

Legal Issues on Subsidies of The Agricultural Products on WTO Frame Work

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ABSTRACT

The WTO was founded with the main objective of building a fair and market-oriented trading system. Fair trade means free and no intervention from anywhere to regulate the market. This applies to all sectors of the economy but especially concerns the agricultural sector which is the basis of a country's defense. Various efforts have been made by the WTO in terms of making trade regulations in the agricultural sector which of course aims to realize this goal. It is well known that in order to stabilize food prices, ensure abundant food production, guarantee farmers' basic income, and in general strengthen the agricultural segment of the national economy, the government has implemented various assistance in the form of assistance to agricultural product producers in the country. This assistance is called a subsidy which can take various forms, namely in the form of tariff barriers, non-tariff barriers, tax levies, positive regulations and direct subsidies to both agricultural producers and exporters. In this study, the authors examine the legal issues regarding subsidies for agricultural products within the WTO framework. The main issue in this legal research is how the legal issues regarding subsidies for agricultural products within the WTO framework. The main objective of this legal research is to find out the legal issues regarding subsidies for agricultural products within the WTO framework. This legal research is a normative legal research in which legal sources are collected through literature study. A relatively detailed review of the content of legal issues regarding subsidies for agricultural products in the WTO framework is discussed in this paper. The results of this study indicate that agriculture is one of the important trade negotiations in the WTO through the rules contained in the AoA. Agreements to implement commitments from disciplines in the AoA, from WTO member countries, are expected to be reached by both developing and developed countries.

Introduction

The word "subsidies" sounds an alert in the minds of some international trade policy makers and politicians. The term "export subsidies" even intensifies the alarm. One learned subsidies are not natural action in business in which it eventually will make the business environment unbalance. And yet the use of subsidies, and more specifically of export subsidies, is rampant and pervasive worldwide, particularly in certain sectors, one of which is agriculture. The agricultural

products as the main sources to supply our basic needs as a human life plays a vital role in our nation. This has been the main reasons why the agricultural products become one of the main agreement in the international life. So that is why the word subsidies in agriculture even much more annoying to some politicians. In fact, the experience of recent events shows that the use of subsidies, especially in the agricultural sector, is increasingly rampant. This is because agricultural products are the main source to meet our basic needs as human life. This is

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the reason why countries, especially developed countries, both democratic and authoritarian, still subsidize their agricultural sector with the consideration of their national economic resilience. This is also the main reason why agricultural products are one of the main agreements in the WTO - AoA.

One of the main functions of a government is to ensure the welfare of the people in its country. In order to guarantee and improve the welfare of its people, the government needs funds. To get this fund, the government has made various efforts and especially the source of funds for poor countries is from taxes. Subsidies to the people are one of the efforts to realize the welfare of the people, especially in the agricultural sector which is a basic need of state life. By providing subsidies to the people, the people will get tools to increase agricultural products and increase their income so that tax payments will take place properly. Therefore, the government often provides stimulus for economic activity by providing subsidies, especially in the agricultural sector. But often subsidies are also a tool for the government to make various efforts to win the competition in the international market. This is very contrary to the spirit of free trade as the main target of WTO. Subsidies often distort international trade because in the existence of the subsidies, free trade doesn't really exist. The price of the product could not reflect of the real efforts of the producers. For developed and strong countries they can provide very large subsidies to their people so that their agricultural products in the international market are very competitive and often turn off agricultural product producers in poor countries. Therefore, considering this matter the international trade policy makers feel the need to eliminate these subsidies even though this must be done gradually. However, it seems that there are still many countries who view that the provision of these subsidies is still necessary. Because they reasoned that subsidies are a form of the state's duty to prosper its people. In fact, some subsidies also give some advantages to a specific customer. So the challenge in this case is to determine which subsidies are distorting trade to unacceptable levels. And the word not accepted of course will be different from one country to another. So, an

agreement is needed to determine which subsidies are acceptable and which are not.

One of the mandates of the World Trade Organization (WTO), which was originally the General Agreement on Tariffs and Trade (GATT), is to achieve a fair and free market. Therefore, with the practice of subsidies that often distort the main objective of the WTO, one of the targets is to regulate the use of national subsidies that distort the free market, especially export subsidies. Although export subsidies for most industrial products have been outlawed for some time now. However, the implementation of the ban on export subsidies in the agricultural sector is currently still difficult to implement.

