Export Subsidies and Export Credit

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Introduction

The treatment of exports in the WTO includes five different areas: (a) export subsidies; (b) export credits, guarantees and insurance; (c) food aid; (d) exporting State trading enterprises; and (e) export restrictions and taxes. Food aid and export restrictions are discussed in other chapters. Here, we concentrate on the other three topics.

1. Background

The world trade legal framework presents the peculiar situation that export subsidies for industrial products are prohibited under the WTO (and before the GATT) agreements, while export subsidies for agricultural products (several of which are also industrial, and not primary, products) were allowed under the GATT and then only partially disciplined under the Agreement on Agriculture of the WTO.¹

The potentially trade-distorting effects of State trading enterprises (STEs) were also recognized in the GATT: Article XVII accepted their existence under the trade regime, provided they acted in accordance with the general principles of non-discrimination, and based their decisions on commercial considerations. In addition, STEs could not diminish or nullify the commercial value of negotiated tariff concessions, and could not be operated in a way that creates quantitative restrictions on imports, export subsidies, and other WTO-inconsistent measures. Governments also had to notify the GATT about the operations of their STEs on a regular basis.

During the Uruguay Round, export subsidies in general were considered in greater detail in the Agreement on Subsidies and Countervailing Measures (ASCM), and their prohibition was reaffirmed. Export subsidies for agriculture, however, were allowed by the Agreement on Agriculture (AoA) for countries that were using them, although they had to be capped and then cut in both value and volume.²

The AoA also included Article 10 on anti-circumvention measures, which expanded the consideration of export competition to food aid (with a definition and certain criteria that must be followed to avoid violating the anti-circumvention provisions) and export credits, guarantees and insurance programmes (with WTO members committing to developing internationally agreed disciplines on these topics and then operating in conformity with them).

¹ From 1986–97, European and US export subsidies amounted to about USD 135 billion, or the equivalent of almost 13 per cent of the value of all agricultural exports by the developing countries of Africa, Latin American and the Caribbean and Asia (minus China) combined during the period (Díaz-Bonilla and Reca 2000).

² While countries were allowed to apply countervailing duties to industrial goods, agricultural subsidies were given a different treatment, which somewhat limited the possibility of imposing those duties until 2003 if the exporting country operated within the quantity limits agreed in the Uruguay Round.
Regarding STEs, the Uruguay Round agreements included an "Understanding on the Interpretation of Article XVII" that tried to clarify the original definition of the GATT 1947 and made an important change: while an STE used to be a "state enterprise" or one receiving exclusive rights or privileges, the new definition made notifications compulsory for "Governmental and non-governmental enterprises, including marketing boards, which have been granted exclusive or special rights or privileges..." (emphasis added). The "or" of the original article was therefore replaced by "which", excluding government-owned companies that are not granted those special privileges.

In summary, the WTO Agreements maintained the more permissive treatment for export subsidies of agricultural and agro-industrial products, introduced the topics of food aid, export credits and related programmes as part of export competition, and changed the definition of STEs.

After the creation of the WTO, agricultural negotiations continued on several topics (as agreed in Article 20 of the AoA), including placing agricultural export subsidies on the same level as non-agricultural subsidies (i.e. as prohibited practices under the WTO legal framework). The "Revised Draft Modalities for Agriculture" (WTO 2008) was the last attempt to reach an agreement on agriculture before the general Doha Round talks collapsed in 2008. The 2008 Modalities determined that developed countries would halve their budgetary outlays for export subsidies by 2010 and then completely eliminate them by 2013. It also indicated that no new markets or products could receive subsidies. Developing countries would have until 2016 to comply.

It defined different categories of export credits, outlined which entities were obliged under the potential Agreement, and set a maximum repayment term of 180 days (360 days for developing countries) to be reached four years after implementation. However, LDCs and net food-importing countries could receive longer repayment periods. It also indicated that all export financing support programmes should be self-financing (the premium rates charged must be sufficient to cover operating costs for a four-year rolling period; eight years for developing countries).

