictionaries website, Accessed at: < <https://www.oxfordlearnersdictionaries.com/definition/english/specific#:~:text=%2Fsp%C9%99%CB%88s%C9%AAf%C9%AAk%2F-%2Fsp%C9%99%CB%88s%C9%AAf%C9%AAk%2F,a%20specific%20type%20of%20cancer>>, Last accessed: 3 March 2022.

transparency at the WTO level the proposed FFSR Ministerial Statement is seeking to achieve. Further, there is sufficient degree of transparency and monitoring of FFS by international forums like G20, OECD and IISD. Thus, it seems redundant why the WTO, yet another international organization, should utilize its energies monitoring the same.

112. *Lastly*, the issue of considering FFSR at the WTO needs careful reflection. It is evident that several international institutions are discussing issues related to fossil fuels. For instance, the UNFCCC's COP26 discussed the issue of FFS as well and called upon countries to phase out the same. A failure on part of countries to effectively engage at COP26 should not lead to shifting these discussions in alternate forums such as the WTO.

### **b) Implications of possible future FFSR disciplines**

113. Although, there is no common understanding of FFS, the ASCM provides a benchmark as to the elements of a 'subsidy'. Therefore, it is relevant to understand whether all subsidies, as defined under Article 1 of the ASCM, towards fossil fuels would constitute "*inefficient fossil fuel subsidies that encourage wasteful consumption*". To clarify, Article 1 of the ASCM specifies that a subsidy contains: (i) financial contribution by a government or any public body on an entrustment basis and (ii) benefit. These elements must be satisfied in order for a subsidy to exist.<sup>134</sup> A claim under the ASCM exists only if the FFS is a prohibited or actionable subsidy.
114. It has been noted that unlike renewable energy subsidies, which have been challenged before the WTO in the past<sup>135</sup>, as they usually specify local content requirements for project developers, FFS primarily target consumers, making them "unspecific" for the purposes of the ASCM. In other words, FFS are often granted across the board and may not be considered to be enterprise or sector specific. Thus, there would be no claim against such subsidies under the ASCM. However, future FFSR disciplines may require phasing out of such non-actionable FFS, which are currently compliant with the ASCM.
115. The development of FFSR disciplines may even encroach upon legitimately available policy space or exceptions available to Members under the ASCM. For instance, Annex I of the ASCM identifies a list of export subsidies that are prohibited but, allows for remissions of all forms of energy taxes on products, if they are not in excess of the similar taxes levied, and the remissions can include prior-stage taxes and taxes on inputs consumed in the production process of the products in question.<sup>136</sup>
116. With respect to inputs consumed in the production process, Annex II of the ASCM contains Guidelines on the Consumption of Inputs in the Production Process and footnote 61 identifies such inputs as 'inputs physically incorporated, energy, fuels and oil used in the production process'. It may be the case that the future FFSR disciplines will encroach upon WTO Members legitimate right to grant rebates on taxes of such inputs which clearly could include fossil fuels as identified in footnote 61.

<sup>134</sup> 'Subsidies and Countervailing Measures: An Overview', Accessed at: <[https://www.wto.org/english/tratop\\_e/scm\\_e/subs\\_e.htm](https://www.wto.org/english/tratop_e/scm_e/subs_e.htm)>, Last accessed: 3 March 2022.

<sup>135</sup> See *Canada – Renewable Energy* (DS412/426), *India – Solar Cells* (DS456), *United States – Renewable Energy* (DS510).

<sup>136</sup> Annex I (h), ASCM.