It is ascertained that the Uruguay Round of Multilateral Trade Negotiations has been completed, and a new discipline has been introduced regarding the regulation of subsidies which are deemed to distort free trade, namely the Subsidy and Counterbalancing Measures Agreement (SCM Agreement) and the Agreement on Agricultural (AoA) for all sectors. These new rules have become the subject of great controversy, because of the particular interests of the member countries so that these rules are still relatively difficult to implement. As such, these regulations have been subject to intense scrutiny by countries through the WTO dispute resolution mechanism.

In order to realize its objectives as stated above, the WTO has worked very hard to negotiate with countries that do not agree on the AoA discipline, namely subsidies in the agricultural sector. AoA's short-term target is to be able to provide understanding to countries that reject or object to reforms in the field of this agricultural agreement. There are basically three disciplines in AoA, namely access to agricultural markets, domestic support and export subsidies. These three main pillars are the first step towards reforming free trade regarding subsidies as stated by **(C. Gonzales, 2002)**. The agenda contained in Article 20 of the AoA is designed to ensure that this AoA Discipline will be the first step in the reform process that will lead to the establishment of a fair and market-oriented agricultural trade system. As we know that agricultural subsidies by the government given to producers of agricultural products have the aim of stabilizing food

prices, ensuring abundant food production, ensuring the welfare and income of farmers so that in general it will strengthen the agricultural segment of the national economy.

The agricultural conditions of WTO member countries are strongly influenced by various things, including the main thing is the local weather and other things such as politics, war, fertilizer readiness and other factors. This causes fluctuating crop yields. So that farmers' incomes will also fluctuate which causes their purchasing power to decrease when their harvests decline and consequently will depend on the availability of needs in the global market. Therefore, government support in the form of price and income guarantees can help maintain a strong domestic agricultural sector and domestic food supply. With the guarantee of smoothness and certainty of farmers' income from time to time, it will increase the strength of the agricultural industry sector which is the main point of defense in every country. We also understand that agricultural subsidies have a strong effect on increasing state revenues from tax payments.

It has become a reality in several countries, without support from the government, domestic farmers will not be able to compete with foreign imports. Therefore, removing subsidies would push domestic farmers out of business, leaving the country with a much smaller agricultural industry. This will result in the agricultural sector being neglected. A country that is unable to produce enough food domestically to feed its people will make the country weak and dependent on international markets and more vulnerable to trade pressures, global food shortages and price shocks. Therefore, agriculture is one of the economic sectors that has always been the main sector to obtain subsidies.

But at the same time, agricultural subsidies have many negative effects on trade and the environment, which this paper highlights. Some of the negative effects are that countries that are still underdeveloped are getting weaker in the face of international free trade because of their country's unpreparedness to provide adequate subsidies in the agricultural sector, such as Indonesia. Indonesia has participated as a contracting party in the GATT (since February 24, 1950) and when GATT became the WTO

in January 1995, Indonesia automatically became the founding fathers of the WTO and has officially adopted the rules in the WTO in Indonesia. Law Number 7 of 1994 concerning Ratification of the Agreement on the Establishment of the World Trade Organization. So it is a must for Indonesia to follow the rules in the WTO (**Meredith A. Crowley, 2003**).

In this study the author aims to discuss several legal issues regarding subsidies for agricultural products within the WTO framework. The review of the AoA is presented. The journey on the GATT round is reviewed. A short analysis concerning the reasons behind the importance of agricultural subsidies is discussed.

Method

This research method is a qualitative research method. This will be done through library research, use of internet sources and other sources. The AoA and the WTO will be the main sources of regulatory information. Other sources are the GATT and SCM agreements. Secondary sources will consist of research papers, reports, journals, articles and books and other related reports. Research papers and journals exploring provisions relevant to this study will be examined.

Results And Discussion

As stated in the introduction that the existence of AoA in the WTO comes from the GATT itself. We know that the 1947 GATT was originally applied to agriculture, but was incomplete, and the signatory countries or in this case the parties to the agreement or entering into the contract have excluded this sector from the scope of the principles stated in the general agreement. In the period 1947-1994 members were allowed to use export subsidies on primary agricultural products and imposed import restrictions under certain conditions, so that the main agricultural commodities faced trade barriers on an unusual scale in other merchandise sectors (M. Khor, 2005). Therefore, in the early stages, a fair and market-oriented agricultural trade system is still difficult to realize.

