



## THE LEGAL FOUNDATIONS AND IMPORTANCE OF SUBSIDY REGULATION IN THE WTO FRAMEWORK

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### Abstract

The article provides a comprehensive examination of the legal foundations and importance of subsidy regulation under the World Trade Organisation, focusing on the effects of subsidies on international trade and the necessity of WTO agreements on subsidy regulation. The article delves into the impact of subsidies on international trade, emphasising how they can distort markets, create unfair competition, and hinder economic growth. It highlights the role of subsidy regulation in promoting a level playing field and ensuring fair competition in global trade. The study discusses key WTO agreements that provide rules and disciplines for subsidy use. This research contributes to understanding the role of subsidy regulation in promoting fair trade and a level playing field in global commerce.

### Key words

Legal basis, subsidy regulation, World Trade Organisation, effects, international trade, WTO agreements, distortion, fair competition, Subsidies and Countervailing Measures Agreement, Agreement on Agriculture, enforcement, markets, trade disputes, global commerce.

## ПРАВОВЫЕ ОСНОВЫ И ВАЖНОСТЬ РЕГУЛИРОВАНИЯ СУБСИДИЙ В РАМКАХ ВТО

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### Аннотация

В статье представлен всесторонний анализ правовых основ и важности регулирования субсидий в рамках Всемирной торговой организации с акцентом на влияние субсидий на международную торговлю и необходимость соглашений ВТО по регулированию субсидий. В статье рассматривается влияние субсидий на международную торговлю, подчеркивается, как они могут искажать рынки, создавать недобросовестную конкуренцию и препятствовать экономическому росту. В нем подчеркивается роль регулирования



субсидий в создании равных условий и обеспечении честной конкуренции в мировой торговле. В исследовании обсуждаются ключевые соглашения ВТО, устанавливающие правила и дисциплины использования субсидий. Это исследование способствует пониманию роли регулирования субсидий в продвижении справедливой торговли и равных условий в мировой торговле.

### Ключевые слова

Правовая основа, регулирование субсидий, Всемирная Торговая Организация, последствия, международная торговля, соглашения ВТО, искажение, добросовестная конкуренция, Соглашение о Субсидиях и Компенсационных Мерах, Соглашение по Сельскому Хозяйству, правоприменение, рынки, торговые споры, мировая торговля.

## JSTDA SUBSIDİYALARNING TARTIBIY OLISHNING HUQUQIY ASOSLARI VA AHAMIYATI

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### Annotatsiya

Maqolada Jahon Savdo Tashkiloti doirasida subsidiyalarni tartibga solishning huquqiy asoslari va ahamiyati har tomonlama tahlil qilinadi, subsidiyalarning xalqaro savdoga ta'siri va JST subsidiyalari bo'yicha kelishuvlarga bo'lgan ehtiyojga e'tibor qaratiladi. Maqolada subsidiyalarning xalqaro savdoga ta'siri ko'rib chiqilib, ular qanday qilib bozorlarni buzishi, adolatsiz raqobat yaratishi va iqtisodiy o'sishga to'sqinlik qilishi mumkinligi ta'kidlangan. Bu o'yin teng sharoitlarni yaratish va global savdoda adolatli raqobatni ta'minlashda subsidiyalarni tartibga solishning rolini ta'kidlaydi. Maqola subsidiyalardan foydalanish qoidalarni va intizomlarni belgilab beruvchi asosiy JST kelishuvlarini muhokama qiladi. Ushbu tadqiqot adolatli savdoni va jahon savdosida teng sharoit yaratishda subsidiyalarni tartibga solishning rolini tushunishga yordam beradi.

### Kalit so'zlar

Huquqiy asos, subsidiyalarni tartibga solish, Jahon savdo tashkiloti, oqibatlari, xalqaro savdo, JST kelishuvlari, buzilish, adolatli raqobat, Subsidiyalar va kompensatsiya choralari to'g'risidagi bitim, Qishloq xo'jaligi, huquqni muhofaza qilish organlari, bozorlar, savdo nizolari, jahon savdosi.

### Introduction



Subsidies play a crucial role in shaping economic policies and fostering societal objectives in many countries. They can provide financial support to specific industries, promote innovation, address social welfare needs, and encourage environmental sustainability. However, if not properly regulated, subsidies can lead to market distortions, unfair competition, and trade disputes among nations. Recognising these challenges, the World Trade Organisation has established a legal framework to govern subsidy practices and ensure a level playing field in international trade.

