



University of Antwerp
| Faculty of Law

Allowing Subsidies under WTO Law: A New Regime of Exceptions to Empower Sustainable Development and Economic Resilience Setting a research agenda

Pierfrancesco Mattiolo

University of Antwerp

pierfrancesco.mattiolo@uantwerpen.be

**International Workshop
The WTO as Major Driver of
Sustainable Development and its
Reform Process**

15th April 2025



ALMA MATER STUDIORUM
UNIVERSITÀ DI BOLOGNA | DEPARTMENT
OF LEGAL STUDIES



**Ministero degli Affari Esteri
e della Cooperazione Internazionale**

Setting a research agenda

1. Problem definition
2. ASCM's categories: allowing sustainable subsidies... and prohibiting unsustainable ones?
3. Regime of exceptions: introducing Art. 27-bis ASCM... or extending Art. XX GATT?
4. Institutional level: multilateral... and plurilateral, bilateral, unilateral?

Problem definition: living in an age of subsidies

- The *permacrisis* compels governments to take action to support their economies.
- Subsidies — and other forms of non-specific public support — are increasingly used to bolster undertakings in sectors deemed strategic for public policy.
- We face a global trade system where *free market economies* coexist with *state capitalism*, *political capitalism* and planned economies.
- Growing hybridisation between public and private actors, notion of *public body* (e.g. sovereign wealth funds, state-owned enterprises) – EU, US, JP Trilateral Summits
- Green and just transition requires unprecedented measures.

Problem definition: living in an age of subsidies

CNN politics The Biden Presidency Facts First 2022 Midterms

Biden signs Inflation Reduction Act into law

By Maegan Vazquez and Donald Judd, CNN
Updated 10:29 PM EDT, Tue August 16, 2022

f t e



Mandel Ngan/AFP/Getty Images

US President Joe Biden speaks during a signing ceremony for H.R. 5376, the Inflation Reduction Act of 2022, in the State Dining Room of the White House in Washington, DC, on August 16, 2022. (Photo by MANDEL NGAN / AFP) (Photo by MANDEL NGAN/AFP via Getty Images)

(CNN) — President Joe Biden signed a sweeping \$750 billion health care, tax and climate bill into law at the White House on Tuesday — marking a major victory for his administration and the Democratic Party ahead of the midterm elections.

Biden said during a signing ceremony in the State Dining Room that the legislation, called the Inflation Reduction Act, is "one of the most significant laws in our history."

PRESIDENT DONALD J. TRUMP The WHITE HOUSE

FACT SHEETS

Fact Sheet: President Donald J. Trump Orders Plan for a United States Sovereign Wealth Fund

