AN EXAMINATION OF THE LEGAL AND STRATEGIC ISSUES OF FOSSIL FUEL SUBSIDY REMOVAL FROM NIGERIAN AND INTERNATIONAL PERSPECTIVES*

Abstract

This study examines the legal and strategic issues of fossil fuel subsidy and it's phasing out from the international as well as the Nigerian perspective. It examines the issues and strategies put in place for the phasing out of fossil fuel subsidy. This provokes the argument that subsidies even though desirable for developing communities, encourages wasteful consumption and spending without taking into account the specific social and economic needs as well as the conditions of developing countries hence encouraging the issue of inefficient fossil fuel subsidies which must be phased out or removed. It also breeds corruption by creating a class of elite importers of fuel who receive unjustifiable payments. This study relies on secondary data which enable reliance on the current international and regional moves on the issue and the possible challenges associated with the phasing out the fossil fuel subsidy.

Keywords: Fossil fuel, Subsidy, Phasing out, Nigerian and International Perspectives

1. Introduction

Why would governments all over the world subsidize energy, giving convincing reasons for doing so, only to turn round and remove same with more convincing and most times contradictory reasons? It is intriguing. Generally, fossil fuel subsidies are one of many policy instruments used by governments to attain economic, social and environmental objectives worldwide, subsidies exist in social and economic sectors including electricity and energy. It is a global concern with over one hundred and seventy countries involve in paying fossil fuel subsidy. Globally, fossil fuel subsidy payments amounted to $ 7 trillion at the end of 2023. Those highly industrialized nations consisting of the United States of America, Britain, France, Germany, Italy, together with other industrialized countries formed the G20 group with the aim of forging a common alliance regarding their economic and trade investments and how to protect and advance same on a common flat form. The European Commission (THE EU), the Organization for Economic Commission and Development (OECD), the Organization of Petroleum Exporting Countries (OPEC), the members of the International Monetary Fund (IMF), the world Bank group (WBG) and the International Energy Agency members (IEA) are all involved directly or indirectly in the issue of subsidy policy framework and its 'phasing out' through various agreements like the World Trade Organization Agreement.

Globally, subsidies are difficult to estimate but conservatively, it is put at seven trillion dollars [$7 trillion] annually including production subsidies (i.e. making the cost of production cheaper) and consumption subsidies (making the price of fossil fuel cheaper to the customer at the pump stations).[1]A report from the Organization for Economic Co-operation and Development (OECD) estimate an increase of $2 trillion dollars since the year 2020 due to government support translating to 7.1 percent GDP IN 2020 and in budgetary support and tax expenditures which have been provided to the citizens and Oil and Gas industries by the member countries. According to the International Energy Agency, (IEA) consumption subsidies in thirty seven developing countries were worth five hundred and fifty seven billion dollar ($557) billion annually.[2]

2. Definition and Meaning of Fossil Fuel Subsidies

The International Community has so many definitions of Fossil fuel subsidy: The world trade organization provides a legal definition of subsidy within the Agreement on Subsidy and Countervailing Measures (ASCM). Article 1 Uruguay Round Table Agreement,[3] International Monetary Fund[4] United Nations Statistics Department (UNSD)[5], and the European commission (EC) also develop a definition of subsidy within the European Union (EU) Treaty in article 87(1) [6]. The International Energy Agency [7], the Organization of Economic and Co-operative Development (OECD), the Food and Agricultural Organization (FAO) Energy Agency report of defines subsidy. [8] As any government action that concerns primarily the energy sector that lowers the cost of energy production, raises the price received by energy producers or lowers the price paid by energy consumers[9] Government action or inaction that modifies by increasing or decreasing the potential profits by the industry in the short medium- or

