

**SUBSIDIES AS A HIDDEN INSTRUMENT OF TRADE PRESSURE:  
CONFLICT BETWEEN WTO NORMS AND NATIONAL POLICY STRATEGIES**

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**Annotation:** This research paper analyzes the legal ambiguity related to the regulation of subsidies and compensation measures in the context of an institutional crisis within the dispute settlement system. It examines key issues concerning the interpretation of the conceptual framework, including the nature and sources of subsidies, as well as the criteria for their admissibility in international trade. The study also highlights how the dysfunction of the Appellate Body mechanism hinders the uniform application of rules, increases the risk of politicized interpretations, and leads to the intensification of trade barriers.

**Keywords:** Appellate Body, arbitration, interpretation, dispute settlement body, trade balance, legal fragmentation.

**Annotatsiya:** Ushbu tadqiqot hujjati nizolarni hal qilish tizimidagi institutsional inqiroz sharoitida subsidiyalar va kompensatsiya choralarini tartibga solish bilan bog'liq huquqiy noaniqlikni tahlil qiladi. Kontseptual asosni talqin qilishning asosiy masalalari, jumladan, subsidiyalarning tabiati va manbalarini aniqlash, shuningdek, xalqaro savdoda ularning maqbulligi mezonlari ko'rib chiqiladi. Ushbu ilmiy tadqiqotda apellyatsiya organi mexanizmining ishlamasligi qoidalarning bir xilda qo'llanilishiga to'sqinlik qiladi, siyosiylik talqinlar xavfini kuchaytiradi va savdo to'siqlarining kuchayishiga olib keladi.

**Kalit so'zlar:** Apellyatsiya organi, arbitraj, talqin, nizolarni hal qilish organi, savdo muvozanati, huquqiy parchalanish.

**Аннотация:** Данная исследовательская работа посвящена анализу правовой неопределенности в регулировании субсидий и компенсационных мер условиях институционального кризиса системы разрешения споров. Рассматриваются ключевые проблемы интерпретации понятийного аппарата, включая определение характера и источников субсидий, а также критериев их допустимости в международной торговле. Отмечается, что отсутствие функционирующего апелляционного механизма препятствует единообразному применению норм, усугубляет риск политизированных интерпретаций и ведёт к росту торговых барьеров.

**Ключевые слова:** Апелляционный орган, арбитраж, интерпретация, орган по разрешению споров, торговое равновесие, юридическая фрагментация.

In the era of global turbulence and unpredictability, and the fragmentation of trade instruments, WTO members' abuse of national market protection is becoming a hidden mechanism of pressure and unfair competitive measures. Despite the provisions of the Agreement on Subsidies

and Countervailing Measures and GATT 1994, amid the legal uncertainty surrounding the concept of subsidies, WTO members subsidize and promote their own economic objectives under the guise of legitimate support. This phenomenon has become more acute due to the paralysis of the WTO Appellate Body. The purpose of this analytical work is to determine how WTO members subsidize and what consequences this leads to.

The nature of subsidies in general is to provide assistance to business entities in order to improve the national entrepreneur in a competitive environment. The so-called state policy and subsidies are its instruments by means of which market failures in agriculture, energy, industry, etc. are eliminated.

The range of goals for the allocation of subsidies for the state include: development and support of priority sectors of the economy, protection of domestic producers (infant industry protection), export stimulation (compensation of costs of entering foreign markets for less developed countries), the placement of production in regions helps to smooth out territorial imbalances (EU, USA), the transition to environmentally friendly technologies (green subsidies), ensuring food and energy security (protection from external dependence), etc.

According to the WTO Agreement on Subsidies and Countervailing Measures,<sup>1</sup> a subsidy is financial assistance by the government or any public body within the territory of a member in the form of a direct transfer of funds (grants, loans, or purchase of shares), an obligation to transfer funds, a government's refusal to collect or does not collect revenues (tax incentives, tax credits), the government provides goods or services in addition to general infrastructure, or purchases goods, the government carries out payments to financing mechanisms or commissions or orders a private person to perform one or more of the functions specified above. In Art. 3.1, 1.2, 2 subsidies are divided into permitted, prohibited (export and subsidies with priority for the use of domestic goods) and contestable (actionable).

Art. 16 of GATT 1994<sup>2</sup> clearly states the obligation of transparency, that is, the contracting party undertakes to notify in writing of the amount and nature of the subsidy and the circumstances that make the subsidy necessary. Paragraph 1 of Art. 16 of GATT introduces transparency into subsidies, and information is considered one of the main factors in monitoring subsidies by WTO members. Along with this, the same part of the article establishes the possibility of appealing if the subsidy causes or may cause serious harm to the interests of another contracting party, which naturally triggers the dispute resolution procedure. At first glance, subsidies are a legitimate tool in the context of globalization, comprehensively regulated by the WTO Agreements, but the use of this tool causes a paradox: legal and economic challenges as a contradiction between international obligations and national interests, distortion of the competitive environment, which develops an unequal position between developed and developing countries, a legal crisis in

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<sup>1</sup> SCM Agreement, art. 1.1(a). [https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)

[accessed: 8 August 2025].

