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30 March 2022



International Economics
Strategic Analysis For Growth & Development

In collaboration with

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OVERVIEW OF SUBSIDIES: PART I

- **Subsidies: their role in the trading system and impact**
- **Overview of the Agreement on Subsidies and Countervailing Measures (SCM Agreement)**
- **Issues related to the definition of subsidies under the SCM Agreement**
- **Comparison with subsidies under the Agreement on Agriculture**

What is a subsidy?

- General definition:
 - A **contribution** by the government
 - Which provides a **benefit** to an individual, business, or institution

Subsidies: role in the trading system and impact

- Reasons for subsidization:
 - Tool for realizing government policies
 - Support or job creation
 - Industrial base support
 - Export promotion
 - A tool to offset market failures and externalities to achieve greater economic efficiency
 - Can be a tool to promote import substitution strategies
 - **Protection to domestic industries** => risk of distortion of the expected competitive relationship resulting from tariff bindings, barrier to trade

The WTO principles: GATT Articles VI and XVI

GATT Articles VI and XVI have been completed by the WTO Agreement on subsidies and countervailing measures (SCM), which is now in practice the legal source for the assessment of subsidies.

WTO Agreement on Subsidies and Countervailing Measures

- Historical introduction to the SCM Agreement
- The SCM Agreement provides rules regulating:
 - the provision of subsidies
 - the use of countervailing measures

WTO Agreement on Subsidies and Countervailing Measures: General Structure

- **Part I** – scope of the Agreement and definitions
- **Parts II and III** – subsidy categories and specific rules and procedures for each category
- **Part IV** – non-actionable subsidies
- **Part V** – substantive and procedural requirements for the imposition of countervailing measures
- **Parts VI and VII** – the institutional structure and notification modalities for the application of the SCM Agreement
- **Part VIII** - rules for various categories of developing country Members
- **Part IX** - transition rules for developed country and former centrally-planned economy Members
- **Parts X and XI** - dispute settlement and final provisions

WTO Agreement on Subsidies and Countervailing Measures

Part I: Coverage

Only a measure which is a “specific subsidy” within the meaning of Part I is subject to multilateral disciplines and can be subject to countervailing measures

- Definition of the term “subsidy”
- Explanation of the concept of “specificity”

WTO SCM Agreement: Part I

Definition
of subsidy

- 1. Financial contribution**
- 2. Benefit**

WTO SCM Agreement: Part I

1. FINANCIAL CONTRIBUTION

- Direct transfer and potential direct transfer of funds
 - grants, loans, equity infusion, loan guarantees
- Government revenue forgone
 - tax credits
- Provision of goods or services or purchase of goods
 - Entrusts or directs private body to carry out one of above
 - *US Export Restraints*
Whether export restraint “entrusts or directs” provision of goods or services
 - *EC – DRAMS Countervailing Measures*
Whether Korean Government had directed private banks to give low-interest loans to Hynix

WTO SCM Agreement: Part I

2. BENEFIT

- Benefit to recipient: market benchmark
- Particular types of financial contribution:
 - **Equity infusion**
Benefit exists if the shares are purchased above their value.
 - **Loan**
Difference between actual rate and commercial rate or if the loan is not otherwise available in the market
 - **Loan guarantee**
difference between interest rate paid and interest rate that would be paid on comparable loan without guarantee
 - **Provision of goods or services**
Price charged is below market price
 - **Purchase of services**
Price paid is above “adequate remuneration”, i.e. above market price

WTO SCM Agreement: Part I

SPECIFICITY

- Subsidy **specifically** provided to an enterprise or industry or group of enterprises or industries.
- Rationale: subsidy widely available within an economy => distortion in the allocation of resources presumed not to occur
- Four types of specificity:
 - **Enterprise-specificity:** A government targets a particular company or companies for subsidization;
 - **Industry-specificity:** A government targets a particular sector or sectors for subsidization.
 - **Regional specificity:** A government targets producers in specified parts of its territory for subsidization.
 - **Prohibited subsidies:** A government targets export goods or goods using domestic inputs for subsidization.

