

LEGAL BASIS FOR THE REGULATION OF SUBSIDIES UNDER THE WTO LEGAL SYSTEM

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ABSTRACT

Subsidy regulation is a critical component of the World Trade Organization's (WTO) legal system, aimed at preventing market distortions and promoting fair competition. Unregulated subsidies can lead to overproduction, price distortions, and the dumping of goods, undermining the competitiveness of other WTO members. This paper employs a doctrinal legal research method to examine the WTO's regulatory framework on subsidies, focusing on the General Agreement on Tariffs and Trade (GATT), the Agreement on Subsidies and Countervailing Measures (SCM Agreement), and the Agreement on Agriculture (AoA). The findings show that while the SCM Agreement provides a clear classification system for subsidies—prohibited, actionable, and non-actionable—loopholes and ambiguities persist. The relationship between the SCM Agreement and the AoA is complementary but reveals sector-specific disparities, particularly in agricultural subsidies. Challenges include regulatory gaps in addressing new forms of subsidies, perceived imbalances between developed and developing countries, and enforcement limitations. The paper recommends comprehensive reforms to close legal loopholes, adapt to modern subsidy practices, and ensure equitable treatment of all WTO members.

KEYWORDS

WTO, subsidies, SCM Agreement, Agreement on Agriculture, GATT, trade distortions, countervailing measures, fair competition, reform

INTRODUCTION

Subsidies have long been recognized as a significant factor affecting the balance of international trade. While they can support domestic industries, subsidies—when misused—distort competition and undermine the principles of free and fair trade. Within the WTO framework, subsidy regulation is crucial to maintaining a level playing field and ensuring that all members can compete under equitable conditions (Bown & Hillman, 2019).

Subsidies artificially lower production costs or confer other financial advantages, potentially leading to overproduction, excess capacity, and dumping of subsidized goods in foreign markets (Hoekman & Kostecki, 2021). Such effects disrupt market equilibrium, distort prices, and threaten domestic industries in importing countries. The WTO, through legal instruments such as the GATT, SCM Agreement, and AoA, seeks to mitigate these impacts by establishing rules and procedures for identifying, classifying, and addressing subsidies.

This paper examines the legal basis for subsidy regulation within the WTO system, the challenges posed by evolving global economic conditions, and the prospects for reform to strengthen fairness and sustainability in international trade.

METHODS

This study adopts a **doctrinal legal research** methodology, focusing on the interpretation of primary legal texts and the analysis of WTO jurisprudence. Primary sources include the **General Agreement on Tariffs and Trade (1994)**, the **Agreement on Subsidies and Countervailing Measures (1994)**, and the **Agreement on Agriculture (1994)**, as well as relevant WTO dispute settlement reports.

Secondary sources consist of academic literature on international trade law, economic analyses of subsidy effects, and commentaries on WTO agreements (Matsushita et al., 2017; Van den Bossche & Zdouc, 2021). The research uses

qualitative analysis to identify the scope of subsidy regulation, examine the effectiveness of existing mechanisms, and evaluate areas requiring reform.

RESULTS

3.1 Legal Framework for Subsidy Regulation

The WTO's subsidy regulation rests primarily on three agreements:

- **GATT:** Articles VI and XVI address subsidies by permitting anti-dumping duties and prohibiting subsidies that nullify or impair other members' benefits (WTO, 1994a).
- **SCM Agreement:** Establishes three categories—prohibited, actionable, and non-actionable subsidies—and outlines procedures for investigations and countervailing measures (WTO, 1994b).
- **Agreement on Agriculture:** Applies to agricultural subsidies, classifying them into amber, blue, and green boxes, each with specific trade-distortion implications (WTO, 1994c).

3.2 Complementary Relationship Between SCM and AoA

While the SCM Agreement applies broadly across sectors, the AoA contains provisions tailored to agriculture. Together, they provide a dual-layer regulatory system, although overlaps and inconsistencies can arise in practice.

3.3 Challenges in the Current Regime

- **Loopholes and Ambiguities:** Certain provisions of the SCM Agreement are open to interpretation, enabling members to design subsidies that technically comply but still distort trade (Rubini, 2009).
- **Emerging Forms of Subsidies:** Digital economy incentives, environmental subsidies, and climate-related support mechanisms are not

explicitly addressed in the current regime.

- **Developmental Imbalance:** Perceived asymmetries in subsidy discipline between developed and developing countries have sparked criticism and calls for fairer treatment (Bown & Hillman, 2019).

DISCUSSION

The existing WTO subsidy framework provides a structured approach to regulating traditional subsidies but struggles to address evolving economic realities. The SCM Agreement's classification system offers clarity but can be undermined by ambiguous provisions and insufficient enforcement.

Agricultural subsidies remain a contentious issue, with developed countries often retaining greater flexibility under the AoA while developing members face tighter constraints. This disparity risks entrenching competitive imbalances and limiting development prospects.

Furthermore, the global shift toward sustainability and digital transformation introduces subsidy forms that the current regime was not designed to address. Without adaptive reforms, the WTO risks losing its effectiveness in regulating trade-distorting practices in these emerging sectors.

Reforms should aim to:

1. Expand subsidy definitions to include new economic realities.
2. Close legal loopholes that permit disguised trade distortions.
3. Balance flexibility for development needs with the principle of fair competition.
4. Strengthen enforcement through more robust dispute settlement mechanisms.

CONCLUSION

Subsidies play a complex role in the global trading system—offering potential benefits for domestic development but posing significant risks to market fairness. The WTO's current framework, centered on the GATT, SCM Agreement, and AoA, provides a strong foundation but requires modernization to meet contemporary challenges. Closing loopholes, addressing emerging subsidy types, and ensuring equitable treatment across all members are essential for preserving the integrity and relevance of the WTO subsidy regime.

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