<sup>2</sup> GATT 1994, art. XVI

dispute resolution, as well as the geopoliticization of subsidies, that is, an instrument of confrontation (USA-China). The problem of subsidies is the increase in inequality in the market and international trade, as well as the hidden nature of the measures increase unpredictability and opacity in the market.

Primarily, the WTO contains clear rules, the Agreement on Subsidies and Countervailing Measures regulates the criteria for admissibility, prohibited forms and the procedure for resolving disputes. However, in practice, a paradox is noticeable, the more detailed the issue is regulated, the more WTO participants use the uncertainty zones in their interests. A striking precedent is the DS437 US-countervailing measures case measures (China)<sup>3</sup> China was able to challenge the systemic practice of the United States regarding countervailing measures specifically in relation to Chinese companies in the solar energy, steel, and pipes sectors. The dispute was over the interpretation of state-owned enterprises of China as a public body within the meaning of Article 1.1(a) of the Agreement on Subsidies on Countervailing Measures.<sup>4</sup> This issue has its own consequences, that is, if it is considered as a public body, then any commercial act can subsequently be regarded as a state subsidy. China's arguments consisted of an incorrect interpretation of the term from the Agreement on public body and the introduction of restrictive measures, accepting state-owned enterprises as a state subsidy without analyzing the state's share of participation, the degree of control, and the actual economic autonomy. The Appellate Body in its decision argued that the analysis must rely on a functional analysis, powers, and not simply a check whether the body is state-owned or not. Following the Appellate Body decision, this precedent began to point to the fact that legal uncertainty is starting to play into the hands of discriminatory and aggressive forms of trade policy, where the boundaries between legitimate support in the form of subsidies and hidden trade pressure are blurred.

In addition, in the EU-US Airbus DS316 case,<sup>5</sup> where the European Community and the US mutually argued about the presence of prohibited subsidies in the aircraft industry in the form of tax incentives, investment guarantees, research and infrastructure funding. The WTO Panel found that both parties had violated Article 3 of the Agreement on Subsidies and Countervailing Measures (SCM) by providing subsidies that were clearly dependent on exports or targeted a

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<sup>3</sup> WTO (2014) *United States — Countervailing Duty Measures on Certain Products from China*, Appellate Body Report, WT/DS437/AB/R. Geneva: World Trade Organization.

[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds437\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds437_e.htm)

<sup>4</sup> SCM, article 1.1 (a)

[https://www.wto.org/english/docs\\_e/legal\\_e/24-scm.pdf](https://www.wto.org/english/docs_e/legal_e/24-scm.pdf)

<sup>5</sup> World Trade Organization (2019) *European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft, DS316*. Available at:

[https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds316\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds316_e.htm) (Accessed: 8 August 2025)

specific sector. The root of the problem was the conflict between the protection of “national champions” of countries and the need to preserve the principles of free and fair trade. Consequently, subsidy cases are most often linked to the political and economic dynamics of WTO members.

The trade war between the US and China, which since 2018 has been characterized by excessive tariff increases, has subsequently evolved into a confrontation where subsidies are a kind of defense (protectionism, import substitution) and at the same time an offensive (creation of a super-competitive corporation through hidden financing). By their nature, subsidies are difficult to monitor and unpredictable, which indicates the difficulty in identifying. Unlike the traditional mechanism of protectionism in the form of tariffs and rate increases, subsidies operate quite unnoticed and flexibly adapt to internal development programs, “green” subsidies and investment initiatives. Undoubtedly, each WTO member has the right to adhere to economic sovereignty, that is, to directly support its “champions” in strategic industries, but subsidies should not be allowed to become a trade weapon and a convenient tool in conducting hybrid economic wars. The question of constructed ambiguity in the WTO Agreements, which in many issues demonstrate flexibility in interpretation, remains open. Including in the Agreement on Subsidies and Countervailing Measures, artificial uncertainty is introduced not just for the sake of a gap, but a deliberately laid down compromise. For example, in Article 2 of the Agreement on Subsidies and Countervailing Measures, the concept of specificity of subsidies is formed quite ambiguously,

if access to subsidies is strictly limited, that is, provided only to certain enterprises;

a subsidy can be specific if it is directly specified in the law (timeframes, objective criteria or conditions regulating eligibility);

The very concept of “objective criteria or conditions regulating eligibility” leaves states to use subsidies as a subtle instrument of support under the guise of “objectivity”. In DS487 US-Conditional Tax Incentives for Large Civil Aircraft<sup>6</sup>, Washington argued that the incentives were granted to all companies engaged in aerospace activities, i.e. were not selective. However, the EU argued to the Panel that the conditions that were considered objective were strictly specific, with only Boeing meeting the criteria. In its decision, the Panel agreed that formal universality does not preclude specificity. Such uncertainty becomes a tool for maneuvering, which informally allows states to advance national interests. As Peter Van den Bossche said: “The elegance of legal uncertainty lies in its role as a lubricant for consensus building. However, when disputes arise, ambiguity ceases to be a compromise - it becomes a battlefield.”<sup>7</sup> It follows from