Then, WTO continues to strive to carry out negotiations with members with which certain agreements can be made during the Uruguay Round. In this agreement the

agricultural sector has a special status in the WTO Agreement and Memorandum of Understanding on trade (which was signed in 1994 and entered into force on January 1, 1995) namely by the existence of a special agreement, the Agricultural Agreement (AoA). In addition, several provisions in the Agreement on the Application of agriculture. The provisions of this Agricultural Agreement are supplemented by the Agreement on technical barriers to trade (TBT), as well as a technical assistance mechanism. With the existence of AoA, WTO Member States make improvements to agricultural policies in their countries by adjusting the rules in their countries according to the discipline of the three main pillars of AoA, namely access to agricultural markets, domestic support and export subsidies. Negotiations to realize the goals of the WTO have been carried out in several places. The Punta del Este Conference in 1986 which launched the Uruguay Round, the contents of which were made an agreement on the agricultural sector. The Uruguay Round was the most important first step in the process of liberalizing agricultural trade since the GATT. Later in its development the Cancun Ministerial Conference also discussed agriculture (Charles Barnor, et. al., 2015). In this case, agricultural products still get different treatment from other products in the content of the WTO. The Agreement on Agriculture or AoA provides a system of rules that is significantly different from the GATT provisions on other products. Existing provisions have sought better provisions to address inconsistent GATT/WTO rules. Thus, agriculture still gets its own attention. Agriculture is still a sector where export subsidies are expressly permitted under WTO law; in this case as a national security consideration of a country, even though domestic subsidy programs that are proven to distort trade and are detrimental can escape the general provisions of the WTO. So with this condition, it means that agricultural trade still has a long way to go towards liberalization. Although on the one hand we can say that the Agreement is a significant breakthrough in the history of international trade regulation, on the other hand it can also be said that this Agreement is a sign that there has been a failure in efforts to make agricultural trade in accordance with the spirit

and purpose of the establishment of the WTO. The third WTO Ministerial Conference in Seattle, has launched a mandate to negotiate agricultural trade regulations as part of a wider round of negotiations. The AoA defines export subsidies as "export performance-dependent subsidies". However, this formulation raises a more basic question about what is meant by "subsidy". There have been several different interpretations of subsidies which have led to debate and disagreement among WTO members. With the regulation that allows export subsidies related to the SCM Agreement, further explanation is needed, namely first regarding the meaning regarding the reasons for the permit such as the meaning of "financial contribution" and the meaning of "receipt of benefits". Because that meaning could be biased. Likewise with respect to permitted agricultural production export subsidies, additional areas of investigation, there needs to be clarity in terms of the meaning of the definition of "subsidy" in Article 9.1 of the AoA and what appropriate amounts of subsidies are included in the Illustrated List of Export Subsidies in Annex 1 of the AOA (Mundzir et al., 2021). Then there is a need for clarification regarding the relationship between the SCM Agreement and AoA. This is because it is known that the basic rules for regulating export subsidies are included in the SCM and AoA Agreements. As the regulation has now been used as a reference in the WTO's Dispute Settlement Body (DSB) report, so it is very important that the clarification is given to get the same level of understanding. Because the DSB reports are an important jurisprudential body in determining the legality of the export subsidy program. To illustrate the example in the case of the Canadian-Aircraft Appeals Board found that a "subsidy", within the meaning of Section 1.1 of the SCM Agreement, arises where the giver makes a "financial contribution" that provides a "benefit" to the beneficiary, as opposed to what would otherwise be available to the recipient in the market (Organization, 2007). Then the Appellate Body applies the definition of subsidies based on Article 9.1 of the AOA which is the definition for agricultural products. Likewise, in the case of Canada-Measures Affecting the Importation of Milk and the Export of Dairy Products (Canada-Milk). In this case, the Appellate Body applied

both of these decisions in cases under Section 8 and Section 10.1 of the AOA in the US-FSC. The result is a consistent application of the definition of subsidies in WTO jurisprudence, both for agricultural and non-agricultural products (Pianta, 2014).

At the 2013 WTO Bali Ministerial Conference, WTO members agreed to adopt a Trade Facilitation Agreement (TFA). In order to make TFA part of the WTO, they developed some legal procedures. Then Unlike the TFA, the Nairobi Ministerial Conference in 2015 agreed to abolish agricultural export subsidies even though it was only adopted as a "ministerial decision". So although there has been progress in terms of limiting and removing subsidies, the legal basis is still weak. At the Nairobi Ministerial Conference, 4 pillars of discipline were agreed upon namely, the elimination of export subsidies, stricter rules on export financing, anti-avoidance clauses in relation to state trading companies and a number of detailed provisions relating to international food aid with the aim of preventing or minimizing commercial movements. However, given the weak legal basis for this Nairobi decision (only ministerial level decisions), unlike TFA, this decision is not included as an attachment to the WTO Agreement and will not be designated as a "covered agreement" that is part of the WTO. So although there has been significant progress in the regulation on subsidies, given the weak legal basis it has, a violation of any of the provisions of the decision cannot be brought to the WTO dispute settlement system. Although for example the WTO dispute resolution panel may be asked to consider Nairobi's decision as a basis for deciding on disputes that arise it may not meet the high standards set out by article 31 of the Vienna Convention on the Law of Treaties. Furthermore, that the implementation of the interpretation under the Vienna Convention cannot conflict with the plain text of the previous treaty (Matsushita, Schoenbaum, Mavroidis, & Hahn, 2015). This means that from a legal point of view there are some redundant regulations but some rules do not have high legal force. That the existing agreements contain a certain degree of flexibility with respect to their implementation by developing countries and least developed countries (LDC) so that this flexibility will also lead to some legal