WTO SCM Agreement: Part I

3. SPECIFICITY

- De jure specificity
- De facto specificity
 - Limited number of enterprises
 - Predominant use
 - Disproportionate use
 - Manner in which discretion is exercised

Relation between SCM and Agriculture Agreement

- Principle: **all subsidies** are regulated by the SCM Agreement, including agricultural subsidies (Art. 21 of the Agriculture Agreement).
- Agricultural subsidies are however also regulated by the Agreement on Agriculture
- Agriculture Agreement sets upper limits on the amount of permissible domestic and export agricultural subsidies and establishes a mechanism for WTO members to commit to reducing these amounts over time.

Subsidies in the Agriculture Agreement

Scope of application:

- Chapters 1-24 of the Harmonised System of product classification:
 - Chapters 01-05: Animal and animal products
 - Chapters 06-15: Vegetable products
 - Chapters 16-24: Foodstuffs
 - as well as certain (essential) oils, skins and raw textiles

- Fish and fish products are not included, nor are forestry products.

Subsidies in the Agriculture Agreement

Domestic support:

- **Amber Box:** a Global Measurement support is calculated, based on which reduction commitments are taken
- **Green Box (under certain conditions):** these subsidies escape reduction commitments
 - Research, promotion, education, inspection, and other general services
 - Infrastructure services for agricultural areas and rural communities; creation of markets for agricultural products.
 - Public stockholding for food security purposes.
 - Domestic food aid
 - Decoupled income support (i.e. that directly linked to production)
 - Income insurance and safety-net programmes
 - Relief from natural disasters.
 - Structural adjustment assistance provided through producer retirement, resource retirement, and investment aid programmes
 - Payments under environmental programmes.
 - Payments under regional assistance programmes.

Subsidies in the Agriculture Agreement

Domestic support:

➤ **Blue Box** : direct payments under production restriction plans as long as the following conditions are met : these subsidies also escape reduction commitments.

- Payments are based on fixed area and yield (subsidy payments for idle fields under the EU Common Agriculture Program)
- Payments are made on 85% or less of base level of production (the deficient payment system under the US Agriculture Act of 1990(abolished by the US Agriculture Act of 1996).
- Livestock payments are made on a fixed number of head (incentives for the bovine sector under the EU Common Agriculture Program).

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➤ **Development Box:** these subsidies also escape reduction commitments.

OVERVIEW OF SUBSIDIES: PART II

- **Categories of subsidies**
- **Remedies**

Categories of subsidies

- Three categories of subsidies:
 - prohibited (red light)
 - actionable (yellow light)
 - non-actionable (green light)

Prohibited subsidies

- Export subsidies
Contingent in law or fact upon export performance
- Import substitution subsidies
Contingent in law or in fact on the use of domestic over imported goods

No need to show adverse effect

Faster timetable for dispute settlement

Actionable subsidies

- Subject to challenge in the WTO or to countervailing measures
- Specific subsidy that causes “adverse effects” to interests of other members:
 - injury to domestic industry (the sole basis for countervailing action)
 - nullification or impairment of benefits
 - serious prejudice to interests of another Member
 - Injury in subsidizing Member
 - Injury in third country markets
 - Significant price undercutting
 - Increase in world market share

Non-actionable subsidies

- Specific categories existed till 31 December 1999 – not extended
- Non-actionable subsidies are only general subsidies now

Remedies

Trade remedies can be pursued through:

- Countervailing duty investigation (unilaterally) => imposition of a countervailing duty on subsidized imports
- WTO Dispute Settlement Procedure => withdrawal of the subsidy or the removal of its adverse effects