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<sup>6</sup> World Trade Organization (2017) *United States — Conditional Tax Incentives for Large Civil Aircraft, DS487*. Available at: [https://www.wto.org/english/tratop\\_e/dispu\\_e/cases\\_e/ds487\\_e.htm](https://www.wto.org/english/tratop_e/dispu_e/cases_e/ds487_e.htm) (Accessed: 8 August 2025)

<sup>7</sup> Peter Van den Bossche, *The Demise of the WTO Appellate Body: Lessons for Governance of International Adjudication?*, WTI Working Paper No. 02/2021

the previous arguments that states can pursue their own interests, which leads to less predictable disputes, therefore provoking the geopoliticization of disputes, where the norms of the Agreement ii is not a shield, but a weapon.

By April 2025, 32 cases on subsidies and countervailing measures remained unimplemented due to the crisis of the WTO Appellate Body. The fatal crisis of the Appellate Body due to the blockade of the appointment of new judges by the United States makes it clear that even with arguments and evidence of a significant violation of trade rules by other countries, it is becoming increasingly difficult to achieve justice and proportionality. Due to the lack of functionality of the Appellate Body, many decisions of the Arbitration Body began to be ignored by countries, since without a proper appeal instance, the decisions of the Arbitration Panel are non-binding recommendations. For example, in 2020-2022, out of 25 reports of the Arbitration Panel, 18 were filed for appeal, but they could not come to a satisfactory decision. Most importantly, the countries that filed the case and appealed could not follow the decision of the Arbitration Body, which subsequently affected the non-compliance with the decisions of the WTO DSB. In trade remedy cases, law and policy are so closely intertwined that without an Appellate Body, the case becomes prone to unilateral interpretations, trade reprisals, and legal relativism. Without an Appellate Body, cases are left without proper legal interpretation, which subsequently leads to legal fragmentation, with panels interpreting the rules “in their own way” without creating a consistent case law. Without a fully-fledged dispute resolution system, the predictability stated in the Preamble is in danger of disappearing.

Today, regionalism in trade and dispute resolution is gaining momentum, and countries attribute this to the inadequate functionality of the WTO dispute resolution system. It is important to clarify that each regional trading system or arbitration will still retain the key norms and principles established by the WTO since 1947.

In order to effectively resolve trade disputes, a temporary system, the Multilateral Interim Arbitration Arrangement (MPIA)<sup>8</sup>, was created in 2020, with 47 members at the time, which now stands at 53 out of 164 WTO members. The parties to the new system agreed to refrain from filing disputes with the inactive Appellate Body in their disputes and, accordingly, to use the appeal process agreed upon by the MPIA instead. When creating the arbitration, the parties referred to Article 25 of the WTO Dispute Settlement Understanding (DSU) on arbitration and did not create a body that does not recognize WTO rules in resolving disputes, but rather as a temporary commission due to the paralysis of the Appellate Body. However, WTO member countries that are not part of this temporary system may appoint ad hoc arbitration for a certain

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[https://www.wti.org/media/filer\\_public/c2/ef/c2efc2de-ce85-45c7-9512-9286e14fca47/wti\\_working\\_paper\\_02\\_2021.p](https://www.wti.org/media/filer_public/c2/ef/c2efc2de-ce85-45c7-9512-9286e14fca47/wti_working_paper_02_2021.p)

<sup>8</sup> World Trade Organization (2020) *Multi-Party Interim Appeal Arbitration Arrangement (MPIA)*. Available at: [https://wtoplurilaterals.info/plural\\_initiative/the-mpia/](https://wtoplurilaterals.info/plural_initiative/the-mpia/) (Accessed: 8 August 2025)

number of cases. The arbitration body will cease to function as soon as the Appellate Body resumes hearing cases.

The current architecture of subsidy regulation within the WTO increasingly resembles a ship without a rudder. The absence of an Appellate Body has turned the Agreement on Subsidies and Countervailing Measures into a set of rules with an incomplete cycle of enforcement: disputes are resolved, but decisions may remain on paper. This is not just an institutional failure - it is a deliberate creation of a legal vacuum that benefits states that use subsidies as a tool of hybrid trade warfare. The example of the confrontation between the US and China shows that subsidies have ceased to be just a “protection” of national industry and are increasingly playing the role of an offensive weapon - from hidden financing of corporations to the creation of an artificial advantage in the global market. This dual nature of subsidies, reinforced by legal uncertainty and gaps in monitoring, creates space for discriminatory and aggressive measures that de facto blur the boundaries between legitimate state support and hidden economic pressure. If the WTO does not restore a fully-fledged appeal mechanism, the system for resolving disputes over subsidies risks finally losing its deterrent function, and world trade risks turning into an arena where the law of the strong replaces the force of law.

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