Subsidies, broadly defined as financial contributions provided by governments to domestic industries that confer a benefit<sup>1</sup>, can have a significant impact on trade flows, market competition, and global economic stability<sup>2</sup>. First, by distorting the level playing field in the markets, they create unfair competition that leads to inefficiencies, pricing distortions, and altered incentives, which distort the level playing field and create unfair competition. Second, because subsidy practices are sometimes opaque, arguments over subsidies are a significant source of conflict in trade relations, particularly when they are viewed as an implicit or explicit form of industrial policy<sup>3</sup>. As a result of these differences, the risks of economic nationalism, governmental intervention, and/or protectionism may continue to increase<sup>4</sup>.

### Importance of the Subsidy Regulation

The regulation of subsidies ensures that all countries have a level playing field when it comes to trade. Without regulations, some countries may provide massive subsidies to their domestic industries, giving them an unfair advantage in the global market. Subsidies destabilise the functioning of international trade and distort international competition, which can lead to the destabilisation of the functioning of international trade and the distortion of international competition. Regulations ensure that competition is fair and that smaller countries have a chance to participate meaningfully in the global economy.

Subsidies play a crucial role in promoting economic growth in several countries. Regulating subsidies ensures that government intervention does not hinder trade and that the benefits of economic growth are spread equitably across all countries. Multilateral rules governing subsidies

<sup>1</sup> SCM Agreement, article 1

<sup>2</sup> WTO Secretariat, 'World trade report: Trade Policy Commitments and Contingency Measures'' (2009)

<sup>3</sup> Cambridge University Press, *Law and Economics of Contingent Protection in International Trade* (CUP, 2010). Available at: <https://doi.org/10.1017/CBO9780511691577>

<sup>4</sup> Lester S., *The Problem of Subsidies as a Means of Protectionism: Lessons from the WTO EC — Aircraft case* (Melbourne Journal of International Law, 2011). Available at: [https://law.unimelb.edu.au/\\_\\_data/assets/pdf\\_file/0010/1687168/Lester.pdf](https://law.unimelb.edu.au/__data/assets/pdf_file/0010/1687168/Lester.pdf)





promote opportunities for competitive trading and help countries integrate into the global economy, making international trade an excellent tool for economic growth.

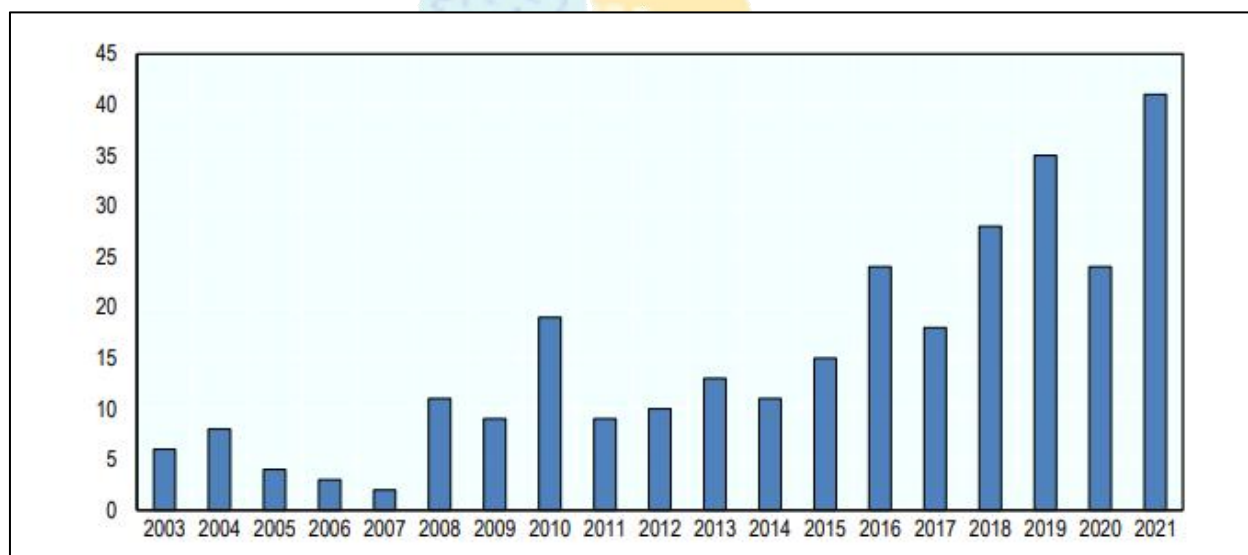
By regulating subsidies, the WTO can promote sustainable development and ensure environmentally friendly practices. Governments can offer less harmful subsidies that support green initiatives, such as promoting renewable energy and organic farming. Regulations ensure that subsidies do not cause harm to the environment but help protect natural habitats for future generations. Environmental degradation, poor food safety, resource waste, and labour disputes are examples of societal problems brought on by economic globalisation and progress.<sup>5</sup>