The White House February 3, 2025

Ministero delle Imprese e del Made in Italy PER IL CITTADINO PER LE AZIENDE

Notizie

Social media

Pubblicazioni

Ufficio stampa

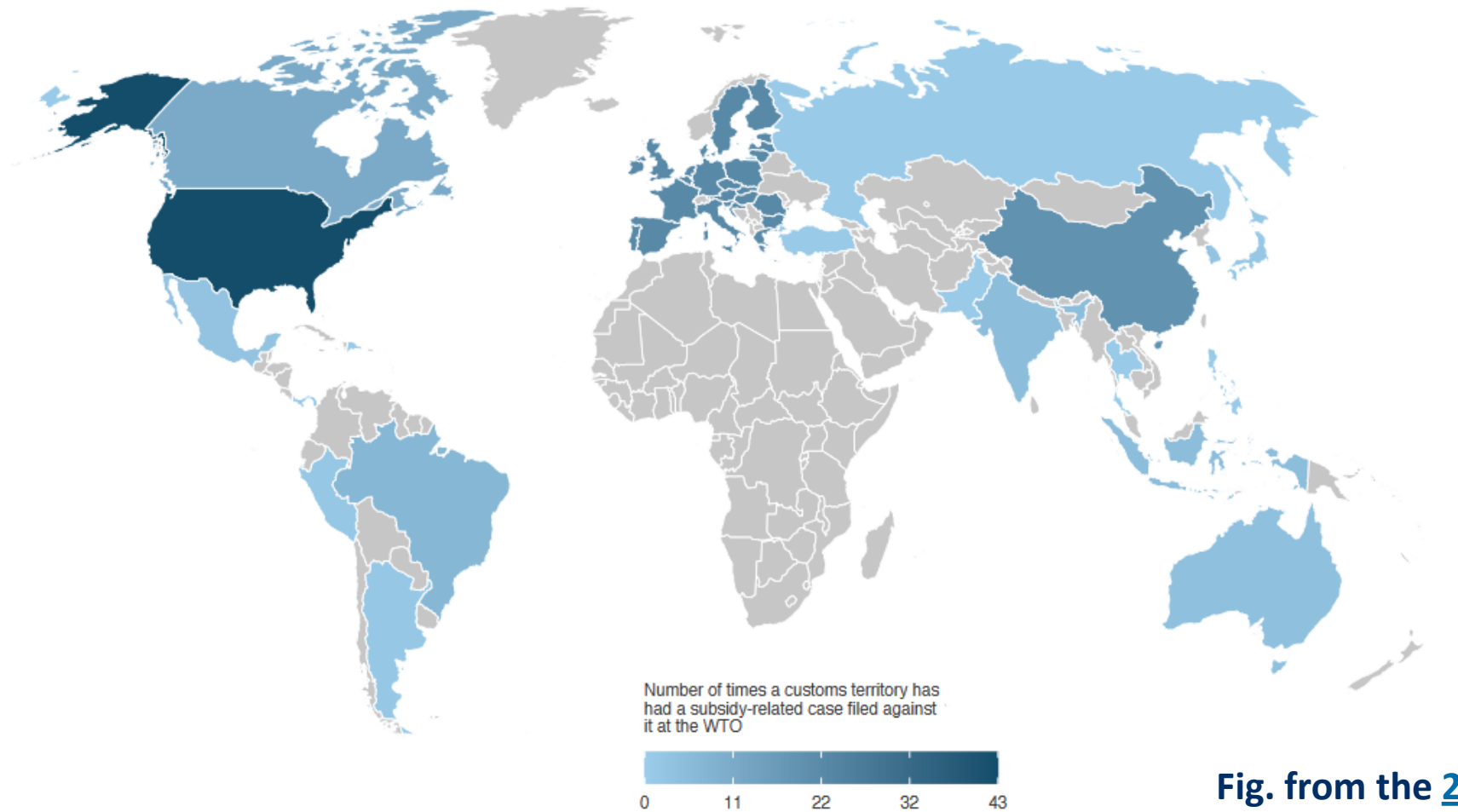
Il Consiglio dei ministri approva il disegno di legge "Made in Italy"

31 Maggio 2023

Nasce il fondo sovrano con una dotazione iniziale di 1 miliardo per promuovere le filiere strategiche

Increasing subsidisation in the global economy

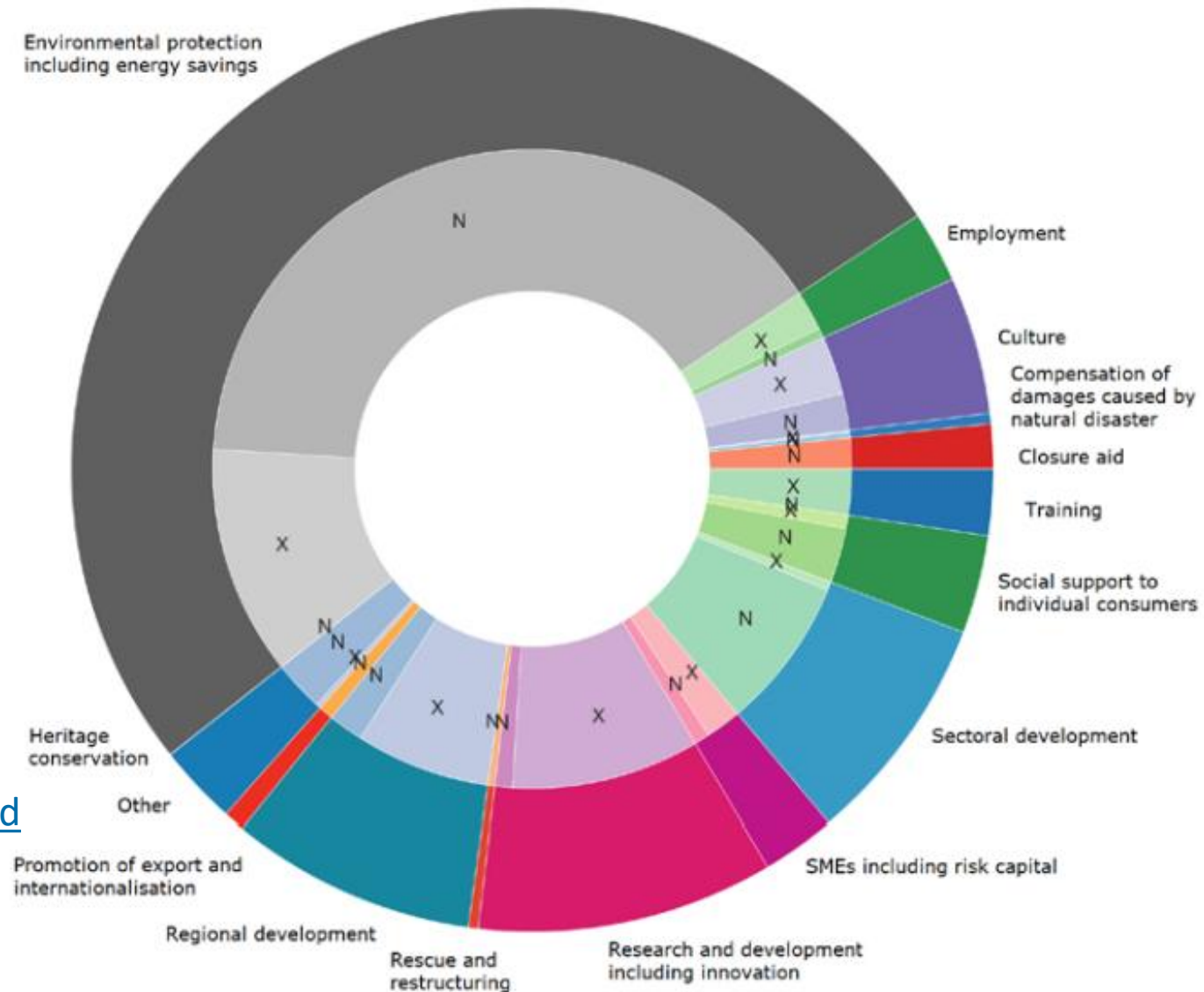
China, the European Union and the United States are most frequently accused of breaking WTO subsidy rules