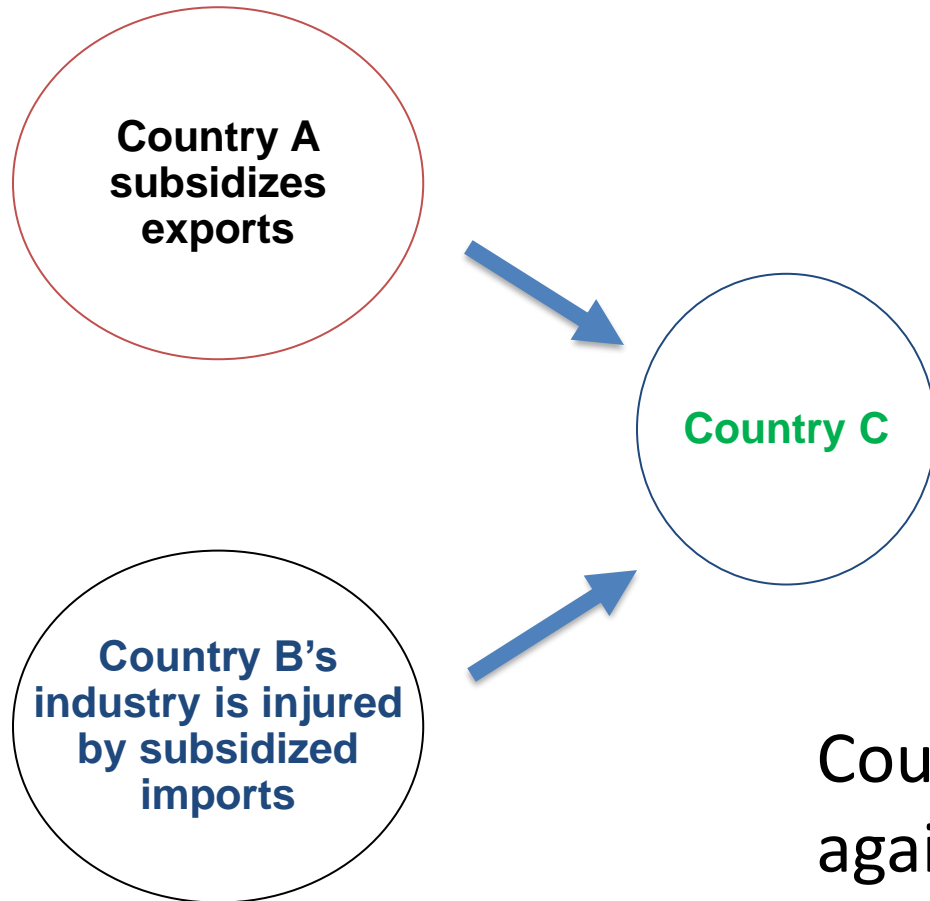
Challenge under Domestic Laws



Country B's industry files a case in Country B under Country B's own domestic law against the subsidized imports.

Note: Country A can then file a case in Geneva claiming that Country B did not properly follow WTO rules when imposing countervailing duties.

Multilateral Challenge under WTO Rules



Country B can file a case in Geneva against A under the SCM Rules

Part III

PART V of the SCM Agreement

- Conditions for imposing countervailing measures
- Investigations

Part III

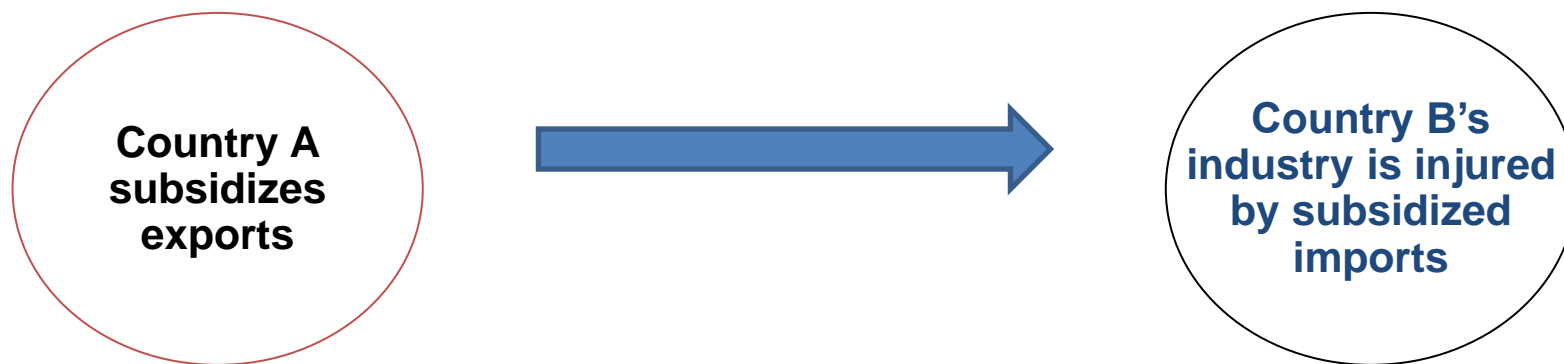
Recap:

What is a countervailing duty?

