

The EU-UK TCA as a Model for Strengthening International Rules on Subsidies

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Agenda

1. Plurilateral Solutions for Reforming International Subsidy Rules
2. EU Unilateral Response to the Current Global Wave of Subsidies: The Foreign Subsidies Regulation (FSR)

1. PLURILATERAL SOLUTIONS FOR REFORMING INTERNATIONAL SUBSIDY RULES

1.1 KEY CONCEPTS

- While WTO disputes tend to involve the same 15–20 Members, when we talk about climate change, there is an imperative to have an **inclusive discussion**.
- **~31% (and growing)** of global GDP is outside US, EU, China, Japan, and the UK, and many potential sources of **critical materials** are located outside those five countries.
- **Aim:** ensuring that developing countries are partners in this greener global economy.

1.2 KEY ISSUES

- Three type of concerns regarding current WTO subsidy framework:
 1. The inability to distinguish between **bad and good subsidies**;
 2. The **ineffectiveness of remedies** in disciplining subsidies;
 3. The notification process failure to provide adequate **transparency**.

1.3 PLURILATERAL AGREEMENTS

- Finding consensus among all **166 WTO Members is hard.**
- In the short term, plurilaterals (less than a consensus of all the Members) can be helpful:
 - (a) plurilateral agreement within the WTO or
 - (b) standalone agreement outside the WTO or
 - (c) overall climate change agreement.
- **Goal:** this could evolve (in the future) into a multilateral agreement.

1.4 LESSON FROM THE EU-UK TCA

- There is a substantial body of law outside of the WTO that could provide valuable inspiration.
- The subsidy control regime under the EU-UK Trade and Cooperation Agreement (TCA) is a major rewrite of international subsidy rules. It could offer some guidance:
 1. General principles that a subsidy must meet to be considered compatible (Art. 366 TCA)
 2. Rebalancing measures (Art. 411 TCA)

2. EU UNILATERAL RESPONSE TO THE CURRENT GLOBAL WAVE OF SUBSIDIES: THE FOREIGN SUBSIDIES REGULATION (FSR)

2.1 KEY CONCEPTS

- EU state aid imposes strict limitations on subsidies granted by EU Member States, but it does not tackle **subsidies granted by third countries**.
- The Foreign Subsidies Regulation (Regulation (EU) 2022/2560) addresses this regulatory asymmetry.
- The FSR empowers the EU Commission to **unilaterally** investigate and impose remedies on distortion caused by foreign subsidies on the EU internal market. See *Nuctech* case (T-284/24).

Conclusion

- Urgency to address this lack of effectiveness of international subsidy control discipline for both **trade and climate**. Main risks:
 1. Copycat behavior among countries;
 2. Increase in the adoption of CVDs;
 3. Climate objectives these green subsidies aim to achieve could be undermined.

→ The TCA could be a good example from which to start.