Disputes relating to subsidy regulations are common in global trade.<sup>6</sup> Different countries employ varying levels of subsidies; some are excessively high, while some fiscally constrained developing countries use far less. Thus, sharp disagreements over subsidies are fueling trade tensions worldwide, which are detrimental to growth and living standards.<sup>7</sup> A thorough understanding of the rules and regulations governing subsidies can help resolve these disputes efficiently. A clear understanding of the legal principles involved in regulating subsidies ensures that disputes are resolved through existing structures established in the WTO.

<sup>5</sup> Khurshid A. and others, "Technological Innovations for Environmental Protection: Role of Intellectual Property Rights in the Carbon Mitigation Efforts. Evidence from Western and Southern Europe - International Journal of Environmental Science and Technology" (*SpringerLink*, 2021) Available at: <https://doi.org/10.1007/s13762-021-03491-z>

<sup>6</sup> The SCM Agreement was raised in WTO disputes more than 130 times during the period between 1995-2021. Available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/disputats\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/disputats_e.htm)

<sup>7</sup> IMF, OECD, World Bank, and WTO report "Subsidies, Trade, and International Cooperation" (January 2022) Available at: <https://www.oecd.org/daf/competition/subsidies-competition-and-trade-2022.pdf>



Over the past two decades, the number of countervailing measures has been rapidly rising.

Source: WTO (WTO | Subsidies and Countervailing Measures) Why do governments use subsidies?

### The reasons behind usage of subsidies by governments

In recent years, there has been a steady rise in the quantity and size of subsidy measures taken around the world.<sup>8</sup> Globally, states face a number of challenges, including recent events like the COVID-19 recovery<sup>9</sup>, climate change, fragile and disrupted global value chains<sup>10</sup>, and other challenges that have necessitated and will continue to require government intervention.<sup>11</sup>

<sup>8</sup> Though the exact understanding of the size and role of the subsidies is incomplete due to uneven and incomplete data because of the lack of transparency by governments about their support to companies.

<sup>9</sup> Evenett, S. and J. Fritz (2021), Subsidies and Market Access: Towards an Inventory of Corporate Subsidies by China, the European Union, and the United States.

In response to the pandemic, governments have provided businesses and whole industries with substantial support, particularly through subsidies. Such assistance programmes have yet to be loosened and finally terminated in many economies, and the various methods for doing so (speed, extent, etc.) may result in considerable trade conflicts and competition.

<sup>10</sup> IMF et al., Subsidies, Trade, and International Cooperation, (OECD Publishing, Paris, 2022). Available at: <https://www.oecd.org/daf/competition/subsidies-competition-and-trade-2022.pdf>

<sup>11</sup> OECD and Global Forum on Competition, 'Subsidies, Competition, and Trade' (OECD Competition Policy Roundtable Background Note, 2022). Available at: <https://www.oecd.org/daf/competition/subsidies-competition-and-trade-2022.pdf>



Governments may subsidise under certain conditions for justifiable reasons. The most common defence of subsidies is that they enable governments to address a variety of market failures.<sup>12</sup> By reducing negative externalities (such as those between jurisdictions and the environment) or by generating positive externalities (such as investment in research and development), subsidies can be used to alleviate market failures and attain specific policy goals. To increase the economic growth of a state, government subsidies can be used to circumvent the market system in the allocation of resources.

State sovereignty and international regulation of subsidies will always clash<sup>13</sup>. On the one hand, governments are free to enact any laws they see fit as sovereign states, including those that depend on the use of subsidies to further their goals. International control of subsidies, however, poses certain difficulties because not all states are willing to restrain their own policy space<sup>14</sup>. The gains of the national and international economies are also constrained by subsidies because they imply distortions. As a result, governments "have a collective interest in cooperating to limit the adverse effects on trade, but they also have a legitimate interest in seeking to influence economic activity within their jurisdiction."<sup>15</sup>

On the other hand, from the governments' perspective, despite the fact that some subsidies pose challenges, they nonetheless possess a certain level of legitimacy that 'border instruments' like tariffs or quotas do not. Economically speaking, subsidies are similar to negative taxes in that they can be used to achieve significant social and political goals, frequently more effectively than other policies. For example, subsidies are used to stimulate innovation (e.g., through R&D tax credits), address regional inequalities (e.g., through European Commission Objective I initiatives), and enable social mobility (e.g., through funding student loans). Due to these factors, trade agreements, such as the GATT/WTO system, have attempted to strike a balance between limiting subsidies and state autonomy. As a result, agreements were exchanged to cut back on or do away with export subsidies and to restrict the impact of those subsidies from having a negative impact on trade flows.

