



Trade Guide: WTO Subsidies

WTO SUBSIDIES AGREEMENT

What is this Agreement and what does it do?

The Agreement on Subsidies and Countervailing Measures (Subsidies Agreement) of the World Trade Organization (WTO) provides rules for the use of government subsidies and for the application of remedies to address subsidized trade that has harmful commercial effects. These remedies can be pursued through the WTO's dispute settlement procedures, or through a countervailing duty (CVD) investigation which can be undertaken unilaterally by any WTO member government.

All [members of the WTO \(offsite link\)](#) are Parties to this Agreement, which went into effect on January 1, 1995. It has no expiration date.

Who benefits from this Agreement?

Any company in the United States or another WTO member country which is being commercially harmed by unfairly subsidized products from another member country can benefit from the Subsidies Agreement. Additionally, if your company becomes the target of a countervailing duty investigation in another country, the Subsidies Agreement will provide numerous procedural and substantive safeguards to ensure that countervailing duties are not imposed arbitrarily against your company's exports.

How does the Agreement define subsidies?

Definition of a Subsidy

A subsidy has a very particular meaning under the Subsidies Agreement and U.S. law (Title VII of the Tariff Act of 1930). A subsidy is defined as a "financial contribution" by a government which provides a benefit. The forms that a subsidy can take include:

- a direct transfer of funds (e.g., a grant, loan, or infusion of equity);
- a potential transfer of funds or liabilities (e.g., a loan guarantee);
- foregone government revenue (e.g., a tax credit); or
- the purchase of goods, or the provision of goods or services (other than general infrastructure).

Under the Agreement, actions can only be taken against subsidies that are "specific." A specific subsidy is one that is only given to one company, or to a special group of companies.

Prohibited Subsidies

A subsidy granted by a WTO member government is prohibited by the Subsidies Agreement if it is contingent, in law or in fact, on export performance, or on the use of domestic over imported goods. These prohibited subsidies are commonly referred to as export subsidies and import substitution subsidies, respectively. They are deemed to be specific and are viewed as particularly harmful under the Subsidies Agreement and U.S. law. (Special rules apply to agricultural subsidies under the WTO Agreement on Agriculture.)

Actionable Subsidies

A subsidy granted by a WTO member government is “actionable” under the Agreement (again, certain exceptions are made for agricultural subsidies) if it “injures” the domestic industry of another country, or if it causes “serious prejudice” to the interests of another country. Serious prejudice can arise in cases where a subsidy:

- impedes or displaces another country’s exports into the market of the subsidizing country;
- impedes or displaces another country’s exports to third countries;
- significantly undercuts the price of a “like product” (e.g., an identical or similar product produced by another country; or,
- increases the world market share of the subsidizing country for a particular primary product or commodity.

The WTO Subsidies Committee and Subsidy Notifications

The Subsidies Agreement established a Committee on Subsidies and Countervailing Measures (WTO Subsidies Committee), which is composed of representatives of each WTO member country. The WTO Subsidies Committee meets not less than twice a year and gives members the opportunity to consult on any matters relating to the operation of the Subsidies Agreement and the advancement of its objectives.

One way in which the Subsidies Agreement facilitates compliance with established rules is through subsidy notifications. Every WTO member is required to notify the WTO Subsidies Committee each year of any subsidy (as defined by the Subsidies Agreement) that it is granting or maintaining within its territory. These subsidy notifications are posted in the Electronic Subsidy Enforcement Library maintained by the Subsidies Enforcement Office at the U.S. Department of Commerce. They are a valuable source of information regarding foreign subsidy practices.

In keeping with the objectives of U.S. law, WTO subsidy notifications play an important role in the U.S. Government’s monitoring and enforcement activities, which are designed to protect U.S. rights and benefits under the Subsidies Agreement. The notification of a subsidy program does not prejudice the issue of whether it is prohibited or actionable under the Agreement.

How can this Agreement help my company?

If your company is being commercially harmed by subsidized competition, two remedies can be pursued under the Subsidies Agreement: dispute settlement at the WTO or a countervailing duty investigation conducted by the U.S. Department of Commerce. The Subsidies Agreement can also be very helpful if the exports of your company become the target of a subsidy investigation begun by another country.

WTO Dispute Settlement

Under the Subsidies Agreement, if a WTO member government believes that a prohibited or actionable subsidy is being granted or maintained by another member government, it can request consultations with that government under the WTO's dispute settlement procedures. For prohibited subsidies, the complaining country does not need to show any adverse effect on its own industry (exceptions are made for developing countries). For actionable subsidies, the complaining country must demonstrate an adverse effect.

If no mutually agreeable solution is reached in initial consultations, the matter can be referred to the WTO's Dispute Settlement Body (DSB), which consists of representatives of all WTO members. The DSB establishes a panel, which reports its findings to the parties to the dispute within 90 days for prohibited subsidies, or 180 days for actionable ones. If the panel finds that the measure in question is a prohibited subsidy, the subsidizing government must withdraw it without delay. In the case of actionable subsidies, the subsidizing government must either withdraw the subsidy or remove its adverse effects. If a prohibited subsidy has not been withdrawn within a specified period of time (which is set by the panel), or if the subsidizing country has not taken appropriate steps to withdraw an actionable subsidy or remove its adverse effects within six months, the DSB can authorize the complaining country to take countermeasures.

One of the advantages of WTO dispute settlement is that it not only provides remedies for subsidies affecting competition domestically, but also provides remedies for subsidies affecting competition in foreign markets. Prior to the Subsidies Agreement, the U.S. countervailing duty law, which only applies to subsidized products imported into the United States, was the only practical way for U.S. companies to address subsidized foreign competition.