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1. International Energy Agency (IEA) word Energy Report outlook (2010); IMF Report, 20/09/2023
2. Organization Economic Cooperation and Development (OECD) and International Energy Agency (IEA) Reports (2010)
3. Uruguay Round Table Agreement of 1994
4. International Monetary Fund (IMF) 2001
5. United National Statistics Department (UNSD) 2010
6. European Commission (EC) 1998
7. Article 87(1) European Union Treaty (EUT)
8. Food and Agricultural Organization (FAO) agency report 1999
9. Oxford Advance Learners Dictionary 6th Edition page 1195

long-term periods.[10] Is any government action that lowers the cost of fossil fuel energy production raise the price received by energy producer or lowers the price paid by energy consumers?[11] As a short or long term financial payment either in the form of cash or service that is designed to assist a business.[12] Monthly assistance granted by a government to a person or group in support of an enterprise regarded as being in public interest. A Sum of Money granted by the government or a public body to assist an industry or business so that the price of a commodity or service will be lower to the end user.[13] A financial contribution made by or {on behalf) of a government or public body which confers a benefit to the recipient.[14] Financial contribution may take the form of money that is paid by a government or an organization to reduce the cost of services or production of goods so that their prices can be kept low. The European anti subsidy rules are based on a 1994 World Trade Organization Agreement which allows remedial action to be taken against subsidies that are considered unfair to trade practices. *A* subsidy exists when there is a financial contribution by a government or public body that confers a benefit[15]

3. Historical Perspective of Fossil Fuel Subsidy Regime

Globally, the evolution of fossil fuel subsidy regime had been an issue with several governments both in the developed and developing countries. Fossil fuel subsidy attracted global attention in the nineties [1990] when the Uruguayan Round Table Agreement on Fuel Subsidy was held in 1994 to discuss issues concerning the key objectives of fossil fuel subsidy. Many oil producing governments find it necessary to regulate oil and gas production in such a way that its citizens enjoy one palliative or the other by lowering the price of fossil fuel to the end users and one of the means of doing this is through government intervention in the oil and gas sector. This was followed up by the European Anti-Subsidy Rules, 1994. The World Trade Organization [WTO] Report 1994. Reported that to sustain trade in the energy sector, it becomes imperative for governments to offer financial contributions to energy consumers through direct transfer of funds through grants, loans and guarantees or equity infusion. The objective of these is to encourage the Energy sector production in such a way that the end consumers are not caught in a web of high energy cost. The European Union report on energy support [1998] was not different from the initial global perception on fossil fuel subsidy, it government intervention in the Energy sector that lowers the cost of production and consumption by the end users. The Food and Agricultural Organization [FAO] sent its agency report on fossil fuel subsidy in 1999 followed up by the United Nations Statistics Department of 2020 as well as the Organization of Economic Cooperation Development [OECD] Report of 2010. International Institute for Sustainable Development, Geneva, 2010, the Agreement on Subsidies and Countervailing Measures [ASCM]. The International Energy Agency Report [IEA] on government's monthly intervention to assist industries or businesses so that the prices of energy or services to the end user is lowered.

4. Historical Perspective of Nigerian Fossil Fuel Subsidy Regime

The history of fossil fuel subsidy in Nigeria is categorized according to periods under the military rule, (Formative Years) transitional periods and democratic periods accordingly.

Formative Years---- 1973 to 1993

S/N	NAME	YEAR	FROM	TO	%
1	General Yakubu Gowon	1973	6 kobo	8.45 kobo	40.83
2	General Murtala R. Mohammed	1976	8.45k	9k	6.5
3	General Olusegun Obasanjo	1978	9k	15.30 k	70
4	Alhaji Shehu U. Shagari	1982	15.3k	20k	30.72
5	General Ibrahim Babangida	1986	20k	39.5k	97. 5
6	General Ibrahim B. Babangida	1988	39.5k	42k	6.33
7	General Ibrahim B. Babangida	1989	42k	60k	42.86
8	General Ibrahim B. Babangida	1991	60k	70k	16.67