<sup>12</sup> OECD (2010), Competition, State Aids, and Subsidies. Available at: <https://search.oecd.org/daf/competition/sectors/48070736.pdf>

<sup>13</sup> Hugo Paemen, 'Forces that (may) Have Shaped Subsidy Regulation' in What Shapes the Law? Reflections on the history, law, politics, and economics of international and European subsidy disciplines (Luca Rubini & Jennifer Hawkins eds., 2016). Available at SSRN: <https://ssrn.com/abstract=2960046>.

<sup>14</sup> Eduardo Chikusa. 'Surveillance and Litigation of the GATT/WTO Subsidy Disciplines' (2016). Available at SSRN: <https://ssrn.com/abstract=2960046>.

<sup>15</sup> Terry Collins-Williams, 'A Negotiator's Perspective on Enhancing Subsidies' Discipline', in What Shapes the Law? Reflections on the history, law, politics, and economics of international and European subsidy disciplines (Luca Rubini & Jennifer Hawkins eds., 2016). Available at SSRN: <https://ssrn.com/abstract=2960046>.





Subsidies are often used as a tool to promote economic development and stimulate growth in certain industries or regions. By providing financial support to businesses, governments aim to encourage investment, innovation, and job creation. Subsidies can attract domestic and foreign investment, boost exports, and enhance competitiveness in strategic sectors. Governments may offer financial incentives, tax breaks, or grants to entice companies to establish or expand operations within their jurisdiction. These subsidies aim to create jobs, boost local economies, and enhance competitiveness by providing advantages over other locations.<sup>16</sup>

Furthermore, governments may employ subsidies to support social objectives such as poverty alleviation, healthcare, education, or housing. Subsidies can make essential goods and services more affordable and accessible to vulnerable populations. They can also target specific groups, such as low-income individuals, students, or senior citizens, to enhance social welfare and reduce inequalities.

Energy crisis brought on by recent aggression in Ukraine: The conflict between Russia and Ukraine has had a substantial impact on energy prices due to the importance of Russia in the global energy scene, especially in Europe. As a response, governments, particularly in Europe, have committed substantial sums of money to reduce the rising prices.<sup>17</sup>

From an economic perspective, subsidies, in comparison to tariffs, are more efficient at overcoming market failures<sup>18</sup> as well as bringing social and private costs and benefits into alignment.<sup>19</sup> In situations where the market does not adequately allocate resources, such as in the case of public goods or externalities, governments may provide subsidies to incentivize private investment or consumption. This can ensure the provision of essential services, promote research and development, or mitigate negative environmental impacts.

It is important to note that while subsidies can have positive effects, they can also lead to unintended consequences, such as market distortions, inefficient resource allocation, or trade disputes. Balancing the objectives of subsidies with the principles of fair competition and international trade rules is a complex challenge faced by governments worldwide.

<sup>16</sup> *Ibid.*

<sup>17</sup> OECD and Global Forum on Competition, 'Subsidies, Competition, and Trade' (*OECD Competition Policy Roundtable Background Note*, 2022). Available at: <https://www.oecd.org/daf/competition/subsidies-competition-and-trade-2022.pdf>

<sup>18</sup> Market failure is when the prices of goods and services do not reflect the true costs of producing and consuming those goods and service

<sup>19</sup> World Trade Organisation, 'The Economics of Subsidies' (*World Trade Organisation*, 2006) Available at: [https://www.wto.org/English/res\\_e/publications\\_e/wtr06\\_e.htm](https://www.wto.org/English/res_e/publications_e/wtr06_e.htm)



## Effects of subsidies on International Trade

The effects of subsidies on international trade have been a subject of significant interest and debate within the realm of global commerce. The effects of subsidies extend beyond their intended purposes, often leading to market distortions, trade disputes, and challenges to open and fair trade. Understanding the effects of subsidies on international trade are crucial for policymakers, economists, and trade practitioners to assess the consequences of subsidy practices and develop effective regulatory frameworks, promoting fair and sustainable global trade.