The Understanding’s definition of agricultural exporting STEs was maintained (it should be noted that the 2008 Modalities did not cover import STEs). The disciplines included the prohibition to use export subsidies. In addition, exporting STEs could not receive government financing or capital below market rates and governments could not underwrite losses. Agricultural export monopoly powers for STEs would end by 2013 (unless the exported product represented no more than 0.25% of the total world trade in agricultural products in the 2003–05 base period, the STE has been notified, and it was not used to effectively circumvent obligations). Special and differentiated treatment for developing countries included the possibility to continue to use monopoly powers “to preserve domestic consumer price stability and to ensure food security;” if those were not the objectives, then the share of the world’s exports of the agricultural product(s) should be less than 5% for three

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3 Although there are several developing countries among the WTO Members that notified export subsidies (14 out of the 25 WTO Members with such notifications) and can thereby use export subsidies for agricultural products, industrialized countries represent 84% of the values still allowed under the current AoA (only the European Union amounts to 62% of the total value of allowed agricultural export subsidies) (FAO 2000). Considering that most of the export subsidies have been utilized by industrial countries, this fact, along with other advantages in domestic support and market access instruments, has been referred to, with irony, as "special and differential treatment" (SDT) for the agriculture of industrialized countries.
consecutive years. Agricultural export STEs from LDCs and “small and vulnerable economies” (a new category defined by the 2008 Modalities) were permitted.

During the process leading to the 2013 Bali Ministerial, several developing countries that are agricultural exporters asked for specific steps to comply with the 2005 Hong Kong Ministerial Declaration, which defined 2013 as the deadline for eliminating exports. This option was mainly opposed by developed countries who argued that they were not ready to make firm commitments in the absence of a more comprehensive reform of all agricultural issues in a finished Doha Round. In the end, the Bali Ministerial adopted a Ministerial Decision on Export Competition (WTO 2013), which only committed WTO members to apply “utmost restraint” when using export subsidies to maintain them at the lower levels of the early 2010s (when they were less utilized due to high world prices) and to improve information about their use. Therefore, the exceptional treatment of agricultural export subsidies under the WTO legal framework has continued.

2. Recent developments

As part of the Bali commitments to improve transparency in export competition, the Committee on Agriculture asked the Secretariat to send a questionnaire on all aspects of export competition and to tabulate answers for a June 2014 meeting. The results of that exercise (WTO 2014) show the following:

a. The overall trend for export subsidies is declining: several products that were the main recipients of subsidies such as grains and oilseeds have not received export subsidies in the last years and many, although not all, of the countries using subsidies are doing so in a small proportion of their allowed levels. At the same time, the information collected still shows almost USD 500 million of export subsidies in 2011–12 (the EU being the largest user with almost USD 190 million, followed by Canada and Switzerland-Liechtenstein with USD 85–90 millions). The main product categories receiving subsidies were: Incorporated Products and Poultry Meat (with USD 120-150 million each) and Skim Milk Powder, Cheese and Bovine meat (with close to USD 50 million each). The data compiled, however, is incomplete.

b. Regarding export credits and similar measures, 12 WTO members notified export credits, although whether they would be complying with the criteria of the 2008 Modalities (in terms of repayment period and to be self-financed) was difficult to assess from the notifications. While, as noted before, grains and oilseeds were not receiving export subsidies, they were the main products under export credits and related measures.

4 Small, vulnerable economies are countries that, in the period 1999–2004, had an average share of (a) world merchandise trade of no more than 0.16 per cent or less; (b) world trade in non-agricultural products of no more than 0.1 per cent; and (c) world trade in agricultural products of no more than 0.4 per cent. Those countries were listed in the 2008 Modalities.

5 During the 2005 Hong Kong WTO Ministerial meeting, the Ministerial Declaration (WTO 2005) stipulated in paragraph 6 that Ministers “agree to ensure the parallel elimination of all forms of export subsidies and disciplines on all export measures with equivalent effect to be completed by the end of 2013.” However, it immediately added that “this will be achieved in a progressive and parallel manner, to be specified in the modalities, so that a substantial part is realized by the end of the first half of the implementation period.” Therefore, while the first part appeared to define a clear deadline for exports subsidies in agriculture, the second part, referring to the “implementation period”, seemed to link that end date to the completion of the trade round.
c. Twenty members reported 77 agricultural exporting STEs. The countries with more STEs were China (25), India (14), and Colombia (14). Tobacco (21 STEs), Other products (20), and Fruits/Vegetables (14) were the main items involved. With some exceptions, the reporting did not include enough information to assess the impact on global markets and whether the STEs had exporting monopoly power. Some of the important agricultural exporting STEs that were operated by developed countries have been reformed and or are in the process of being reformed (such as the Canadian Wheat Board), while the presence of STEs appears more important in developing countries (although the latter may still be, considering the very limited information available, within the limits by products suggested by the 2008 Modalities).

Among other developments, in newly acceded countries, the tendency seems to have been not to allow export subsidies, even though the countries may have used them before the accession (Brink 2014).

An important legal development on STEs was the ruling of the WTO Appellate Body in the case brought by the United States against the Canadian Wheat Board, which defined that the primary discipline of the WTO regarding STEs was non-discrimination; operating under "commercial considerations" was not an independent obligation, but the potentially non-commercial nature of some operations could be used as a test of discrimination (Hoekman and Trachtman 2007).