- Import duty assessed to offset injurious subsidies
- Unilateral measure
- Can be imposed above the bound duty rate

Part III : Conditions for imposing countervailing measures

Recap: Countervailing measures can be envisaged only in case when:



- Country A subsidizes exports to country B.
- Country B's industry files a case in Country B under Country B's own domestic law against the subsidized imports.

Part III Conditions for imposing countervailing measures

Importing Country

1st step: Domestic industry will complain that subsidized imports are causing injury

2nd step: Authorities will examine domestic industry's complaint.

3rd step: If sufficient prima facie evidence in complaint, authorities will initiate investigation.

Part III Conditions for imposing countervailing measures

Three key elements:

- Specific subsidies
- Material Injury or Threat of Material Injury to the industry
- Causal Link

Part III Conditions for imposing countervailing measures

Material Injury or threat of material injury to domestic industry:

- The affected domestic industry (like products)
- The existence of injury or threat of injury to that domestic industry
- Causal link between the imports and the injury or threat of injury to the domestic industry

Part III Conditions for imposing countervailing measures

The affected domestic industry:

- Domestic industry
- Like products

Part III Conditions for imposing countervailing measures

The existence of injury or threat of injury to that domestic industry:

- Important injury
- Important threat
- Important material retardation

Part III Conditions for imposing countervailing measures

Causal link between the imports and the injury or threat of injury to the domestic industry:

- Import volumes
- A “significant” increase in the volume of imports
- The effect of imports on the prices of like products in the domestic market – calculate price undercutting and price underselling
- The impact of imports on domestic producers of these products
- Accumulation of imports from different origins
- Consideration of other possible causes

Part III Investigation : procedural issues

INITIATION OF THE INVESTIGATION

- Complaint by or on behalf of domestic industry
- Preliminary consultations
- Applicant must represent:
 - at least 25 % of total production
 - at least 50 % of production by producers supporting or opposing application
- Application must include reasonably available evidence of (a) specific subsidization (b) material injury (c) causal connection
- The filing of a complaint is confidential

Part III Investigation : procedural issues

INITIATION OF THE INVESTIGATION

- If complaint is accepted, publication of a Notice of Initiation of an Investigation
- All interested parties must be contacted
 - The producers / exporters
 - The importers
 - The users
 - The domestic industry
- Non-confidential version of the complaint must be available to all parties

Part III Investigation : procedural issues

Verification

- Sampling
- Questionnaires sent to the parties
- Benefits of cooperation: avoid a determination based on best facts available
- Need to protect the confidentiality of information
- But obligation of transparency: a non-confidential version of all documents must be made available to all parties
- Non-confidential file can be electronic or physical (obsolete)
- Due process guarantees throughout the investigation
- Verification of questionnaire responses

Part III Investigation : procedural issues

Provisional measures

- Only after preliminary findings of specific subsidy and injury
- Critical circumstances
- No more than four months (six with respondents' consent)

Part III Investigation : procedural issues

Definitive measures

- They retroact at the date of the imposition of the provisional measures
- They last 5 years in principle

Part III Investigation : procedural issues

Collection of duties

- Non-discriminatory
- No more than margin of subsidy = margin of benefit
- Preferably less, if enough to remedy injury
- Time limits for administrative reviews

Part III Investigation : procedural issues

Immediate termination

- Total of all subsidies less than:
 - 1% - developed countries
 - 2% - developing countries
- Imports from a particular country account for less than 3% of total imports, unless imports from all investigated countries with less than 3% account in total for more than 7%

Part III Investigation : procedural issues

Transparency

Public notice of:

- Initiation
- Provisional measures
- Final decisions (with reasons)

Part III Investigation : procedural issues

Review

Prompt review by judicial, arbitral or administrative panels

THANK YOU !

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