117. Also, paragraph (k) of Annex I of the ASCM prohibits (1) grant of export credits at rates below those which governments actually have to pay for the funds so employed, or (2) governments to pay all or part of the costs incurred by exporters or financial institutions in obtaining credits to the extent it secures a material advantage in the field of export credit terms. The second sentence of paragraph (k) of Annex I specifies a proviso for WTO Members that are participants to the OECD Arrangement on Officially Supported Export Credits, or for WTO Members that apply the interest rates provisions of the OECD Arrangement. Such export credit practice is allowed and considered to be consistent with the ASCM.
118. However, recently EU proposed a ban export credits for coal-fired electricity projects and is discussing the same with countries such as Canada, Norway, Switzerland, UK and the U.S under the OECD Arrangement.<sup>137</sup> By virtue of this development, we can anticipate that the exception granted under the proviso of paragraph (k) of Annex I of the ASCM may no longer be available to WTO Members with respect to fossil fuel related projects. Further, EU also seeks to immediately end all financing of new coal infrastructure in third countries and these may have spill over effects on certain countries that are reliant on coal for their energy requirements and were dependant on the EU.
119. FFSR disciplines may also have certain implications on the AOA, which specifically regulates subsidies granted to agricultural products. Article 6.2 of the AoA provides an exception to domestic support commitments for developing countries and is often referred to as Development Box subsidies. Article 6.2 specifies that agricultural input subsidies generally available to low-income or resource-poor producers in developing countries are exempt from domestic support reduction commitments and need not be included in the calculation of a Member's Total AMS.
120. Although, Article 6.2 has not been interpreted by any panel or the Appellate Body, it is reasonable to assume that inputs will include electricity and/or fuels/oil. Development Box subsidies can be provided without any monetary ceiling. For instance, in India, one of the common forms of input subsidies is to provide electricity to the farmers at subsidised rates. The prohibition or phase out of FFS could prevent developing countries from providing electricity at subsidised rates to their farmers, if such electricity is generated from fossil fuels. Therefore, even this legitimate exception granted to developing countries to allow such input subsidies to low-income or resource-poor producers may possibly be encroached upon by the future FFSR disciplines.
121. As is evident from the comparative statistics discussed earlier, FFSR is bound to disproportionately impact developing countries over developed countries. Developing countries such as Argentina, China, India, Indonesia, Malaysia rely on fossil fuels for more than 80% of their energy needs in 2019 and will be required to reduce such dependence based on a clear timeline set by the WTO, if such disciplines come into force. In this context, it is critical to recall the principle of common but differentiated responsibility (CBDR) granted under multilateral environmental agreements such as the Paris Agreement. If FFSR disciplines lead to developing countries committing beyond their voluntary commitments undertaken in their NDCs under the Paris Agreement, such disciplines may conflict with CBDR, which rightly seeks to take into account the historical context of climate change.

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<sup>137</sup> 'EU teams up with other OECD countries to propose ban on export credits for coal-fired electricity projects', European Commission, Brussels, 14 September 2021, Accessed at: <<https://trade.ec.europa.eu/doclib/press/index.cfm?id=2299>>, Last accessed: 3 March 2022.

122. Interestingly, recent research indicates that about half of the world’s fossil fuel assets will be worthless by 2036 under a net zero transition.<sup>138</sup> Such market fluctuations further adversely impacts developing countries reliant on fossil fuels. In fact, the UNCTAD Trade and Development Report 2021 notes that developing countries confront the dilemma of having to pursue economic development while keeping emissions and resource consumption within the ecological limits of the planet.<sup>139</sup> This is a difficult dilemma to resolve. However, the resolution of this dilemma should be in the sovereign hands of each developing country and international disciplines on FFSR should not be used to curtail requisite policy space available to them.
123. The UNCTAD Trade and Development Report 2021 also notes that the spread of global value chains along with tightening of intellectual property rights pose even greater obstacles for developing countries in accessing the technologies needed to make that transition to cleaner energy.<sup>140</sup> As the world transitions towards renewable energy, resources and capacity to develop the same lie in the hands of developed countries. In fact, the two countries that are leaders in filing patent applications in the renewable energy sector are Japan and the U.S.<sup>141</sup>
124. Further, transitional challenges to clean energy differs widely between countries, depending on the level of dependence on fossil fuels and their capacity to support a transition. FFSR disciplines may compel developing countries to give up the use of fossil fuels even in the absence of capabilities in renewable energy. Accordingly, the UNEP Production Gap Report highlights that countries with limited capacity will need financial, technological, and capacity-building support from higher-capacity countries in order to support a transition away from fossil fuels.<sup>142</sup> Without such policy interventions, there will be an enhanced demand for imports of renewable energy machinery and equipment in developing countries that will benefit developed countries, which have the requisite financial and technological capacity.
125. In other words, FFSR may erode the price competitiveness of manufacturing in developing countries and impact the growth and development of such countries. The UNCTAD Trade and Development Report 2021 has also noted that the transfer of low-carbon technology on commercial terms works well among developed countries, while developing countries continue to be exposed to a range of economic, financial, and technical barriers.<sup>143</sup> Moreover, job losses in the fossil fuel sector will be around 7.4 million. Although it has been noted that there will be a net addition of 11.6 million jobs towards the green path but this job-generation capacity may adversely impact parts of Africa and Asia because existing renewable energy technologies are too capital intensive for these economies’ structural conditions.<sup>144</sup> Further, adequate care must be taken when targeting, designing and phasing-in green policies to avoid further increases of

<sup>138</sup> JF Mercure and others, ‘Reframing Incentives for Climate Policy Action’ [2021] Nature Energy <<https://www.nature.com/articles/s41560-021-00934-2>> accessed 7 November 2021.