problems such as misunderstanding or disputes among WTO members. Therefore, efforts are needed to increase the existence of a common understanding and in parallel with strong law enforcement.

The existence of the GATT was intended to be part of a much broader agreement to establish the International Trade Organization (ITO). In this case the ITO is intended to promote trade liberalization by setting guidelines or rules that will be approved by member countries (Matsushita, 2004). The ITO was conceived during the Bretton Woods conference attended by major allied countries in New Hampshire in 1944 and is seen as complementary to two other organizations also initiated there such as the International Monetary Fund (IMF) and the World Bank. The IMF functions to monitor and regulate the international fixed exchange rate system, the World Bank will assist loans. The goal of GATT is to make international trade more free and fair. Therefore, various state interferences that hinder free trade must be a commitment from member countries. Because the countries that made this commitment have agreed to do so by co-signing the agreement. Several discussions to understand the purpose of GATT were carried out in various rounds of negotiations. Each round of negotiations is usually given a name associated with the meeting location or with an important figure. There were eight rounds of negotiations under the GATT: Geneva Round (1948), Annecy Round (1950), Torquay Round (1951), Geneva II Round (1956), Dillon Round (1962), Kennedy Round (1967), Tokyo Round (1979), and the Uruguay Round (1994) (Kartadjoemena, 1919). In each round of negotiations, it is prioritized to reach an agreement or commitment. Commitments, made by countries under the GATT take two forms i.e., first, there are country-specific and product-specific commitments. For example, China may agree to reduce the maximum tariff imposed on certain goods to a certain percentage (for example, 10 percent). This maximum rate is called the binding rate, or the bound rate. In each round, each participating country offers a concession, which involves a list of new tariff bindings. To achieve trade liberalization, new tariff ties must be lower than before. At the end of the

round, the signatory countries do not always end up with the same level of tariffs. Instead, each country enters the round with a unique rate assigned to each item. The expectation in this round of negotiations is that each country will lower its tariffs, on average, from their initial levels. Thus, if Country A enters the discussion with a 10 percent tariff on imports of refrigerators, while Country B has a 50 percent tariff, then the typical outcome of the round might be A lowering its tariff binding to 7 percent, while B lowering it to 35 percent (Birovljev & Etkovi, 2013). Some countries, especially developing countries, maintain relatively high bound tariffs but have decided to reduce actual tariffs to levels below the bound rate. This rate is called the applied rate. Lowering tariffs unilaterally is allowed under the GATT, such as increasing the applied tariff until the tariff is bound. The second commitment is about the acceptance of certain behavioral principles with respect to international trade policy. In this regard there are also two forms: the first involving the core principles of non-discrimination and the second involving the permissible exceptions to these principles.

AoA itself is quite the controversy. On the one hand, some view the AoA as an instrument that has the potential to address imbalances in trade relations between developing and developed countries. But on the other hand there are those who see the AoA as an instrument that is increasingly beneficial for developed countries and detrimental to less developed countries. With its overly neoliberal tendencies, AoA seems to ignore that underdeveloped countries will not be able to compete fairly in international trade that is too liberal. AoA implicitly pushes the principle that the stronger is the winner of the bargain. Free trade is like a match for gladiators. Perhaps what we need to analyze is the question of why agriculture in the AoA is so different that it is the only sector that is effectively regulated by sector-specific agreements in the WTO (Desta, 2001). Several explanations have been given one of them by Ragosta. Because agriculture has a unique role in maintaining the availability of food sources and also controlling the environment and for survival in rural ways and cultures. Bernard O'Connor gives a strategic and economic explanation and concludes that "agriculture is different from

other sectors and is properly treated according to the rules of a separate WTO Agreement" (Gonzalez, 2002). But certainly all agree that the AoA has taken one of the most important steps to bring stronger agriculture into the multilaterally agreed system of rules, rules that led to the adoption by WTO member states of new national laws to bring the practice of the pre-Uruguay Round they are in line with AoA requirements. What is also clear is that, as long as the AoA remains in force, agricultural products will remain a special category in itself subject to special treatment within the WTO framework (Xiaozhen Li & Wang, 2008).

