

What Does the International Court of Justice Advisory Opinion on Climate Change Mean for Environmentally Harmful Subsidies?

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In July 2025, the International Court of Justice (ICJ) delivered its landmark Advisory Opinion on the Obligations of States in Respect of Climate Change. The opinion provides authoritative legal guidance on states' obligations to address climate change and prevent significant harm to vulnerable countries and communities. While the opinion is non-binding, it makes clear that failure to act can trigger legal consequences. States require timely and accessible analysis to understand their legal obligations and the consequences of breaching them.

This brief is part of a series of publications aimed at unpacking the implications of the opinion and suggesting clear actions governments can take to ensure compliance across five critical areas: climate adaptation, environmental impact assessments, environmentally harmful subsidies, international investment law, and multilateral environmental agreements.

Introduction

An environmentally harmful subsidy is when governments fund, under-tax, or otherwise support economic activities that have negative impacts on climate and nature (Gerasimchuk et al., 2025) (Box 1). These subsidies drive climate change, biodiversity loss, and other environmental degradation. They also disincentivize emerging green economy solutions, and often strain government budgets, distort markets, and stall innovation (Gerasimchuk et al., 2025).

Studies indicate that government support for environmentally harmful subsidies is over USD 2 trillion annually (Damanian et al., 2023), with fossil fuel subsidies alone making up USD 900 billion of that in 2024 (Organisation for Economic Co-operation and Development & International Institute for Sustainable Development, n.d.).



The ICJ's Advisory Opinion on climate change has important implications for environmentally harmful subsidies. Although the court's ruling mentioned only fossil fuel subsidies explicitly, its reasoning can extend to other types of climate-harmful subsidies, such as agricultural subsidies.

Box 1. What is an environmentally harmful subsidy?

According to the World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures, signed by 166 members, a subsidy is “a financial contribution by a government, or agent of a government, that confers a benefit on its recipients” (WTO, 1994).

While the International Monetary Fund (n.d.) also considers the non-internalization of externalities, e.g., underpricing of carbon or government inaction, an implicit subsidy, in this paper, we consider only explicit subsidies as per the WTO definition.

The types of measures that qualify as subsidies include the following: direct government spending, such as grants, loans, and loan guarantees to consumers or producers of environmentally harmful goods and services; preferential credit; regulated below-market prices for government-provided goods or services that harm climate or nature; tax exemptions for environmentally harmful activities; and waived fees for the use of land, water, and public infrastructure (Gerasimchuk et al., 2025).

Types of environmentally harmful subsidies include subsidies for fossil fuels, non-energy mining, fisheries, agriculture, water, transport, construction, plastics, and forestry (Gerasimchuk et al., 2025).

Political Commitments on Ending Environmentally Harmful Subsidies

Countries have made several commitments to phasing out fossil fuel subsidies, including under the United Nations Framework Convention on Climate Change (2021), the Group of 20 (2009), the Group of 7 (G7, 2014), the Asia-Pacific Economic Cooperation (2009), and Sustainable Development Goal 12 (responsible consumption and production) (UN Environment Programme, n.d.).

However, so far, governments have not lived up to those pledges. For example, G7 fossil fuel subsidies increased from USD 66.8 billion in 2014 to USD 133 billion in 2024, peaking at USD 197 billion in 2022 (Organisation for Economic Co-operation and Development & International Institute for Sustainable Development, n.d.). G20 fossil fuel subsidies followed a similar pattern. Some countries have taken steps forward. For example, Canada has reformed nine federal subsidies, and in 2021, Italy eliminated five fossil fuel subsidies (Jones et al., 2025). However, this has not resulted in a meaningful drop in overall subsidy levels.

In addition to these commitments on fossil fuel subsidies, the Kunming-Montreal Global Biodiversity Framework created a target for environmentally harmful subsidy reform (Convention on Biological Diversity, 2022), following on from the previous Aichi Target on



environmentally harmful subsidy reform (Convention on Biological Diversity, 2010). Target 18 of the Kunming-Montreal Global Biodiversity Framework reads:

Identify by 2025, and eliminate, phase out or reform incentives, including subsidies, harmful for biodiversity, in a proportionate, just, fair, effective and equitable way, while substantially and progressively reducing them by at least 500 billion United States dollars per year by 2030, starting with the most harmful incentives, and scale up positive incentives for the conservation and sustainable use of biodiversity.

Providing Fossil Fuel Subsidies May Breach International Law

The ICJ Advisory Opinion is clear that ending fossil fuel subsidies is not just a matter of political commitment, but a legal imperative. The ICJ's first significant finding in this regard was that fossil fuel subsidies are included within the scope of conduct that can potentially breach international law. International legal obligations relating to climate change don't only cover conduct that directly results in greenhouse gas (GHG) emissions (such as fossil fuel combustion), but can also cover the "production, licensing and subsidizing" of fossil fuels (ICJ, 2025, para. 94).