10. Loc Cit
11. GSI 2010 defining of fossil fuel subsidy for G20 countries Ibid
12. Also defined (designed to assist business) G51 of the international institute for sustainable development Geneva (2010)
13. Ibid
14. European Anti Subsidy Rules of 1994
15. Article 1 World Trade Agreement 1994

Transitional Years. 1993-------2003

S/N	NAME	YEAR	FROM	TO	%
1	Shonekan	1993	70k	N5.00	614.29
2	General Sani Abacha	1993	N5.00	N3.25k	35
3	General Sani Abacha	1994	N3.25K	N15.00	361.54
4	General Sani Abacha	1994	N15.00	N11.00	26.67
5	General Abubakar Abdulsalami	1998	N11.00	N25.00	127.27
6	General Abdulsalami Abubakar	1999	N25.00	N20.00	25

Third Democratic Rule Years---------------1999-------2007

S/N	NAME	YEAR	FROM	TO	%
1	President Olusegun Obasanjo	2000	N20.00	N30.00	50
2	President Olusegun Obasanjo	2000	N30.00	N22.00	26.67
3	President Olusegun Obasanjo	2002	N22.00	N26.00	18.18
4	President Olusegun Obasanjo	2003	N26.00	N42.00	61.54
5	President Olusegun Obasanjo	2004	N42.00	N50.00	19.05
6	President Olusegun Obasanjo	2004	N50.00	N65.00	30
7	President Olusegun Obasanjo	2007	N65	N75.00	15.39

Fourth Democratic Rule Period----------2007----------2015

S/N	NAME	YEAR	FROM	TO	%
1	President Umaru Musa 'Yar' aduwa	2007	N75.00	N65.00	15.39
2	President Goodluck E. Jonathan	2012	N65.00	N141.00	116.92 percent increase
3	President Goodluck E. Jonathan	2012	N141	N97.00	31.21 percent drop
4	President Goodluck E. Jonathan	2015	N97.00	N87.00	10.31 percent drop

Fifth Democratic Rule------------2015---------2023

S/N	NAME	YEAR	FROM	TO	%
1	President Muhammadu Buhari	2016	N87.00	N145.00	66.67 percent increase
2	President Muhammadu Buhari	2023	N87.00	N195.00	124 percent increase

Sixth Democratic Rule Period 2003------------To Date

S/N	NAME	YEAR	FROM	TO	%
1	President Bola Ahmed Tinubu	2023	N195	N559.00	
2	President Bola Ahmed Tinubu	2024	N557	N770.00	

5. International Perspective of Fossil Fuel Subsidy and its Phasing Out

The United Nations Sustainable Development Goal and the 2030 Agenda on fossil fuel subsidy is a complete turn round on subsidizing energy for both the producers and consumers. While the fossil fuel subsidy was seen as a necessary mechanism by various governments to reduce the high cost of energy produced and consumed, it has gradually assumed a contrary dimension. The various international organizations that supported the subsidy initiative now have a rethink. They view fossil fuel subsidy as a waste of resources and should therefore be removed. The amount of money spent by oil and gas producing countries on fossil fuel subsidy is staggering and the argument here is that such spending cannot be sustained. Some of the highest spenders on fossil fuel subsidy is led by China with a staggering figure of USD 2.2 Trillion followed by Qatar. The United States of America spent $757 billion followed by Russia with $421 billion, India with $346 billion while Japan spent $ 310 billion on subsidy payments all in 2023 alone[16] It is not surprising therefore to see this various governments trying to get out of the fossil fuel subsidy payments. The European Anti- Subsidy Rules, the International Institute for Sustainable development and the Organization of Economic Cooperation and Development [OECD] Reports of 2010 are now in the fore front of fossil fuel phasing out.