Subsidies can distort market conditions by altering the cost structure and competitive landscape of subsidised industries<sup>20</sup>. This can lead to an unfair advantage for subsidised industries, resulting in trade disruptions<sup>21</sup>. Domestic producers may have a competitive edge over foreign competitors, leading to reduced market access for imports and potential trade imbalances. Such market distortions can impede free and fair trade, undermining the principles of the WTO.

The effects of subsidies on international trade can be particularly challenging for developing countries. Subsidies provided by developed countries can hinder market access opportunities for products from developing countries. Developing countries may face difficulties competing with subsidised imports, leading to imbalances in trade relations. The WTO recognises the need to take into account the development needs and interests of developing countries in the interpretation and application of subsidy rules, as emphasised in the Doha Development Agenda.

It is worth noting that subsidies can also have positive effects on international trade by promoting economic development, particularly in developing countries. Article 8 of the SCM Agreement acknowledges the importance of subsidies in achieving the economic and social policy objectives of developing countries. Well-designed and targeted subsidies can contribute to job creation, income generation, and the development of strategic industries. By strategically utilising subsidies, developing countries can nurture domestic industries, build technological capabilities, and reduce dependence on imports. Subsidies can be a tool for levelling the playing field and allowing developing countries to participate in global trade on more equitable terms. The legal framework of the WTO provides developing countries with policy space to utilise subsidies in support of their development goals while ensuring that they do not cause undue harm to the interests of other members. Subsidies can provide developing countries with policy space to address their development challenges.

## The need for the Agreement on the Regulation of Subsidies

<sup>20</sup> Article 3 of the SCM Agreement recognises that subsidies can have adverse effects on the trade interests of other members.

<sup>21</sup> Borlini L., 'Subsidies Regulation Beyond the WTO. Substance, Procedure, and Policy Space in the 'New Generation' EU Trade Agreements' (Bocconi Legal Studies Research Paper No. 3730574, 2020). Available at <http://dx.doi.org/10.2139/ssrn.3730574>





Over the years, governments have faced clear redlines to give up policy space, regardless of how crucial the need to regulate subsidies may be. This is especially true if doing so would result in restrictions on their ability to develop policies for strategic sectors. An essential factor in the development of the regulation of subsidies has been the safeguarding of programmes for strategic industries<sup>22</sup>.

The primary legal basis for the regulation of subsidies under the WTO are Articles VI and XVI of the GATT, 1994 and the Agreement on Subsidies and Countervailing Measures. The SCM Agreement, one of the agreements included in Annex 1A of the Agreement establishing the WTO, is an integral component of the WTO's legal framework and provides clear guidelines for the regulation of subsidies. The Interpretative Note to Annex 1A<sup>23</sup> states that, with regard to the relationship between the GATT and the SCM Agreement, the provisions of the SCM shall take precedence.<sup>24</sup> In addition to the SCM Agreement, other WTO agreements and legal instruments have relevance to the regulation of subsidies in specific contexts. The Agreement on Agriculture addresses certain aspects of agricultural subsidies. Subsidies granted to services are subject to the provisions of the General Agreement on the Trade in Services and, therefore, are not covered by the SCM Agreement. It's important to note that the legal basis for the regulation of subsidies may also be found in domestic laws and regulations of WTO members, which implement and enforce the obligations and commitments under the SCM Agreement.

The WTO's primary instrument for achieving its overarching goals is the considerable reduction of tariffs and other trade barriers, as well as the elimination of unfair practices in global trade relations.<sup>25</sup> As its name implies, the 1947 General Agreement on Tariffs and Trade began with a

<sup>22</sup> Chikusa E, 'Surveillance and Litigation of the GATT/WTO Subsidy Disciplines' (2016). Available at SSRN: <https://ssrn.com/abstract=2960046>.

<sup>23</sup> Annex 1A, Multilateral agreements on trade in goods, "General interpretative note to Annex 1A.

<sup>24</sup> As the Panel explained in EC-Bananas:

[i]n light of the wording, the context, the object, and the purpose of this Note, we consider that it is designed to deal with (i) clashes between obligations contained in GATT 1994 and obligations contained in agreements listed in Annex 1A, where those obligations are mutually exclusive in the sense that a Member cannot comply with both obligations at the same time, and (ii) the situation where a rule in one agreement prohibits what a rule in another agreement explicitly permits.