More generally, it is important to note the general advances made by developing countries in agricultural production, trade and policies. Agricultural products exported and imported by developing countries have increased as a percentage of world agricultural trade (26.9% for exports and 16.9% for imports in the 1970s to 36.9% and 32.3%, respectively, in the early 2010s). While, in the 1990s, only one developing country (Argentina) was in the top five net agricultural exporters by value and only two more (Brazil and Thailand) were in the top ten, by 2010–11, Brazil and Argentina had displaced the US and the Netherlands in the top two positions and, in addition to Thailand, there were now three developing countries in the top five exporters. Among the largest developing countries, China was a net exporter in the 1990s but became the largest net trade importer after Japan in the 2010s, and India has been climbing the ranks as a significant net agricultural exporter. In fact, in recent years, India has become the main global exporter of rice and the second for both beef and cotton. On the other hand, India's agricultural sector includes a large number of very small farmers affected by poverty and vulnerability. In recent trade negotiations, India has emphasized the latter aspect, but its trading partners have taken note of the country's increasing presence in global food and agricultural exports (Díaz-Bonilla 2014).

Not only have developing countries as a whole been advancing globally in production and trade, they have also increased their agricultural support, judging from the Nominal Rate of Assistance (NRA) (as calculated by a World Bank project), the Producer Support Estimate (PSE) (computed by the OECD), and the categories of domestic support that must be notified to the WTO as defined in the AoA. All these developments have modified the landscape of the political economy of global trade negotiations (Díaz-Bonilla 2014).
3. Implications for the WTO negotiations

The reduced use of export subsidies for agricultural and agro-industrial products offers the possibility of finally unifying the treatment of export subsidies, eliminating the special treatment of the AoA. The 2008 Modalities offer a template for this. Agricultural export subsidies should be banned and the system unified under the ASCM. The 2008 Modalities also provide an appropriate template for export credits, export guarantees and insurance.

The case of agricultural STEs is different. Their treatment in the 2008 Modalities may require further thinking. First, STEs in developed countries are exempt from the obligation of ending monopoly powers if the exported product represented no more than 0.25% of total world trade in agricultural products in the 2003–05 base period. The percentage seems small, but it translates to a value of about USD 1,500 million (which represents between 8-12% of the world trade in individual products such as wheat, maize and soybeans).

Second, the exemptions for developing countries may also need adjusting. As noted, the 2008 Modalities allowed developing countries to maintain STEs with monopoly powers "to preserve domestic consumer price stability and to ensure food security." If those were not the objectives, they could still maintain monopoly power if their share of the world’s exports of the agricultural product(s) involved was less than 5% for three consecutive years (of course that SDT always comes with the not necessarily very operational proviso "not be otherwise inconsistent with other provisions of this Agreement and other WTO Agreements.") The percentage allowed for a specific product is significant. Furthermore, it is unclear how exporting the product "ensures food security" in a specific country; it rather seems to detract from it to the extent that food that could have been given to presumably food insecure domestic consumers is reoriented towards world markets.

Third, there appear to be different standards for the notion of "commercial" that may need to be reconciled: a country may engage in certain practices that are not in "commercial terms" and still be in agreement with Article XVII – as interpreted in the case against the Canadian Wheat Board – while still claiming "commercial confidentiality" to avoid providing adequate information for surveillance. The quid pro quo of having the legal right to operate an STE (which may pursue a variety of legitimate public interest objectives) should be full transparency. Otherwise, it would be impossible to determine whether an STE is violating other WTO commitments. If countries do not comply with those notifications, then the lack of information may be taken as a presumption of violations of other WTO commitments, and the countries affected by the operation of the STEs may invoke trade sanctions.

Fourth, although the 2008 Modalities only refer to exporting STEs, importing STEs should also be included. As shown by McCorriston and MacLaren (2006) in the case of rice in Korea, the operations of the STE implied an ad valorem tariff equivalent of 178 per cent and a producer subsidy of 25 per cent.
Conclusion

The 2008 Modalities serve as an appropriate template for the long overdue elimination of the SDT for agricultural export subsidies. They should be banned, as is the case for industrial export subsidies. Developed countries still clinging to that practice should have been more forthcoming in Bali. An agreement beyond “best efforts” to include export subsidies as a banned practice should be an early harvest result. The 2008 Modalities also provide an appropriate template for export credits, export guarantees and insurance.

However, with the advance of developing countries in export and import markets, the treatment of STEs requires stricter disciplines than those envisaged in the 2008 Modalities, including the consideration of importing STEs. At the very minimum, stricter requirements of transparency and timely communication will be necessary.
References


