

CHAPTER 8

A Core Proposal for Reforming the WTO's Subsidy Rules¹

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The World Trade Organization (WTO) Agreement on Subsidies and Countervailing Measures (SCM Agreement) is no longer suitable for the current situation of the international trade development and should be revised to incorporate the newly developed rules in a timely manner.

In my opinion, the revision should focus on the following aspects:

1. DEFINE 'PUBLIC BODY' IN A MORE PRECISE WAY.

There are major differences among WTO Members on the criterion of 'public body' in the SCM Agreement, which has been illustrated by the huge divergence between China and the United States in *US - AD and CVD* (DS379).² In that case, the appellate body overturned the 'government control' criterion of 'public body' set by the panel, and redefined 'public body' as 'entities entrusted with or performing government functions'.

The criterion set by the appellate body is reasonable, and the SCM Agreement should define 'public body' according to the criterion set by the appellate body.

2. NO SPECIAL RULES WITH REGARD TO SOE SHOULD BE PUT INTO THE SCM AGREEMENT.

As a matter of fact, not only state-owned enterprises may cause market distortions through subsidies; private enterprises may also be entrusted with or perform government functions and provide subsidies to downstream enterprises. Therefore, special rules with regard to state-owned enterprises are discriminatory by nature and should not be adopted by the SCM Agreement.

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² https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds379_e.htm. Accessed on 1 July, 2021.

3. STRENGTHEN RULES REGARDING TRANSPARENCY AND BURDEN OF PROOF, AND URGE MEMBERS TO STRICTLY COMPLY WITH THEIR SUBSIDIES NOTIFICATION OBLIGATION.

At present, the record of subsidies notification under the SCM Agreement is poor, which is reflected in the delay of notification, low quality of notification, and lack of notification ability. The WTO should strengthen the transparency rules in the SCM Agreement, provide relevant procedures to urge Members to strictly fulfil their notification obligations, and make the notification more specific, so that other Members can assess the trade impact, and learn the operation of the notified subsidy scheme.

As regards burden of proof, it should be borne by the claimant when conducting countervailing duty investigations or bringing a case before the WTO dispute settlement mechanism. It makes no sense that the burden of proof reverts to the opposing party.

4. RESTORE NON-ACTIONABLE SUBSIDIES

The SCM Agreement provides that non-actionable subsidies, as 'green light' subsidies, shall only apply for a period of five years after the WTO agreement came into force, and the relevant provisions expired years ago. Non-actionable subsidies won't distort the international trade market, and are very necessary for members in terms of their economic and social development.

Therefore, this policy should be restored in the SCM Agreement, and there needs to be specific rules confirming the legitimacy of subsidies for research and development, environmental protection and disadvantaged regions, etc.

5. INCORPORATE BOTH INDUSTRIAL SUBSIDIES AND AGRICULTURAL SUBSIDIES IN THE PACKAGE NEGOTIATION

Since the expiry of the 'peace clause' in 2003, the WTO Agreement on Agriculture does not include specific obligations concerning agricultural subsidies for the Members. Although commitments to eliminating agricultural export subsidies and restricting agricultural export credit have been made at the 2015 WTO Ministerial Conference, developed countries such as the United States and European countries still have a high degree of agriculture subsidies. In addition, there are conflicts between the Agreement on Agriculture and the SCM Agreement. WTO reform should aim to solve the market distortion problems caused by excessive agricultural subsidies provided by some Members, and put forward a negotiation package proposal for both industrial subsidies and agricultural subsidies. When revising the SCM Agreement, developed countries must promise to cut their agricultural subsidies because they have a high-level of 'Aggregate Measure of Support' (AMS), which can provide 'Amber Box' subsidies that exceed 5% *de minimis* permissible level, leading to the severe distortion of the agricultural product price

in the international market. Hence, developed countries should cancel AMS gradually and remove price distortive measures in agricultural markets, so that the reform of subsidy rules can be fundamentally fair and balanced.

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