6. Global Campaign against Fossil Fuel Subsidy

There has been a global campaign against subsidy since 2009 with the realization that such subsidies often fail in achieving their touted benefits. Secretary General, Organization for Economic Cooperation and Development, [OECD] notes:

> Both developing and developed countries need to phase out inefficient fossil fuel subsidies. As they look for policy responses to the worst economic crisis of our lifetimes, phasing out subsidies is an obvious way to help governments meet their economic, environmental and social goals. The organization of which Nigeria is a member noted that about five hundred dollar ($500) billion was committed to subsidies worldwide in 2010 alone, and thus urged its members to relieve themselves of the subsidy liability.[17]

The Group of Twenty [G-20] countries and the International Monetary Fund, [IMF] are also in the forefront of campaigns against fuel subsidy. Nigeria spends $500 million to sustain fossil fuel subsidy payment monthly. [N400 billion] [18] Economically, this is unsustainable as the production capacity is always unmet. OPEC Quota has always not been achieved because of oil pipeline vandalization, bunkering, sabotage and militancy in the oil and gas producing fields. These affect the revenue generation derive by the government. Lack of sufficient revenue to finance fossil fuel subsidy force government thinking on its sustainability. In 2022, an estimated N2.74 trillion was paid as fossil fuel subsidy when only N600 billion was generated as oil revenue.[19]. In the year 2023 budget, N3.36 trillion was provided for fuel subsidy up to mid- year June while the sum of N2.23 trillion was the projected oil revenue for that period.[20]. What this means is that the government must borrow money to fill the gap in subsidy payment. [21]

7. Strategic Framework for Fossil Fuel Reform Initiative

The significance of fuel subsidy on world economics has seen different arguments from different perspectives especially from the developed economies and international organizations notably, the International Monitory Fund, the World Bank, the World Trade Organization, the International Energy Agency led by the United Nations Sustainable Development Goal and its 2030 Agenda All of a sudden these International organizations and the Developed economies miraculously discover that contrary to their initial campaign on subsidizing energy to sustain and help both producers and consumers of energy by urging various governments on financial contribution to lower the cost of energy and services, fossil fuel subsidy now pose a heavy debt burden on their economies and therefore must be phased out. The World Bank which sees energy security in the perspective of energy reaching the poorest of the poor in a transparent and affordable manner now has a change of mind by insisting that subsidy payments significantly impact on public finance and pose debt sustainability concern. The European Union which was an advocate of fossil fuel subsidy by seeing same as a financial contribution made by or on behalf of government or public body that confers benefit to the recipient doesn't see such benefit to the recipient, rather what it sees is the debt burden imposed by such subsidy hence, there is a new reform in the name of European Anti- Subsidy Rules which in conjunction with the World Trade Organization Agreement of 1994, allows remedial action to be taken against fossil fuel subsidies that are considered unfair to trade practices. The short-, medium- or long-term financial payment by governments either in form of cash or services designed to assist businesses so that the prices of commodities or such services will be lower and affordable is seen as a waste and no longer sustainable and therefore must be phased out. Similarly, government's direct transfer of funds through grants, loans, guarantees and equity infusion even though done to lower the cost and services to the end user now has a negative implication.

8. Fossil Fuel Subsidy Reform Initiative

This is a strategy put in place by the United Nations Sustainable Development Goal 2030 which came up with the objectives and work plan on how the fossil fuel subsidy initially encouraged can now be phased out. Some of these objectives include but not limited to considering the specific needs and conditions of the developing countries with emphasis on their domestic initiatives, provide workable options for rationalizing and phasing out inefficient fossil fuel subsidies and this can be done when there exist available data and must encourage transparency on the subsidy initiate. How this can be achieved is very subjective because of the developmental

[16] I.M.F Report, 25th, August, 2023.
[17] Angel .G. Secretary General Organization of Economic Cooperation and Development (OECD)2011
[18] Mele K. GMD NNPC LTD 17/08/2023
[19] Ibid
[20] Ibid
[21] Mele K. GMD, NNPC LTD Ibid.

differences among stakeholders. The rate of corruption especially in developing countries, hamper transparency in the oil and gas sector. Take Nigeria for instance, where there is no parameter to gauge the quantum of fuel produced especially in the absence of metering system. The issue of gathering and sharing available data on the number of crude barrels of oil produced and sold does not arise.

