

Transparency in Trade Agreements: Subsidies and SOEs

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Plan

The subject matter:
subsidies and SOEs

Transparency disciplines
in trade agreements

Reimagining
transparency: beyond 1.0

Subject matter

Subsidies and SOEs

Global Trade Alert (2008-2022): subsidies

10932 policy *harmful* interventions since 2008

4915 are **subsidies** (42.6%) – most common policy intervention

1781: export-related measures, including **export subsidies** (15.5%)

1386: contingent protection (12%)

Source: https://www.globaltradealert.org/global_dynamics/day-to_1023/flow_all
(last access: 23rd October 2022)

SOEs

- Over the 2010-2020 decade, the share of SOE assets among the world's 2,000 largest firms has doubled to 20%
- These assets are equivalent to 50% of global GDP
- The largest SOEs have become global players
- “The growing global reach of SOEs means SOE-induced competitive distortions in the home market may be spilling over to the global market. Governments often provide support to SOEs to compensate them for pursuing policy goals. ... However, government support may not be linked to a specific public mandate or may exceed the net cost of the mandate. In this case, government support can give the SOE a competitive advantage over private firms.”

Source: IMF (2020)

1. Emerging Market Economies Account for the Increasing Importance of SOEs (Percent of assets of largest firms)

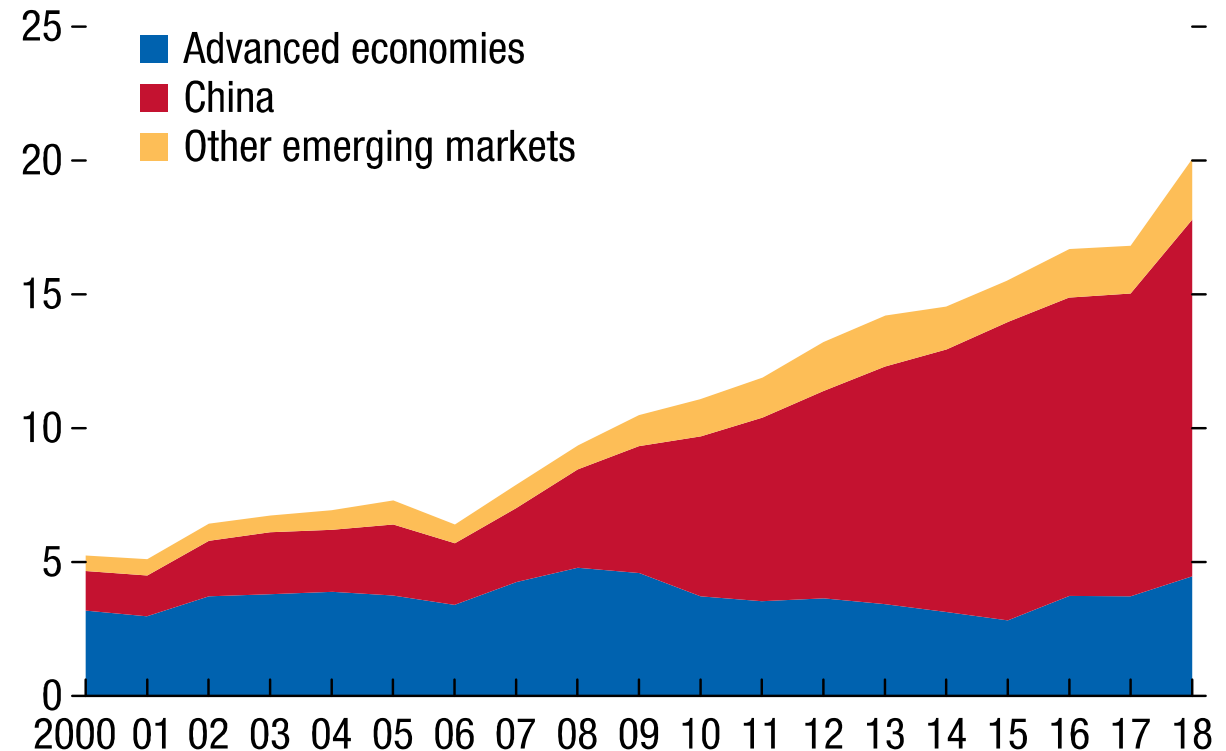
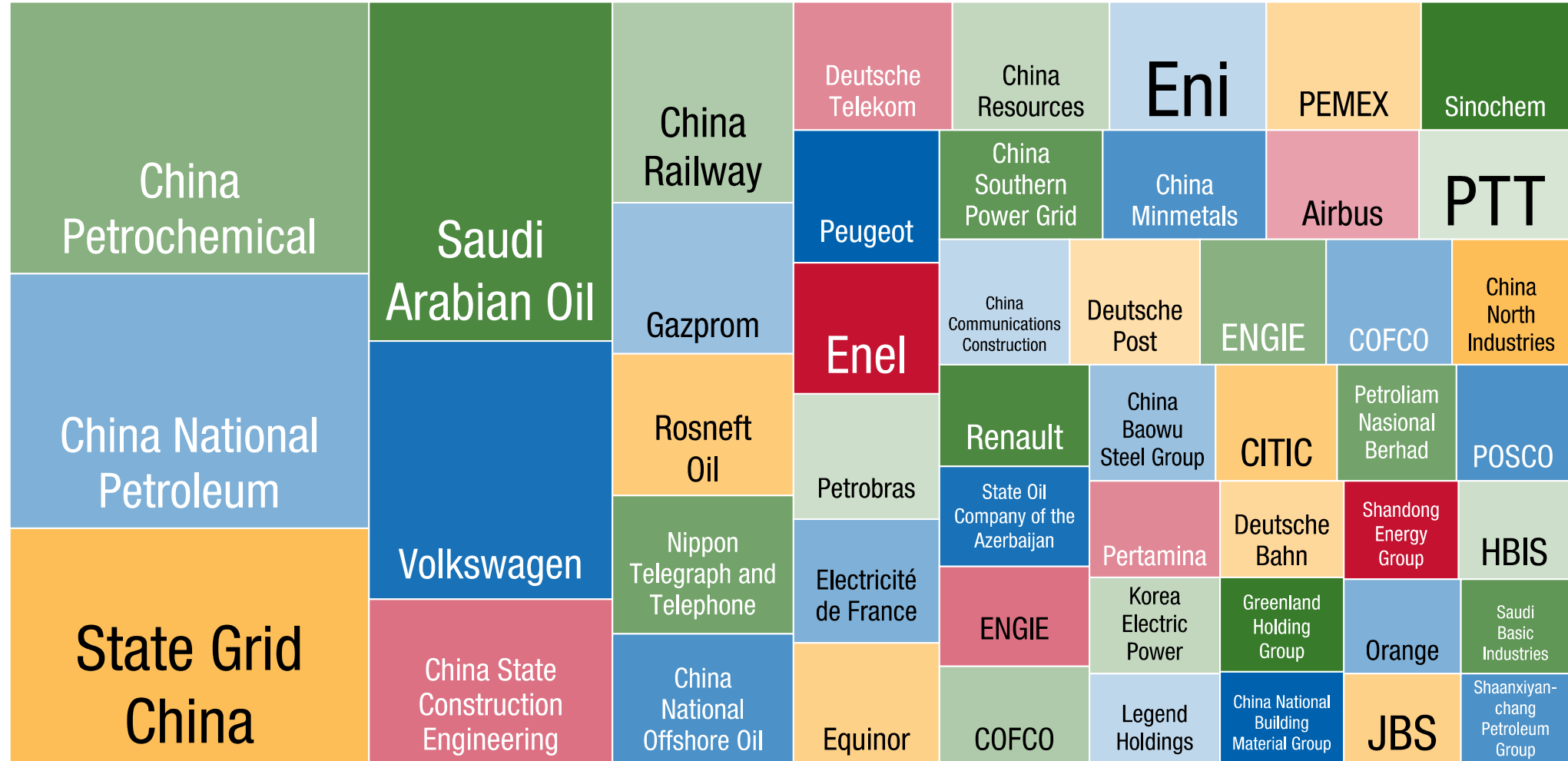


Figure 3.6. Top 50 Nonfinancial SOEs

(Percent of revenues relative to total revenues in largest 2,000 firms)



Conclusions

From a policy perspective, subsidies and SOEs are largely **two sides** of the same coin

Public subsidies (quite often channelled through SOEs) are very **politically sensitive**

High degree of **uncertainty** regarding definitions, policy goals, effects

Background issue: integration of **China** into the world trading system

Current transparency disciplines

WTO and PTAs

In two
words

Ineffective

"Old approach"

Subsidies: GATT Article XVI (1947)

“If any contracting party grants or maintains any subsidy, including any form of income or price support, which operates directly or indirectly to increase exports of any product from, or to reduce imports of any product into, its territory, it shall notify the CONTRACTING PARTIES in writing of the extent and nature of the subsidization, of the estimated effect of the subsidization on the quantity of the affected product or products imported into or exported from its territory and of the circumstances making the subsidization necessary. “

WTO: ASCM Articles 24 and 25

- ASCM Articles 24 and 25 develops GATT Article XVII
- Article 24.1 sets up a Committee
- Notify any subsidy which is specific granted or maintained within their territory (art 25.2)
- Notification 'without prejudice' (Art 25.7)
 - "Members recognize that notification of a measure does not prejudice either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself."

