

Developing a methodology for defining a good or bad subsidy

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Existing WTO rules on subsidies

- ASCM: types of subsidies and relevant remedies
 - Prohibited subsidies: export subsidies contingent on export performance and import substitution subsidies contingent on the use of domestic over imported goods
 - Available remedy is a fast-track dispute settlement mechanism
 - Actionable subsidies: production subsidies which have adverse effects on the importing country, or serious prejudice with import displacement in the home or third markets, or nullification or impairment of legitimate benefits.
 - Available remedy for adverse effects is CVD, and for others is DSM
 - Non-actionable subsidies: subsidies for R&D, regional development and environmental requirement adaption
 - Shall be notified in advance of its implementation
 - Expired in 1999

Existing WTO rules on subsidies

- Agreement on Agriculture: types of subsidies and relevant disciplines
 - Export subsidies were allowed by AoA, but in 2015 members agreed to phase out all export subsidies
 - Amber box subsidies were all domestic support measures except green box subsidies meaning that amber box subsidies are those domestic subsidies with some trade-distorting effects or effects on production
 - Amber box subsidies are allowed but subject to reduction and constraints
 - De minimis amounts of amber box subsidies are allowed for all members but with different levels
 - 32 members mostly, developed members are allowed to offer more production subsidies above de minimis level on the basis of historical spending
 - Green box subsidies: domestic production subsidies without or with minimal trade-distorting effects or effects on production
 - Green box subsidies are allowed without limits
 - Blue box measures, i.e. direct payments under production-limiting programs and development are also allowed without limits
 - Development programs of developing countries to assist rural and agricultural development are also allowed without reduction commitment

Summarizing the existing approaches to subsidies

- The first step is dependent on the intention of subsidies. If a subsidy is clearly intended to promote exports or substitute imports, then it should be prohibited. But if the intention is not directly related to promote or restrict trade, then it should be generally allowed but subject to the next step evaluation.——red box
- The next step is to evaluate the effects of the subsidy. If the subsidy has no or minimal direct effects on trade, then the subsidy should be considered a domestically-oriented policy and not be challenged.——green box
- All the others are subject to constraints and could be challenged——amber box
 - Unilateral action by the importing country, i.e., countervailing duties against those subsidized imports with serious injury to domestic industries
 - Multilateral disciplines to reduce or constrain their use
 - Judicial process to restrict their use

Complaints and concerns about the current rules

- Remedies available for actionable subsidies are too late or slow because they have to wait for the appearance of serious injury which means that it could be too late to rescue the domestic industry
- The related complaint is the coverage of prohibited subsidies is too small and many kinds of subsidies with obvious production-distorting effects are not included
- The expiry of non-actionable subsidies limited the policy space and caused more disputes
- Green box measures in agriculture are too broad and amber box measures available for developed countries are too large
- The misuse of CVD as well as antidumping is complained by the exporting countries

To evaluate the impact of subsidies is critical

- Subsidies usually have two-fold objectives: one is to develop the industry, the other is to fulfill certain cultural, social, environmental, strategic, technological, security purposes
- For those subsidies with internationally positive spillover effects especially on environmental protection, they should be taken into account when evaluating their legitimacy
- How to deal with those subsidies which focus on domestic production and have no spillover effects on imports or exports yet is a difficult issue

To reach an academic consensus on how to define a good or bad subsidy

- An academic consensus should be made prior to governmental negotiations and more easily
- While some issues such as public bodies are too difficult to reach consensus, more focus should be put on the impact of subsidies.
- Economists and jurists should work together on the methodology
- The traffic light approach is still the best choice
- The emphasis should be put on clarifying the coverage of green and red box measures both of which should be limited to a small number of measures with obvious negative impact on trade or positive externalities
- For the amber box or actionable subsidies, the better way is to impose ex-ante justification requirements on the subsidizing governments for certain types of production subsidies which have visible impact on the volume of domestic production
- Economists and jurists should work together Members should be encouraged to establish domestic regulation on subsidies as exemplified by the EU state aid system
- The current CVD rules are available for everyone and basically fine in the context of subsidy competition

Adding the non-discrimination principle into the subsidy rules is important for mitigating the disputes regarding subsidies

- Article III.8(b) of GATT allows the payment of subsidies exclusively to domestic producers
- There is no requirement of non-discrimination on subsidization in ASCM or AOA
- Subsidies given to consumers should be subject to MFN and national treatment principles, giving the opportunity to foreign intermediate and final products benefiting from the expanded demand
- Subsidies given to producers should be open to foreign invested companies
- Subsidies should not have domestic content requirements so that foreign intermediate goods producers could benefit from the subsidies