The ICJ went even further on this point, specifically stating that the provision of fossil fuel subsidies "may constitute an internationally wrongful act which is attributable to that State" (ICJ, 2025, para. 427). In other words, if a government provides fossil fuel subsidies, it may, by so doing, breach international law.

A state's capabilities matter when it comes to the standard to which they are to be held when it comes to phasing out fossil fuel subsidies. According to the ICJ, "the capabilities of States are a key factor" in determining the applicable standard of due diligence, the legal obligation of conduct requiring states to take all necessary and reasonable measures to prevent, mitigate, and control potential transboundary environmental harm arising from activities within their jurisdiction or control (ICJ, 2025, para. 290). However, even a state with lesser capabilities or insufficient resources is required "to take all the means at its disposal to protect the climate system in accordance with its capabilities and available resources" (ICJ, 2025, para. 291).

Application to Other Types of Environmentally Harmful Subsidies

Fossil fuel subsidies are not the only types of subsidies that have deleterious impacts on the global climate. Agricultural subsidies are another such case. While emissions resulting from burning fossil fuels constitute 74.5% of anthropogenic GHG emissions (European Commission, 2025), agrifood systems account for about one-third (Food and Agriculture Organization of the United Nations, 2024). Many countries provide subsidies that incentivize agricultural practices that degrade soils, such as the use of chemical fertilizers, reducing soils' efficacy as carbon sinks (McConnell, 2025). Subsidies for meat and dairy products artificially enhance the competitiveness of animal products compared to plant-based, lower-emitting alternatives (Ruhland et al., 2024).



It could be argued that the ICJ's reasoning on fossil fuel subsidies can be applied by analogy to agricultural subsidies as well. The court held that the relevant conduct for the purposes of the opinion included not only conduct that directly results in GHG emissions but rather comprises "all actions or omissions of States which result in the climate system and other parts of the environment being adversely affected by anthropogenic GHG emissions" (ICJ, 2025, para. 94). Subsidizing climate-harmful agricultural activities could be regarded as a relevant "action" of states that results in the climate system being adversely affected by GHG emissions. The same reasoning follows for other types of subsidies that have climate-harmful effects, such as plastics subsidies.

Recommendations for States

The ICJ Advisory Opinion means that the door is now open to international litigation against states with significant volumes of environmentally harmful subsidies, such as fossil fuel subsidies and agricultural subsidies. The countries that have accepted the compulsory jurisdiction of the ICJ account for 49% of the total volume of fossil fuel subsidies in 2023 (Jones, 2025). These countries in particular face vastly increased international legal risk, although any country can face increased domestic legal risk since domestic courts can refer to ICJ opinions in relevant circumstances.

To reduce their legal risk, governments should

- **phase out their fossil fuel subsidies, agricultural subsidies, and other climate-harmful subsidies.** In doing so, governments should
 - **be transparent.** You can't manage what you can't measure. Transparency about environmentally harmful subsidies is the first step to reform (International Institute for Sustainable Development [IISD], 2025). Preparing fossil fuel subsidy inventories, for example, is one way to build transparency (Urazova et al., 2025). Transparency is also key to engaging stakeholders, as gaining public buy-in is a critical success factor for successful subsidy reform.
 - **take a phased approach.** Sudden, unexpected removal of subsidies can cause economic and social disruptions, particularly for vulnerable populations. Taking a gradual approach, in a step-by-step manner, increases the likelihood of success (Sanchez et al., 2020). Making a phase-out plan is a good way to plan and manage the approach through prioritization by impact (Kuehl et al., 2025).
 - **take advantage of timing.** Evidence shows that the timing of reforms can play an important role in their success. For example, for consumer fossil fuel subsidies, taking advantage of low international oil prices can increase the success of reforms (Sanchez et al., 2020).
 - **support people, not fuels.** Focusing on people and social protection is a way to shape reform. It makes more sense to help people directly (for example, through income support or cash transfers) than to keep subsidies that distort markets and production (IISD, 2025).



- **shift support to green solutions.** For example, fossil fuel subsidy reforms work better when they are part of a wider push for energy sector transformation. Reallocating savings from subsidy reform to alternative sources of energy and energy efficiency is a good way to support people, including the most vulnerable, alongside other social protection measures (Sanchez et al., 2020).
- **coordinate internationally.** For instance, the Coalition on Phasing Out Fossil Fuel Incentives Including Subsidies (COFFIS) is a coalition of 17 countries working to remove fossil fuel subsidies both collectively and through domestic action (IISD, n.d.).
- **Join COFFIS,** which provides a supportive environment for countries to phase out their fossil fuel subsidies. Collective action lowers the political cost of reform and makes bold moves more credible, since there is often a first-mover disadvantage in subsidy reform (IISD, 2025).

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