ASCM Article 25.3

“The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection, and without prejudice to the contents and form of the questionnaire on subsidies, Members shall ensure that their notifications contain the following information:

- (i) form of a subsidy (i.e. grant, loan, tax concession, etc.);
- (ii) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);
- (iii) policy objective and/or purpose of a subsidy;
- (iv) duration of a subsidy and/or any other time-limits attached to it;
- (v) statistical data permitting an assessment of the trade effects of a subsidy.”

Peer-control and surveillance; cross-notifications

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- Written requests for information by other Members (Art 25.8) and prompt reply (Art 25.9)
 - Surveillance by Committee (Art 26)
 - “Any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.” Example: US vs China and India in October 2011

Effective?

Wide agreement: NO!

Why? Several factors:

- Difficult technical nature of subsidies
- Political sensitivity
- Fear of challenges (“glasshouse effect”)
- Subsidies are diffuse – granted by various departments and levels of government (no unified subsidy authority; Committee representatives are ‘only’ trade people)
- Diplomats vs ‘experts’
- Compare SPS and TBT committee and ‘serious trade concerns’
- Wolfe & Collins-Williams (2010)

Committee on Subsidies

Proverbial example of non-working
WTO committee

NB: It has not always been like this!
Compare with GATT and in
particular the Tokyo Round
Committee on the Calculation of
Subsidy

SOEs: virtually only one provision

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- GATT Article XVII on **State Trading Enterprises (“STEs”)**, e.g. marketing boards, import monopolies
 - GATS Article VIII (on monopoly suppliers and exclusive service suppliers) does not add much
 - **Transparency** obligations already in the beginning (see para. 4: notification of products imported and exported; import mark-up; operations)
 - **China’s Protocol of Accession** includes additional disciplines, including transparency obligations notification of fiscal or other transfers between or among SOEs and STEs in the agricultural sector
 - NB: it does not generally applies to SOEs or public undertakings; similar to Art 37 TFEU on State monopolies of a commercial character

Conclusions on (transparency) disciplines

Still a great deal of uncertainty on subsidies and SOEs, their nature, goals and effects

Disciplines largely proved ineffective

Now limited scope of application

Transparency is highly deficient

Do PTAs
add much
to the WTO
law?

Only partly ...

Transparency and PTAs

- PTAs include **rules that develop the GATT/WTO transparency standard**
- More **frequent notifications** (e.g. annual, EU – Korea)
- **Commitment to publish data on publicly accessible website** (e.g. objective of subsidies, legal basis, form, amount, recipient: CAI; or data on SOEs: CPTPP)
- **Obligation to answer request for information** (e.g. on “covered entities” with respect to ownership, organizational structure, revenues/assets, exemptions, description of government authority; CAI; very developed chapter in CPTPP)
- **Reference to *corporate governance* standards** (e.g. EU – Ukraine; EU – Mexico; EU – Vietnam; leaked TTIP text; CAI)
- Regional Comprehensive Economic Partnership (RCEP) – **silent**; compare with CAI
- Supervision and review of disciplines


Reimagining transparency

Beyond micro-management towards paradigms

Main message

- Let's think “outside the box”
- It is **not** time for “**technicalities**”
- It is time to go back to the **fundamentals** and to generate an informed debate and garner as much broad consensus as possible on fully **deliberated** key **ideas** and **paradigms** around which the world trading system should be shaped for the years to come

Time to




Time	Time to create knowledge
Time	Time to fully understand the key actors in trade and the impact of trade measures
Time	Time to connect the various stakeholders – inside and outside the organization
Time	Time to foster an epistemic community



All this ...