Another legal issue is about subsidies. It is well known that the indirect effects of subsidies, most of which work through world markets, affect different categories of countries differently. First, subsidies are clearly detrimental to other countries that export their products without providing subsidies, because their prices are not competitive so it will cut their market share and reduce their export income. Second, export subsidies do benefit countries where there is little appropriate production of the subsidized product or similar substitutes. In this case, the subsidy is a transfer of income from the subsidizing country to consumers in the importing country. In general, export subsidies may have an overall welfare advantage for importing countries with very low levels of self-sufficiency, because consumer gains should more than offset producer losses. However, if the conditions are not as stated above, this export subsidy can disrupt the international trade market.

The impact of export subsidies on the third country category, i.e., where the level of self-sufficiency in subsidized products or their substitutes is high, is more complex. Where export subsidies depress world market prices, and where these prices are transmitted to the domestic market, producers lose and consumers gain. The dark side of this effect is where there is an accumulation of losses for these producers over time, as prolonged depressed prices and low yields weaken investment in agriculture, slowing the growth of the sector. The net welfare loss is generally expected to be higher, the greater the level of self-sufficiency. Many developing countries fall into this group and almost all of them produce staple foods, which are the

main products that receive export subsidies. In theory, the importing country can take advantage of the transfer of income by capturing it at the border in the form of tariffs, while maintaining higher prices in the domestic market (Stehn, 1996). However, such actions must be consistent with other commitments. on the type and level of tariff action. In addition, there may be political economy considerations that make it difficult to use this option in practice. Finally, where the widespread use of export subsidies is destabilizing world markets, most likely, food-importing countries face additional transaction costs in trying to cope with this volatile market.

All the effects of subsidies above have given rise to several legal disputes between countries that enjoy the benefits and countries that do not. Although settlement procedures are also available in the WTO Agreement on Agriculture, due to the lack of legal force of the agreement, the settlement will be void. Another form of protection from these impacts is in the form of indirect subsidies to agricultural producers or export subsidies which in turn will lead to distortions and market disputes. In summary, the issue of agricultural market access in current negotiations presents some of the most complex international trade issues. It is ascertained that other industrial products have complied with the rules of GATT/WTO, but the products are still not in accordance with the rules of GATT/WTO. The development of agricultural trade rules is more about understanding the rules that have been set by GATT/WTO while simultaneously making strict implementation of the rules. The task of understanding and applying WTO rules to situations brought before a WTO panel, and anticipating what future panels might decide in relation to national programs requires serious research.

Conclusion

The AOA brief review above shows that agriculture is one of the most important trade negotiations in the WTO. However, due to various reasons, the implementation of the rules in AOA is still difficult to implement. Apart from differences in understanding and different perceptions of AOA where there are many opinions that are not positive about AOA, such as the opinion that AOA is an

instrument of developed countries to stay ahead of developing countries. Despite the fact that developing countries are gaining strength in making their voices heard with increasing strength and momentum, countries that want liberalist trade tend to defend their own national interests by using the pretext of free trade as fair international trade.

There are several legal issues regarding subsidies on agricultural products within the WTO framework, such as issues regarding the definition of subsidies, rules and interpretations in the WTO and SCM, WTO and SCM alignment and internal domestic rules and interpretations of member countries. This legal issue needs an immediate solution in order to achieve the goals of the WTO in terms of free and fair international trade. Of course, fair has an unequal meaning. But basically all countries will agree when it comes to the welfare of all countries then an agreement will be reached. There are still cynical views from some countries regarding the hypocrisy of the AOA. However, this can be overcome with better communication and discussion of the meaning contained in AOA so as to eliminate prejudices that will only make things worse. The elimination of all forms of agricultural export subsidies in 2013 is a historic achievement but its implementation requires hard work from the WTO for this new rule to be implemented. Likewise, the agreement to apply the tariff reduction commitments from bound rates rather than applied ones also has the effect of allowing most developing countries to retain their existing applied rates while reducing their bound rates to levels which should in many cases still remain far higher than what most of these countries may want to apply. In most developed countries, on the other hand, the gap between bound and applied tariffs is either small or non-existent, and the implications of the commitments will be more immediate in many cases.

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