Panel Report, EC – Regime on the Importation, Sale, and Distribution of Bananas, WT/DS27/R/USA, adopted September 25, 1997, para. 7.155.

<sup>25</sup> *Preamble* of the Agreement establishing the WTO,

Being desirous of contributing to these objectives by entering into reciprocal and mutually advantageous arrangements directed to the substantial reduction of tariffs and other barriers to trade and to the elimination of discriminatory treatment in international trade relations.



political consensus for the 'substantial reduction of tariffs'. Tariffs and quotas were regarded as the main barriers to international trade when the GATT of 1947<sup>26</sup> was drafted. Therefore, the GATT imposed a broad ban on quantitative restrictions to address this issue.<sup>27</sup> While tariffs are not strictly forbidden, they were also significantly lowered as a result of the eight GATT Rounds.<sup>28</sup>

Despite the success GATT achieved in reducing tariffs on trade in goods, in particular on industrial goods<sup>29</sup>, with respect to the reduction of non-tariff barriers, it was notably less successful. The value of these tariff and quantitative limit removals depends on whether "the parties do not turn around and impose new non-tariff barriers".<sup>30</sup> The removal of border trade restrictions resulted in a rise in non-tariff restrictions. This has led the WTO to focus on non-tariff trade policies and domestic policies with an impact on trade. The kind of scheduled obligations used in tariffs on commodities or the treatment of traded services, however, have never come about despite years of discussions to cut subsidies.<sup>31</sup>

Tariff rules have generally been effective, whereas subsidies, on the contrary, have been a consistent source of legal and political controversy<sup>32</sup>. Subsidies can be utilised for a range of significant social and economic objectives, unlike tariffs, whose considerable detrimental effects on trade exceed other policy benefits. Therefore, merely advocating for a reduction in subsidies in the process of establishing rules is not viable, as has been done with tariffs. Instead, it is necessary to develop a more complex regulatory system that addresses potential issues with subsidies without restricting governments' capacity to employ them for primary objectives.

<sup>26</sup> General Agreement on Tariffs and Trade, 1947.

<sup>27</sup> Article 11 of the GATT, 1994.

<sup>28</sup> Id., art. II.

<sup>29</sup> In the late 1940s, before the creation of the GATT, the average duty on industrial products imposed by developed countries was about 40 percent ad valorem. After the tariff negotiations, this average has been reduced to about 3.9 percent ad valorem.

<sup>30</sup> R.E. Hudec, Regulation of Domestic Subsidies Under the MTN Subsidies Code (2015) available at: doi:10.54648/TRAD2003038

<sup>31</sup> Gulotty, R., 'WTO Subsidy Disciplines' (World Trade Review (2022), 21, 330–341 available at: doi:10.1017/S1474745622000118

<sup>32</sup> De Remer, D, 'The Evolution of International Subsidy Rules', (Working Papers ECARES ECARES 2013-45. ULB – Universite Libre de Bruxelles, 2013). available at: [https://www.peio.me/wp-content/uploads/2014/04/Conf5\\_DeRemer-20.11.11.pdf](https://www.peio.me/wp-content/uploads/2014/04/Conf5_DeRemer-20.11.11.pdf)





## Conclusion

Subsidy regulation holds immense importance in the WTO framework. Subsidies, when not properly regulated, can distort market competition and create unfair advantages for certain industries or goods. This undermines the principles of free and fair trade, as it hampers the ability of other WTO members to compete on an equal footing. Thus, having a robust regulatory framework for subsidies becomes crucial to ensuring a level playing field and promoting fair competition among trading partners.

Furthermore, subsidies can have far-reaching consequences for international trade flows. By artificially reducing production costs or providing financial benefits, subsidies can lead to overproduction, excess capacity, and the dumping of subsidised goods in foreign markets. This disrupts market dynamics, distorts prices, and undermines the viability of domestic industries in importing countries. Understanding and mitigating these effects is essential for maintaining a balanced and sustainable global trading system.

The SCM Agreement serves as a key pillar in the regulation of subsidies within the WTO. It provides clear guidelines and disciplines for members to address the adverse effects of subsidies on trade. The agreement establishes criteria to identify and assess the consistency of subsidies with WTO rules, allowing for effective countervailing measures to be implemented when necessary. The SCM Agreement ensures that member countries have a legal framework to address trade distortions caused by subsidies, enabling them to protect their domestic industries from unfair competition.

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