... can be summed up with one
paradigm: that of
“transparency”



Literature

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Subsidies, Trade, and International Cooperation


Prepared by staff of IMF, OECD, World Bank, and WTO

2022/001

“The international organizations (IOs) authoring this report can strengthen their individual and joint work to support governments in this endeavor. While the brunt of this work lies with finance ministries, trade ministries, and sectoral and specialized agencies of national governments, international organizations have key roles to play. The four authoring institutions are examining ways to help, individually and jointly, such as by collecting, organizing, and sharing data, coordinating analytical work agendas to develop methodologies to assess the cross-border effects of different forms of subsidies, and supporting inter-governmental dialogues. This will involve reaching out to and working with other international institutions as well.” (IMF, OECD, World Bank and WTO, 2022)



Transparency

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- Not simply «**right to know**» governments' measures (see GATT 1947 Article X)
 - The «right to know» is simply the basis for **evaluating** measures and **deliberating** about rules



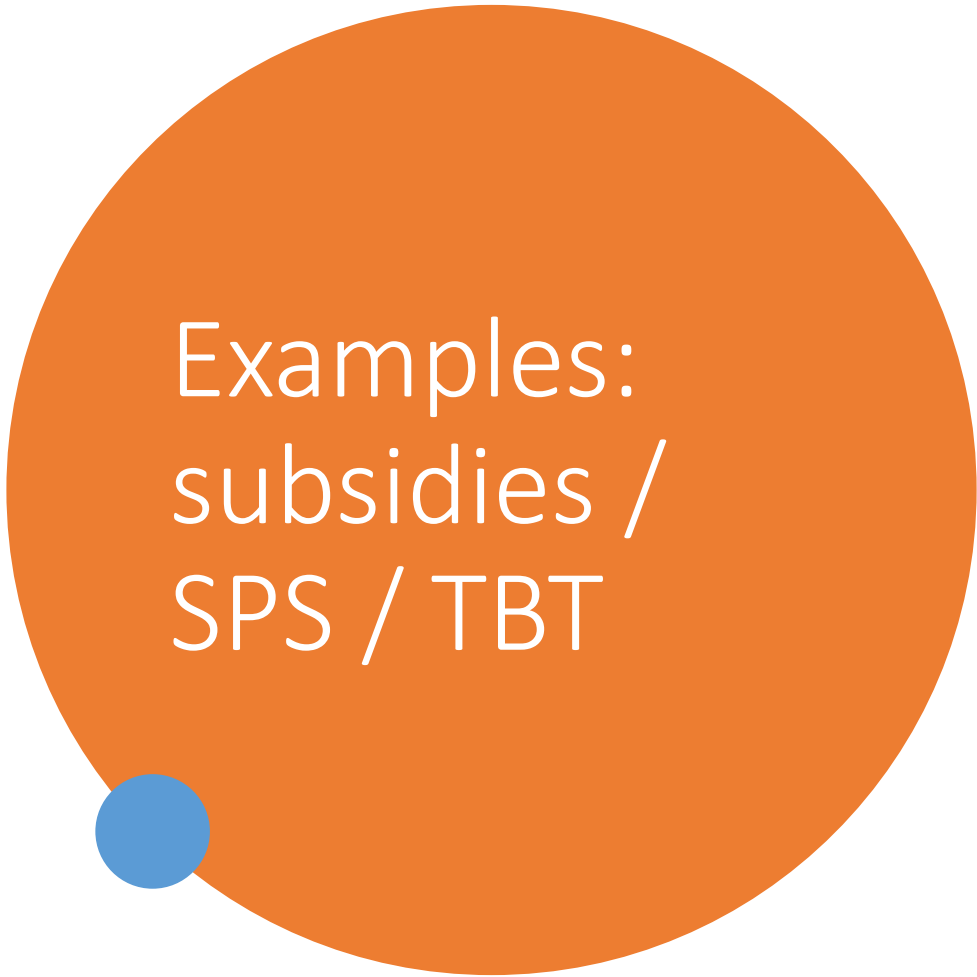
Transparency 1.0

- The very first meaning of transparency – which is embodied in the “right to know” – should enable the WTO community to get to know about governments’ measures and their salient characteristics **from the trade perspective**



Evaluation

- It is **not about determining whether the measure is compliant or not with the laws**
- but rather whether it has **succeeded in achieving its objectives**, what **effects** it generates, especially in terms of cross-border trade externalities, whether “best practices” can emerge



Examples:
subsidies /
SPS / TBT

- Members need to know about **subsidies**, their forms, magnitudes, recipients, circumstances, policy objectives, duration, trade effects etc – not very effective
- A similar transparency is required of **TBT / SPS measures** – very effective in dealing with STCs (see Scott, Lang; Mavroidis, Horn and Wolfe)



Deliberation

- Finally, after the necessary knowledge is generated, Members are put in the best position to “**deliberate**” – to make *informed policy* decisions and, if necessary, reform the law

Participation

- Important to go beyond deeply-rooted **mantras** like «**Member-driven organization**» - Not written anywhere, interpreted in the most restrictive fashion to disable any “policy” action on the part of the WTO as an IO and to deny past remedies
- **Prescriptions:** enable Secretariat, connect to other relevant IOs (e.g. World Bank, IMF, OECD, WHO) and give “right of audience” to all interested stakeholders (e.g. business community, consumers, NGOs, etc)
- Reinforcing the “**private law**” dimension of PIL: difficult to state PIL is only about States / IOs in 2022!