9. Challenges of the Fossil Fuel Subsidy Reform Initiative

The new agenda of the United Nations Sustainable Development Goal 2030 which seek to do away with Fossil fuel subsidy by initiating some reform initiatives may face some challenges because of the differences in economic, social and political arrangement of various stakeholder countries. These challenges manifested when New Zealand expanded this Fossil Fuel Subsidy Reform Initiatives which was opened to all stakeholders such as the Civil Society Organizations, the G20member countries, V20 Finance Ministers, Asian-Pacific Economic Cooperation, World Trade Organization, the Academia, private sector. These reform initiatives give room for each stakeholder room to act within regional and domestic platform. This means that whatever decision or initiative taken by a stakeholder may not be the same with another stakeholders' initiative and in these, differences in any work plan is certain. On the issue of rationalizing and phasing out inefficient and wasteful spending on fossil fuel subsidy, the challenge here is the socio-political arrangement of the stakeholder involved. Developing countries have to take into consideration the poverty and infrastructure level of their citizens. A stakeholder country that has social problems of unemployment, lack of infrastructure, food scarcity, failing public health and general insecurity will be very cautious in risking any upheaval or protest from the already impoverished citizens. Record shows that even where such developing countries phase out subsidies, the economic circumstances have multiplier effect in raising inflation, escalating costs in every field not only resulting in energy insecurity of its affordability, sustainability and efficiency but housing, transportation, health facilities, education and other conveniences. In Nigeria and Kenya for instances, there were cases of social unrest as a result of government removal of fossil fuel subsidy especially when the government did not deem it fit to make adequate arrangement of putting safety nets on ground before the removal of the subsidy. The economy fails and government has to resort to borrowing through loans to pay salaries and finance roads and rail as well as airport infrastructure.

Another initiative of the Fuel Subsidy Reform work plan is the mapping out of relevant international Initiative to adopt. The first challenge here is that IMF and the World Bank Policies or initiatives are not known to be helpful to developing nation's economies, on the contrary, developing nations have over the years become victims of such initiatives because they have to devalue their currency, sack workers, reduce spending for public infrastructure and privatize them or commercialize them to lighten the budget of government spending and financing on them. The social consequences if not managed can affect the political survival of a country. The Nigerian and Kenyan social unrest by the improvised citizen is growing stronger by the day. All these means that government did not take the specific needs and conditions of their country into consideration when they keyed into the fossil fuel subsidy phase out.

10. Different Perspectives of Fossil Fuel Subsidy Reform Initiatives and Plans

The success and failure of the fossil fuel subsidy Reform Initiative and Plan on the phase -out arises from two different perspectives. These differences pose the challenges rearing their head. Less than a year after New Zealand led the reform initiative, its economy entered recession. So where lies the problem? That means arbitrary removal of fossil fuel subsidy as envisaged by some stakeholders has not been workable and obviously not the solution to sustainable energy.The perspective from the developed countries differs from those from the developing countries in so many ways. For instance, the economy including the energy sector in the developed economies is technology driven while the developing economies heavily rely on what their oil and gas companies or hired Oil Companies used.Most of the developing economies are monolithic. The cash cow for their economic development and revenue projection is mineral oil and gas[22] and where challenges arise in the sector, heavy loss of revenue occurs. This hampers financing of any developmental projects. The developing nations do nott rely on a single product. Their economy is usually diversified so they don't have any problem that will affect their energy. The developed countries are often financially strong. Their borrowings are strictly limited to other areas of infrastructure development as well as research technology. The developing countries are financially weak and have to borrow and borrow. The funds borrowed are often squandered. Most developing countries suffer from Dutch Disease, meaning that they spend money heavily in anticipation of expected oil revenue. The developing countries lack policy and legal framework for diversification of their energy sources.

