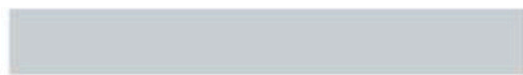
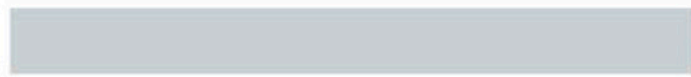


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IN THE SHADOW OF SUBSIDIES: WTO'S REGULATORY FRAMEWORK

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Abstract. The regulation of subsidies within the World Trade Organization (WTO) framework is a critical aspect of international trade law, addressing the complexities and impacts of governmental financial support on global markets. This article delves into the key provisions of the Agreement on Subsidies and Countervailing Measures (SCM Agreement), which outlines the rules for permissible subsidies and the measures that can be taken against unfair subsidization. It explores the three main types of countervailing measures: provisional measures, voluntary undertakings, and definitive duties, alongside the procedural obligations and transparency requirements imposed on WTO Members. Special attention is given to the differential treatment afforded to developing countries under Article 27, recognizing their economic development needs while maintaining the integrity of the SCM Agreement's disciplines. The relationship between the SCM Agreement and the Agreement on Agriculture is also examined, particularly in the context of agricultural export subsidies. Compliance issues, including the low rate of subsidy notifications and the challenges faced by developing countries in meeting these obligations, are discussed, highlighting the ongoing debates around WTO reform. Through a comprehensive analysis of the SCM Agreement and related jurisprudence, this article underscores the importance of transparent and fair subsidy practices in fostering a balanced and equitable international trade environment.

Keywords: subsidy, agreement, countervailing measures, WTO, investigation, types, agriculture, obligation, transparency. .

The regulation of subsidies within the World Trade Organization (WTO) framework is primarily governed by the Agreement on Subsidies and Countervailing Measures (SCM Agreement). This agreement provides a structured approach to disciplining the use of subsidies and regulating the implementation of countervailing measures, which are duties imposed to counteract subsidies that cause harm to domestic industries.

Classification of Subsidies:

The SCM Agreement classifies subsidies into three main categories:

Prohibited Subsidies: These include export subsidies and import substitution subsidies. Export subsidies are contingent upon export performance, while import substitution subsidies require the use of domestic over imported goods. Both are banned because they directly distort international trade.

Actionable Subsidies: These subsidies are not prohibited outright but can be challenged if they cause adverse effects to other WTO Members. Such adverse effects include injury to domestic industries, nullification of benefits under the GATT, or serious prejudice.

Non-Actionable Subsidies: Initially, these included subsidies for industrial research, regional development, and environmental adaptation. Although largely phased out, they were considered less likely to distort trade significantly.¹

Types of Countervailing Measures:

To address the effects of subsidies, the SCM Agreement provides for three types of countervailing measures:

Provisional Measures: Provisional measures of countervailing measures play a crucial role in the regulation of subsidies within the framework of the World

¹ See Peter Van den Bossche and Werner Zdouc, “The Law and Policy of the World Trade Organization”: Text, Cases, and Materials. 5th edition, Cambridge University Press, p.927

Trade Organization (WTO). These measures are implemented as a temporary solution to address the potential harm caused by subsidized imports pending the completion of a thorough investigation. The objective is to prevent further injury to domestic industries while ensuring a fair and transparent process.²

When a domestic industry files a complaint alleging injury due to subsidized imports, investigating authorities have the option to impose provisional countervailing measures. These measures are designed to offset the effects of the subsidy until a final determination is made regarding the existence of subsidization and injury.³

Voluntary Undertakings: Agreements where the subsidizing government or exporters agree to eliminate or limit the subsidy or adjust their prices to remove the injurious effect of the subsidy.

In the realm of subsidies regulation within the World Trade Organization (WTO), voluntary undertakings of countervailing measures represent a significant mechanism for resolving disputes related to alleged subsidization.⁴ These undertakings involve agreements between the exporting country and the importing country or investigating authorities to address the concerns raised by the subsidization of imports.⁵

Definitive Countervailing Duties: These are final duties imposed after an investigation confirms the existence of a countervail able subsidy and the injury it causes.

In the landscape of subsidies regulation within the World Trade Organization (WTO), definitive countervailing duties stand as a crucial measure to

² See Art. 17 of the SCM Agreement.

³ See Art.17.3 and 17.4 of the SCM Agreement

⁴ Art. 18.6 of the SCM Agreement sets out the consequences of a violation of an undertakings.

⁵ See Art. 18.1 of the SCM Agreement.

address the adverse effects of subsidized imports on domestic industries. These duties can only be imposed following a thorough investigation and a final determination that specific conditions are met. The imposition of definitive countervailing duties hinges on two key factors: a) Existence of Countervailable Subsidy, b) Demonstrated Injury to Domestic Industry.⁶

Procedural Obligations and Transparency:

The regulation of subsidies within the World Trade Organization (WTO) framework is governed by a series of procedural obligations and transparency requirements, primarily outlined in the Agreement on Subsidies and Countervailing Measures (SCM Agreement). These provisions ensure that Members adhere to specific guidelines in their subsidy practices and maintain transparency, facilitating fair trade and accountability.

Transparency is a cornerstone of the SCM Agreement, crucial for its effective operation. Article 25 mandates that Members notify all specific subsidies by June 30 of each year. This requirement is designed to provide a clear and comprehensive picture of subsidy practices globally, enhancing accountability and allowing for informed decision-making within the WTO. Despite its importance, compliance with this requirement has been historically low. For instance, as of October 2016, only thirty-three Members had submitted their 2015 notifications indicating that they provided specific subsidies, while fifteen Members reported no notifiable subsidies. This highlights a significant gap in meeting transparency obligations, impacting the proper functioning of the SCM Agreement.