If transparency
is fully
embraced

This would in turn
improve:

Law-making >

Decision-making >

Dispute settlement

Experiment

Perhaps multilateral solutions now are not viable

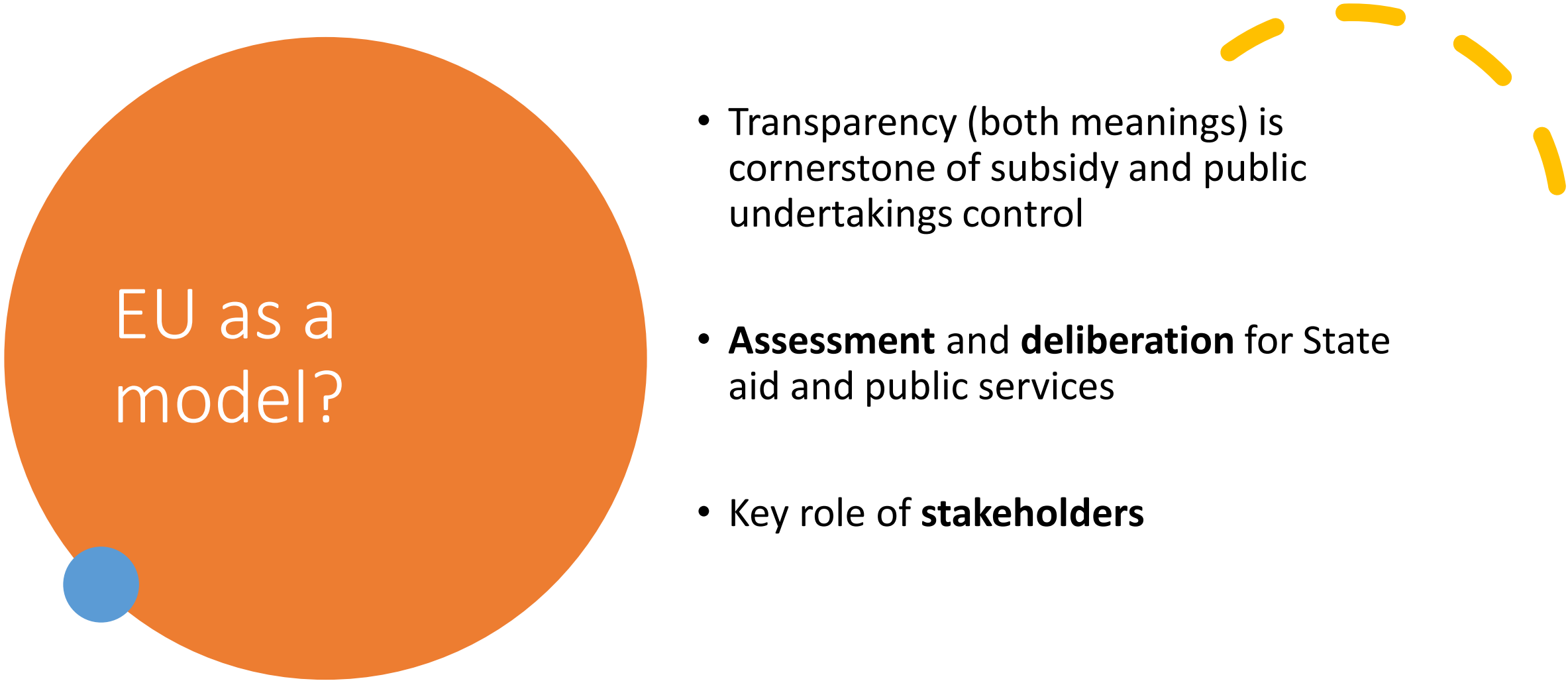
Explore plurilateral solutions

Consider variable geometry

Law reform?

- **Would embracing this “deeper” notion of transparency requirement changes to the law?**
- Art 24.2 ASCM: “The Committee may set up subsidiary bodies as appropriate.”





EU as a model?

- Transparency (both meanings) is cornerstone of subsidy and public undertakings control
- **Assessment** and **deliberation** for State aid and public services
- Key role of **stakeholders**

Thank you