<sup>139</sup> Trade and Development Report 2021 - *From recovery to resilience: the development dimension*, 28 October 2021, (UNCTAD/TDR/2021), Accessed at: <<https://unctad.org/webflyer/trade-and-development-report-2021>>, Last accessed: 3 March 2022.

<sup>140</sup> *Ibid*, p. 106.

<sup>141</sup> James Nurton, Patenting trends in renewable energy, March 2020, WIPO Magazine, Accessed at: <[https://www.wipo.int/wipo\\_magazine/en/2020/01/article\\_0008.html](https://www.wipo.int/wipo_magazine/en/2020/01/article_0008.html)>, Last accessed: 3 March 2022.

<sup>142</sup> UNEP Production Gap Report, Executive Summary, Available at: <[https://productiongap.org/wp-content/uploads/2020/12/PGR2020\\_ExecSum\\_web.pdf](https://productiongap.org/wp-content/uploads/2020/12/PGR2020_ExecSum_web.pdf)>, Last accessed: 3 March 2022, p.35.

<sup>143</sup> Trade and Development Report 2021 - *From recovery to resilience: the development dimension*, 28 October 2021, (UNCTAD/TDR/2021), Accessed at: <<https://unctad.org/webflyer/trade-and-development-report-2021>>, Last accessed: 3 March 2022.

<sup>144</sup> *Ibid*, p. 120.

wealth inequalities across and within many developed and developing countries.<sup>145</sup> This is particularly important because increasing the price of fossil fuels affects lower-income households more than affluent households, since energy costs account for a higher share of lower-income households' consumption.<sup>146</sup>

126. FFSR will narrow the policy space of countries and may even constrain the very policy instruments that countries may like to apply to transition to renewable energy. For example, it has been noted that regulatory de-risking would make it more difficult to maintain vertically integrated, state-owned energy utilities, to redirect subsidies from fossil-fuel to renewable energy providers, such as via feed-in tariffs, or to ensure guaranteed grid access for renewable energy sources.<sup>147</sup>
127. Moreover, support towards renewable energy programs, for instance through feed-in-tariffs or other local content requirements are not consistent with the WTO Agreements. In fact, U.S., Canadian and Indian measures encouraging renewable energy have already been challenged at the WTO and found to be inconsistent.<sup>148</sup> Therefore, existing WTO disciplines already encroach upon Members' abilities to develop capacity for renewable energy and future disciplines on FFSR will only further disadvantage fossil fuel dependent countries.

**c) Position to be considered at the WTO by developing countries**

128. It is critical that developing countries, particularly those reliant on fossil fuels, develop a unified position on the issue of FFSR. In light of climate change, it is critical to transition away from the use of fossil fuels and FFSR may aid in discouraging fossil fuel usage. However, FFSR is being discussed at multiple forums and there is no need for duplicity of such work at the WTO. In fact, the WTO is not even specifically mandated to address issues related to climate change and its mandate is limited to 'sustainable development' only.
129. FFSR is being pursued at forums such as G20 and OECD, which already have an existing framework for the same. Therefore, WTO Members should effectively engage on FFSR at these existing frameworks and avoid engulfing disciplines on yet another issue at the WTO. Such disciplines appear to be redundant and may be utilised to curb the legitimate policy space available to developing countries and be inconsistent with the principles of CBDR.

**D.2. Position to be considered by India**

130. India, as part of the G20 and UN SDG 12.c.1, has committed to rationalizing and phasing out inefficient and wasteful fossil fuel subsidies. In 2019, India even committed to a G20 fossil fuel subsidy peer review along with France.<sup>149</sup> India is also one of the few countries that has committed to FFSR as part of its NDCs under the Paris Agreement.

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<sup>145</sup> *Ibid.*

<sup>146</sup> *Ibid.*, p. 71.

<sup>147</sup> *Ibid.*, p. 124.

<sup>148</sup> See *Canada – Renewable Energy* (DS412/426), *India – Solar Cells* (DS456), *United States – Renewable Energy* (DS510).

<sup>149</sup> India-France Joint Statement on Visit of Prime Minister to France (22-23 August 2019), 22 August 2019, para. 16, Accessed <<https://www.mea.gov.in/bilateral-documents.htm?dtl/31755/IndiaFrance+Joint+Statement+on+Visit+of+Prime+Minister+to+France+2223+August+2019>> Last accessed: 3 March 2022.

