

## TRACING THE LEGAL REGIME OF AGRICULTURAL SUBSIDIES WITHIN THE WTO FRAMEWORK: A HISTORICAL INSIGHT

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### Abstract

The global regulation of agricultural subsidies under international trade law represents one of the most intricate and contentious areas of the World Trade Organization (WTO) legal system. The discipline surrounding agricultural subsidies evolved through decades of negotiations, legal experimentation, and political compromise. Although subsidies are addressed within the general framework of the WTO through the Agreement on Subsidies and Countervailing Measures (SCM Agreement), agricultural subsidies are primarily governed by a distinct legal regime—the Agreement on Agriculture (AoA)—due to the unique nature of agriculture in domestic economic, social, and food security policies.

This article provides a historically grounded and legal examination of the evolution of the WTO regime governing agricultural subsidies, exploring the trajectory from the early General Agreement on Tariffs and Trade (GATT) provisions to the specialized legal framework established by the AoA. It also discusses the implications of this legal regime and its architecture, including its three-pillar structure and the subsidy classification system.

**Keywords:** agriculture, subsidy, WTO, GATT, Agreement on Agriculture, SCM Agreement. When the General Agreement on Tariffs and Trade (GATT) was drafted in 1947 as a provisional framework to liberalize international trade, the treatment of subsidies, including those related to agriculture, was included in the text.<sup>1</sup> Article XVI of the GATT 1947 was the principal provision addressing subsidies, which required member states (contracting parties) to notify others of any subsidies that affected trade, and allowed other members to request consultations.<sup>2</sup>

More specifically, Article XVI:3 made a distinction between primary and non-primary products, prohibiting export subsidies on the latter while allowing some leeway for the former. This bifurcated treatment was a political compromise, reflecting the post-World War II concern with ensuring food security, protecting farmers' incomes, and rebuilding agricultural productivity.

While the GATT recognized that subsidies distorted trade, the approach toward agricultural subsidies was *accommodative rather than prohibitive*. Developed countries, particularly in

<sup>1</sup> The 1955 Review Session of the GATT witnessed the introduction of Section B to Article XVI.

<sup>2</sup> See Article XVI:1 of GATT.

Europe and North America, extensively supported their domestic agricultural sectors, and the GATT regime permitted such support in recognition of the sector's sensitivity.

During the Tokyo Round (1973–1979),<sup>3</sup> the GATT system attempted to strengthen subsidy disciplines through the Subsidies Code, formally known as the “Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade”.<sup>4</sup>

This plurilateral code was the first specialized multilateral agreement addressing subsidies and countervailing measures. It extended rules on the use of subsidies and introduced some procedural guidelines for imposing countervailing duties. Importantly, it was designed to cover both industrial and agricultural goods.

However, the Subsidies Code failed to achieve universal application. It lacked binding commitments and had limited membership—only a subset of GATT parties signed and implemented it. As a result, its impact on agricultural subsidy disciplines was negligible. It nevertheless laid conceptual foundations for the later, more comprehensive SCM Agreement and informed the eventual structure of the AoA.<sup>5</sup>

The Uruguay Round (1986–1994) marked a turning point in international trade law, culminating in the creation of the WTO and a more coherent system of rules. One of the most significant and controversial negotiation areas was agriculture.<sup>6</sup>

For decades, agriculture had remained largely insulated from multilateral disciplines. However, growing dissatisfaction among export-oriented countries—most notably the United States, Australia, and other members of the Cairns Group<sup>7</sup>—spurred a demand for liberalization and more effective subsidy regulation.<sup>8</sup> Their advocacy, supported by economic studies showing global welfare losses from agricultural protectionism,<sup>9</sup> led to the inclusion of agriculture as a priority area in the 1986 Punta del Este Declaration, which launched the Uruguay Round.<sup>10</sup>

Negotiators initially considered integrating agriculture into the general rules of the SCM Agreement, which was also being drafted during the Uruguay Round. However, strong resistance from countries with heavily protected agricultural sectors—particularly the European Community (now European Union) and Japan—prevented this integration.<sup>11</sup>

The result was the creation of a specialized agreement tailored to the agricultural sector—the Agreement on Agriculture (AoA)—which would sit alongside the SCM Agreement but apply

<sup>3</sup> See further Peter Van den Bossche, Werner Zdouc, “World Trade Organization Text, Cases and materials”, (4<sup>th</sup> edition, Cambridge University Press, 2017), p.772.

<sup>4</sup> Agreement on Interpretation and Application of Articles VI, XVI and XXXIII of the GATT,1979.

<sup>5</sup> See further T.Andrew, Guzman and Alan O.Sykes, “Research handbook in International Economic Law”, (Edward Elgar,2007), p.20.

<sup>6</sup> Agreement on Interpretation and Application of Articles VI, XVI and XXXIII of the GATT,1979.

<sup>7</sup> See further Petros C.Mavroidis, “Trade In Goods”, (Oxford University Press, 2008), p.204.

<sup>8</sup> See further M.Trebilcock, R.Howse, A.Eliason, “The Regulation of International Trade”, (4<sup>th</sup> edition, Routledge), p.447.

<sup>9</sup> For details see O'Connor B. **Agriculture in WTO Law**, London, 2007, p. 17.

<sup>10</sup> Zelenska, Kataryna, “Grain Subsidies in Ukraine: The Role of WTO law and the EU-Ukraine Association Agreement”, (BRIL,2018), p.61.