The Committee on Subsidies and Countervailing Measures (Subsidies Committee) plays a vital role in overseeing compliance with notification

⁶ See Michael J. Trebilcock, Joel Trachtman, "Advanced Introduction to International Trade Law", 2nd edition, p.84.

obligations. Composed of representatives from each WTO Member, the Committee meets at least twice a year, as stipulated by Article 24.1 of the SCM Agreement. It provides a platform for Members to consult on any matters related to the operation of the agreement and its objectives. If a Member believes that the required information has not been provided adequately, Articles 25.9 and 25.10 allow them to bring the matter before the Committee. This ensures that concerns regarding incomplete or insufficient notifications can be addressed in a formal and structured manner.⁷

Article 25.11 requires Members to report all preliminary and final actions taken with respect to countervailing duties without delay. They must also submit semi-annual reports detailing any countervailing duty actions taken within the preceding six months. These notifications and reports are kept under surveillance by the Subsidies Committee, as outlined in Article 26. This ongoing review process ensures that countervailing measures are transparent and subject to scrutiny, maintaining the integrity of the WTO's subsidy regulations.

Differential Treatment for Developing Countries:

Article 27 of the SCM Agreement acknowledges the role of subsidies in the economic development of developing countries, providing them with special and differential treatment. Least-developed countries and those with a per capita income below \$1,000 are exempt from the prohibition on export subsidies. Additionally, certain subsidies related to privatization programs in developing countries receive more lenient treatment.

Agricultural Subsidies:

Agricultural subsidies have long been a contentious issue in international

⁷ See Peter Van den Bossche and Werner Zdouc, "The Law and Policy of the World Trade Organization": Text, Cases, and Materials. 5th edition, Cambridge University Press, p.947.

trade, significantly impacting negotiations and policy frameworks within the World Trade Organization (WTO). The regulation of these subsidies is addressed through both the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Agriculture, reflecting their complex role in global trade dynamics.

The prominence of agricultural subsidies became particularly evident during the Uruguay Round, where they emerged as a central issue.⁸ These negotiations led to the creation of the Agreement on Agriculture, which specifically addresses the unique nature of agricultural subsidies. The Doha Development Round also saw agricultural subsidies as a major sticking point, underscoring the ongoing tensions between developed and developing countries on this matter.

For many developed-country Members, agricultural subsidies are indispensable instruments of their agricultural policies. These subsidies support farmers, stabilize food supplies, and ensure food security. However, they also lead to significant trade distortions, affecting global market prices and competitiveness. The economic development and trade interests of many developing countries are severely impacted by the agricultural subsidies provided by developed countries, often leading to reduced market access and unfair competition for their agricultural products.

The SCM Agreement's prohibition on export subsidies, outlined in Article 3, extends to agricultural subsidies unless otherwise specified in the Agreement on Agriculture. This interrelationship is crucial, as it means that any export subsidy for agricultural products must first be evaluated under the rules set forth in the Agreement on Agriculture. Article 3.1 of the SCM Agreement explicitly states that

⁸ See Michael J. Trebilcock, Joel Trachtman, "Advanced Introduction to International Trade Law", 2nd edition, p.86.

export and import substitution subsidies are prohibited "except as provided in the Agreement on Agriculture," highlighting the primacy of agricultural-specific rules in these cases.

Several WTO disputes have centered around agricultural subsidies, with cases often addressing the consistency of these subsidies with WTO rules. Dispute settlement bodies, including the Appellate Body, have been instrumental in interpreting the provisions of the SCM Agreement and the Agreement on Agriculture. For example, the Appellate Body has clarified the application of these agreements in various contexts, ensuring that the disciplines on subsidies are appropriately enforced.

The issue of agricultural subsidies continues to be a focal point in WTO negotiations. The Doha Development Round, although stalled, highlighted the need for substantial reforms in the way agricultural subsidies are managed globally. Future negotiations are expected to build on these discussions, seeking to balance the interests of both developed and developing countries while promoting sustainable agricultural practices and fair trade.

Key WTO cases, such as US – Carbon Steel⁹ and US – Anti-Dumping and Countervailing Duties (China),¹⁰ offer significant insights into the interpretation and application of the SCM Agreement. These cases highlight the importance of transparency, proper procedural conduct, and avoiding double-counting in the imposition of duties.¹¹

In conclusion, the SCM Agreement is vital for regulating subsidies and

⁹ See Appellate Body Report, US – Carbon Steel (2002), para. 108.

¹⁰ Appellate Body Report, *US – Anti-Dumping and Countervailing Duties (China)* (2011), para. 301 referring to Appellate Body Report, *US – Softwood Lumber IV* (2004), para. 64 and Appellate Body Report, *US – Countervailing Duty Investigation on DRAMS* (2005), para. 115.

¹¹ See also See Michael J. Trebilcock, Joel Trachtman, “Advanced Introduction to International Trade Law”, 2nd edition, p.86.

ensuring fair trade practices within the WTO framework. It balances the economic development needs of developing countries with the necessity of preventing trade distortions caused by subsidies. Despite challenges in compliance and evolving complexities in government support measures, the SCM Agreement remains a fundamental component of international trade regulation.

In conclusion, while the SCM Agreement sets out a comprehensive regulatory framework for subsidies within the WTO, its effectiveness is contingent upon Members' compliance with notification and procedural obligations. The role of the Subsidies Committee and the support provided to developing countries are crucial in addressing compliance challenges and ensuring transparency. Continued efforts to enhance understanding and capacity among Members will be essential for the fair regulation of subsidies and the promotion of equitable trade practices in the global economy.

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