A company interested in asking the U.S. Government to initiate a WTO dispute settlement case should contact the Department of Commerce's Subsidies Enforcement Office (SEO) to discuss possible remedies under the Subsidies Agreement. The role of the SEO is to examine subsidy complaints and concerns raised by U.S. exporters, and to monitor foreign subsidy practices in order to determine whether they are impeding U.S. exports to foreign markets and are inconsistent with the Subsidies Agreement.

For more information on the WTO's dispute settlement procedures, see the Exporter's Guide to the WTO Understanding on Settlement of Disputes.

Countervailing Duty Investigations by the U.S. Department of Commerce

A U.S. company being injured by unfairly subsidized imports into the United States can also file a complaint or "petition" with the U.S. Department of Commerce asking that a countervailing duty investigation be initiated. A countervailing duty investigation is a unilateral action taken by a WTO member government to determine whether a domestic industry is being injured by subsidized imports. Under the Subsidies Agreement, countries can impose a special import duty - called a countervailing duty (CVD) - to offset the benefit of prohibited or actionable subsidies on imported products. Countervailing duties can only be imposed if the investigating agency of the importing country determines that the imports of the product in question are subsidized and are injuring a domestic industry.

To ensure that there is sufficient support by the relevant U.S. industry for the investigation, U.S. law requires that petitioners must represent at least 25 percent of U.S. production. The petition must also contain a complete description of the nature and (where possible) the amount of the subsidy, as well as evidence that the domestic industry in the United States (as a whole) is being injured by subsidized imports.

Detailed rules are set forth for determining whether the subsidy is injuring a domestic industry in the complaining country. Injury is defined to mean material injury itself, the threat of material injury, or material

retardation of the establishment of a domestic industry. An injury determination must involve an examination of the volume of subsidized imports, the effect of those imports on the prices of products in the domestic market of the complaining country, and the consequent impact of those imports on the domestic producers of such products. A causal link must be established between the subsidized imports and any injury that has occurred.

The agency within the Department of Commerce that handles countervailing duty petitions is Import Administration. If this agency determines that a countervailable subsidy is being provided, and the U.S. International Trade Commission determines that the subsidized imports have injured a U.S. industry, a countervailing or offsetting import duty can be imposed. Import Administration's Office of Policy offers counseling to companies interested in filing a countervailing duty petition. Countervailing duty trade remedies have been successfully pursued by a variety of domestic industries, including producers of steel, industrial equipment, computer chips, agricultural products, textiles, chemicals and consumer products.

Protecting the Rights of U.S. Exporters

Because WTO member governments have the right to impose countervailing duties, and many countries have countervailing duty laws similar to those in the United States, it is important to keep in mind that, as a U.S. exporter, your company may face a countervailing duty investigation in another country.

You should also know that the Subsidies Agreement obligates WTO member governments to conduct countervailing duty investigations fairly and in accordance with the procedures outlined in the Subsidies Agreement. Governments have the right to complain to the WTO through the dispute settlement process if countervailing duties are imposed arbitrarily. In particular, under the Subsidies Agreement, proceedings must be transparent and interested parties must be given ample opportunity to defend their interests. Moreover, the Subsidies Agreement contains substantive rules which foreign governments must follow before they impose countervailing duties against U.S. exports. U.S. exporters facing a countervailing duty investigation in another country who are in need of assistance should contact the Subsidies Enforcement Office.

Can the U.S. Government help me if I have a problem?

Yes. If your export business is being commercially harmed due to subsidized foreign competition, contact the Subsidies Enforcement Office at the U.S. Department of Commerce. A representative of the Subsidies Enforcement Office will work with you to gather relevant information and assess the facts. If there is sufficient reliable data, the Subsidies Enforcement Office may confer with an interagency team, including representatives of the office of the United States Trade Representative (USTR), to determine the most effective way to proceed. In many cases, raising the matter through informal contacts, formal bilateral meetings and/or in WTO Subsidies Committee discussions can promote more speedy and practical solutions than resorting to WTO dispute settlement. These other approaches may also uncover additional information, or improve our understanding of what the other country is doing, which can affect the decision as to next steps, including the possibility of pursuing the problem on grounds other than those provided for under WTO subsidy rules. In any event, it is frequently advantageous to pursue resolution of these problems through a combination of informal and formal contacts, including, where warranted, dispute settlement action at the WTO.

How can I get more information?

The complete text of the WTO Agreement on Subsidies and Countervailing Measures is available on the web site of the Office of Trade Agreements Negotiations and Compliance (TANC) at the U.S. Department of Commerce. The TANC helps American exporters who are facing foreign trade barriers and ensures that foreign

countries comply with their trade commitments to the United States. You can contact the TANC by e-mail.

Further information on the Department of Commerce's subsidies enforcement efforts may be found on the Subsidies Enforcement Office's web site. In addition, you can learn more about filing a countervailing duty complaint by visiting the Import Administration's website. Petitioner counseling is available by e-mailing: Petitioners_Support@ita.doc.gov.

You can also contact the Designated Monitoring Officer for the Subsidies Agreement at the following address:

Designated Monitoring Officer

Office of Antidumping/Countervailing Duty Policy

Enforcement and Compliance

U.S. Department of Commerce

14th Street & Constitution Avenue, N.W.

Washington, D.C. 20230

Tel: (202) 482-4412

Fax: (202) 501-7952