<sup>11</sup> See the Preamble of Ministerial Declaration of 1 Punta del Este Declaration, 986.

only to agricultural goods. This divergence reflects the unique political and economic sensitivities surrounding agriculture and the need for a separate legal architecture that balances trade liberalization with domestic policy space.

The AoA, which came into force in 1995 as part of the Annex 1A of the WTO Agreement, represents a legally binding multilateral treaty that specifically regulates trade in agricultural products. While the GATT 1994 still applies to agriculture, the AoA modifies or prevails over the GATT provisions to the extent of inconsistency.<sup>12</sup>

Importantly, agricultural subsidies fall outside the scope of the SCM Agreement, which governs subsidies in all other sectors. This legal separation has led some commentators to argue that agriculture remains a “managed exception” in the WTO system.<sup>13</sup>

The AoA is structured around three key pillars, each representing a category of trade-distorting practices:

#### 1. Market Access

This pillar governs tariffs and quotas. Under the AoA, all non-tariff barriers (e.g., import bans, quotas) were required to be converted into tariffs through a process known as tariffication, and then subject to binding commitments on their reduction.

Developed countries agreed to reduce tariffs by an average of 36% over six years, while developing countries committed to 24% over ten years. Least-developed countries were exempted.

#### 2. Export Competition (*Export Subsidies*)

This pillar regulates subsidies that directly support exports of agricultural products. The AoA required WTO members to:

- Reduce budgetary outlays on export subsidies by 36% (24% for developing countries).
- Reduce the quantities of subsidized exports by 21% (14% for developing countries).

It also prohibited the introduction of new export subsidies beyond those already in place.

Despite these reductions, the AoA did not eliminate export subsidies, a shortcoming that drew criticism for perpetuating trade distortions, particularly harming agricultural exporters in developing countries.

#### 3. Domestic Support

This is perhaps the most complex pillar of the AoA, as it classifies domestic support measures into “boxes” based on their trade-distorting potential.

#### 4. The AoA’s Subsidy Classification: Amber, Blue, and Green Boxes

##### 4.1. Amber Box

The Amber Box includes all domestic support measures that are considered to distort production and trade. These include price supports and input subsidies that directly affect the

<sup>12</sup> O’Connor B. “Agriculture in WTO Law”, (London, 2007), p. 83.

<sup>13</sup> O’Connor B. “Agriculture in WTO Law”, (London, 2007), p. 83.

decisions of producers. Such subsidies are subject to reduction commitments and are capped by country-specific Total Aggregate Measurement of Support (AMS) ceilings.

Certain de minimis exemptions exist, allowing small subsidies (5% of production value for developed countries; 10% for developing countries) to be excluded from the AMS calculation.

#### 4.2. Blue Box

Blue Box subsidies are a special category introduced as a compromise, particularly to accommodate the EU's Common Agricultural Policy (CAP). These subsidies are linked to production-limiting programs, such as set-aside schemes or quotas. While they are less trade-distorting than Amber Box subsidies, they still influence production and income levels.

Blue Box subsidies are not subject to reduction commitments, making them a legal channel for maintaining some forms of support while technically complying with the AoA.

#### 4.3. Green Box

The Green Box covers non- or minimally trade-distorting support, such as:

- Research and development
- Infrastructure services
- Environmental protection programs
- Direct income support not linked to production levels

To qualify, Green Box measures must meet specific criteria set out in Annex 2 of the AoA, including decoupling from output and price signals. These subsidies are exempt from reduction commitments, thus providing a politically and legally acceptable avenue for continued agricultural support.

The inclusion of agriculture in the WTO's binding legal framework was a landmark achievement. For the first time, the principle of market-oriented agriculture was established at the multilateral level. The AoA also improved transparency, introduced notification obligations, and created legal predictability in an area previously dominated by opaque and unilateral measures.

Moreover, it facilitated future negotiations, laying the groundwork for further reform under the WTO's Doha Development Agenda (DDA).

Despite its achievements, the AoA has been widely criticized:

- *Asymmetry*: Developed countries, due to higher baseline AMS levels, have more legal flexibility to provide support than developing countries.
- *Continued Trade Distortions*: The AoA allowed significant room for support to continue under Green and Blue Boxes, often benefiting large agribusinesses in the Global North.
- *Limited Progress on Reform*: The Doha Round, launched in 2001 with the goal of further liberalizing agriculture, has been stalled for decades.

As a result, the WTO's legal regime on agricultural subsidies remains fragmented, and the credibility of multilateral trade rules in this domain is frequently questioned.

**Conclusion**

The legal regime governing agricultural subsidies under the WTO is the result of a long and complex evolution, rooted in the original GATT system and crystallized in the Agreement on Agriculture. The AoA reflects a compromise between liberalization and policy space, accommodating divergent interests across developed and developing countries. Its three-pillar structure and subsidy classification system represent a unique legal architecture within the WTO framework, differentiating agriculture from other sectors.

However, persistent challenges—especially the inequitable distribution of support entitlements and the limited effectiveness of reform negotiations—underscore the need for a comprehensive review and modernization of the AoA. The future of agricultural trade regulation may well depend on the ability of WTO members to move beyond entrenched positions and reimagine subsidy governance in a way that is both equitable and sustainable.

As agriculture continues to intersect with pressing global challenges—including climate change, food security, and rural development—the need for a more coherent, just, and environmentally sound legal regime is greater than ever. The WTO has the normative tools, but political will remains the key missing ingredient.

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