131. At the July G20 meeting, India noted that the pledges made by some countries to achieve net zero GHG emissions may not be adequate in view of fast depleting available carbon space, but highlighted the legitimate need of developing countries to growth and accordingly, urged G20 countries to commit to bringing down per capita emissions to global average by 2030.<sup>150</sup> Further, at the COP26 summit, India promised to cut its emissions to net zero by 2070.<sup>151</sup>
132. Thus, India seeks to commit to the international goal of bringing down carbon emissions but, not without highlighting the historical context of climate change and the legitimate right of developing countries for growth. In this regard, it may be relevant for India to consider the following points when developing its position on FFSR at the WTO:
- India is heavily reliant on fossil fuels for its energy requirements and has sought to grant subsidies in this sector for years. Prior to considering any possible phase out of FFS unilaterally or on account of international commitment, India must seek to invest in alternate energy sources other than fossil fuels so that the transition out of being fossil fuel reliant is smooth and does not impact India's energy requirements. It has also been estimated that some 3.6 million jobs in India are directly or indirectly linked to domestic coal mining and the main direct effect of transitioning away from subsidizing domestic coal mining will be felt in the mining industry itself.<sup>152</sup>
  - India may also like to recall that its ambitious goals of building domestic capacity for renewable energy faced a dispute before the WTO. The U.S. challenged India's domestic content requirement for solar cells and solar modules under "Phase II" of India's Jawaharlal Nehru National Solar Mission, where both the panel and the erstwhile Appellate Body ruled against India. The WTO dispute settlement body found that India's measures were inconsistent with Article III of the General Agreement on Tariffs and Trade (GATT) and could not be justified under the exceptions specified under Article XX of the GATT.<sup>153</sup> Without developing domestic capacity for renewable energy, India may become even more import dependent for its energy needs. India should consider structuring its renewable energy support programs in a manner that is WTO compatible.
  - India lacks technological know-how with respect to the renewable energy sector and may like to consider proposing more effective transfer of technology and capacity building provisions from developed countries that are seeking to move away from fossil fuels, not just at the WTO, but also at other forums.
  - Prior to committing to a position on FFSR, India may like to consider seeking clarifications from the WTO Members supporting the FFSR Statement regarding the scope and meaning of the phrase such as "*inefficient fossil fuel subsidies that encourage wasteful consumption*" and understand what these disciplines seek to achieve.
  - India can also rightfully object to the discussions on FFSR at the WTO and take the position similar to some other countries that highlighted that alternate forums such as the G20 already deals with the issue of FFSR.

<sup>150</sup> 'Statement from the Republic of India', Presidency Statement towards the G20 Leaders Summit, G20 Energy and Climate Ministerial Meeting, Naples, 23 July 2021, Accessed at: <<https://www.g20.org/wp-content/uploads/2021/07/Presidency-Statement.pdf>>, Last accessed: 3 March 2022.

<sup>151</sup> COP26: India PM Narendra Modi pledges net zero by 2070, BBC, 2 November 2021, Accessed at: <<https://www.bbc.com/news/world-asia-india-59125143>>, Last accessed: 3 March 2022.

<sup>152</sup> Joachim Monkelbaan and Ronald Steenbik, 'Fossil Fuel Subsidy Reform: What role for the World Trade Organization?', Working Paper No.3 in Trade and Environmental Sustainability Series, Accessed at: <[https://quno.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform\\_A4\\_29\\_11.pdf](https://quno.org/sites/default/files/resources/Fossil%20Fuel%20Subsidy%20Reform_A4_29_11.pdf)> Last accessed: 3 March 2022., p. 14.

<sup>153</sup> India — Certain Measures Relating to Solar Cells and Solar Modules (DS456)

- India may also like to consider conducting a detailed assessment of its domestic FFS regime so that it can highlight its concerns with respect to FFSR and adopt a consistent position on the same at the variety of international forums discussing the issue.

133. India must be mindful that the phasing out FFS should be done in a staggered manner with a clearly defined and outlined policy to maintain price stability. FFSR can impact the prices of fossil fuels not just for end-consumers but also for ancillary industries and sectors.

## **E. Conclusion**

134. The issue of trade-related to disciplines on fossil fuels is being discussed at several international organizations and multilateral forums and is focused on FFSR. Currently, most disciplines are limited to efforts of transparency and accountability by countries through pledges or on a voluntary and/or peer review basis. However, developing countries (particularly those that are primarily reliant on fossil fuels for their energy needs) should maintain a watchful eye on the developments related to FFSR because the data reveals that future FFSR disciplines will asymmetrically impact fossil fuel dependent developing countries.

135. At the WTO, negotiations on FFSR should not be supported without an express mandate from the entire membership. Further, developing countries must ensure that discussions, if any, on FFSR should not curtail the legitimate policy space available to them under the WTO Agreements. Environmental protection and prevention of climate change are critical but, binding international disciplines cannot be developed in an inequitable manner without taking into consideration the historical context of climate change. The development of such unfair disciplines will not only fail to achieve its goals but, may even lead to the exploitation of the Global South.



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