11. The Legal Framework for Fossil Fuel Subsidy Removal in Nigeria

The primary functions of the regulatory Commission and Agency in the oil and gas industry has been explained under the Petroleum Industry Act. The Nigerian Upstream Petroleum Regulatory Commission [23], *PIA* which set out the objectives of the Commission and the commercial regulatory functions of the Commission[24], *PIA*

[22] Revenue from Petroleum products contribute 99 percent of government revenue and 38.8 percent of GDP, NNPC, [2010]
[23] section 4 and section 6
[24] section 8

concerned with Offshore petroleum activities and the Nigerian Midstream and Down Stream Petroleum Regulatory Agency[25] *PIA* responsible for Downstream activities of licensing,[26] liquid oil & gas transportation, refining, distribution, pricing principles,[27] whole sale pricing of petroleum products [28] and marketing of petroleum products. Legally, it is the prerogative of the President acting on the recommendation of the Agency to fix and regulate petroleum prices. This can be seen in the functions of the Agency the power to regulate commercial Midstream and Downstream Petroleum Operations, including, petroleum liquid operations, domestic natural gas operation and export natural gas operation.[29]. The Agency is also responsible for determining appropriate tariffs methodology for natural gas.[30] as well as setting cost benchmark for midstream and Downstream petroleum operations.[31]. However certain considerations have to be considered in arriving at any benchmark and this can be seen where the Agency is empowered to provide pricing and tariff framework for natural gas in midstream and downstream gas operations and petroleum products based on the fair market value of the applicable petroleum products. After all the assessment of a fair market value, the Agency then advise the government or government agencies including other stakeholders on commercial matters relating to tariffs and petroleum pricing framework [32] which ultimately the President takes a decision and announce the new pricing regime.

12. Conclusion and Recommendations

The phasing out of fossil fuel subsidy has its advantages and disadvantages. While the reasons advanced for the phasing out seems economically viable, in terms of removing inefficient fossil fuel waste and smuggling as well as making cheap money available for the government to execute other projects, the phasing out has serious consequences on all sectors be it economic, which include high inflation and rising costs of goods and services, loss of purchasing power as well as cost of energy itself. Social activities, affecting the social life of the citizens in terms of loss of jobs, unemployment and general unrest which often lead to street protest and labour organization led protest shutting down the nation. Political activities which have consequences on the government's goodwill. High cost of education, housing, health services and other areas of small and medium businesses New Zealand that led the advocacy for fossil fuel subsidy phase- out has experienced economic recession for the second time since the removal of its energy subsidy. What this translate into is that the reform initiatives are not workable probably because of special needs and conditions of each stakeholder. Nigeria's economy is currently on auto- drive. Inflation has set in resulting in high cost of living conditions. All sectors of the economy are affected. Federal Government and some State governments do not appear to know what to do apart from giving food palliatives and cash transfers which are at best grossly laughable. When the president declared that subsidy is gone, he never understood the consequences of his declaration especially in the absence of any safety nets put in place to cushion the impact and consequences of the removal.

Having seen the failure of the fossil fuel subsidy reform initiative by the United Nations Sustainable Development Initiative of phasing out fossil fuel subsidy regimes, it becomes imperative for all stakeholder States to consider their individual needs and socio- economic conditions with a view to applying caution in implementing any policy initiative inimical to their economy. IMF and World Bank policies are never known to help any economy. The declaration by the Nigerian president that subsidy is gone without putting any safety nets has resulted in multiplier effects on the socio-economic life of Nigerians. The government as a matter of urgency must pay attention to the problems of insecurity, hyper – inflation, sound monitory policy to address the currency slide, reduce costs of transportation, health services, education and housing, oil theft, bunkering and stop unserious palliatives that does not even reach the needy.

[25] section 29,
[26] section 174 PIA
[27] section 205, PIA 206
[28] section 207, PIA
[29] section32 [b] PIA
[30] section 32[c]
[31] section 32[d], PIA
[32] section 32[f] PIA