Source: Assembled from WTO dispute settlement cases involving the ASCM.

Fig. from the [28th Global Trade Alert Report](#)

SDGs are used to justify subsidies: the EU example



Source: [State Aid Scoreboard](#)

[2020](#)

The current ASCM framework on (industrial) subsidies

Subsidies are not all prohibited by the ASCM. Three categories:

1. Prohibited subsidies (Art. 3): subsidies contingent upon (1) export performance and/or (2) use of domestic over imported goods.
2. Actionable subsidies (Art. 5): subsidies that cause adverse effects to the interest of other Members. The adverse effects may be:
 - (A) *injury* to the domestic industry of another Member producing *like product*;
 - (B) nullification or impairment of benefits enjoyed under the GATT;
 - (C) *serious prejudice* to the interests of another Member.
3. Non-actionable subsidies (Art. 8): category temporary applicable, now expired.

Allowing sustainable subsidies... and prohibiting unsustainable ones?

1. Prohibited subsidies: measures considered detrimental to sustainable development (e.g. fossil fuel subsidies, support linked to forced labour) → *ex ante*, measure-based classification.
2. Actionable subsidies: when not outright prohibited, but may have adverse effects on sustainable development → *ex post*, effect-based.
3. Allowed subsidies: subsidies (even if prohibited or actionable under current ASCM) that demonstrate a positive contribution to sustainable development could be allowed.

Research agenda: should the legal framework focus solely on allowing sustainable subsidies, or also on prohibiting unsustainable ones?

Regime of exceptions: Art. 27-bis ASCM... or extending Art. XX GATT?

Instead of (or alongside) creating an “allowed subsidies” category, a new regime of exceptions could be considered:

1. A new provision after Article 27 ASCM (Special and Differential Treatment for Developing Country Members) → Introduce new grounds of justification for subsidies pursuing sustainable development; or
2. Extend Article XX GATT exceptions to the ASCM (*e.g.* environmental protection, human health). There are pros and cons (and Art. XX could be amended as well...)

Institutional level: multilateral... or also plurilateral, bilateral, unilateral?

- Multilateral (WTO) reform: assessing the challenges and opportunities of introducing a new regime for sustainable subsidies within the WTO → Would Members agree on such proposals? What political and legal obstacles remain?
- Plurilateral solutions: could temporary or issue-specific agreements serve as stepping stones? Or would they risk weakening the broader WTO reform process?
- Bilateral solutions: how Free Trade Agreements regulate subsidies (competition and subsidies chapters in EU FTAs), do they include grounds of justification?
- Unilateral measures: increasing role of 'beyond WTO' measures, *e.g.* EU Foreign Subsidies Regulation. Do they include balancing (like Art. 6 FSR)?
- The paper will map bilateral and unilateral initiatives, drawing lessons from current practice and identifying needed adjustments to ensure coherence with a potential reform path at the multilateral level.

**Thank you for your attention and
feedback!**

