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INDIA'S USE OF AGRICULTURAL SUBSIDIES WITHIN THE WTO FRAMEWORK: THE DEBATE BETWEEN LIBERALIZATION AND PROTECTIONISM

AUTHORED BY - MANYA SHARMA
O.P. JINDAL GLOBAL UNIVERSITY

ABSTRACT

The use of agricultural subsidies by India and other developing countries has remained and continues to remain one of the most contentious issues within the WTO (World Trade Organization) framework. In India, agriculture has been closely linked to food security, rural life and poverty alleviation. The paper examines India's use of agricultural subsidies in detail and connects it to the broader debate within WTO between liberalization and protectionism. The paper begins by highlighting the basic subsidy framework under WTO, particularly explaining the SCM agreement in detail. The paper then moves forward and discusses India's use of agricultural subsidies by highlighting the areas within Indian agriculture wherein public investment has played and continues to play a crucial role. The third section of the paper focuses on the contentions raised by WTO and the arguments provided by India to defend its position. The last section of the paper seeks to answer as to what extent is India justified in its use of agricultural subsidies, however subject to the WTO framework rules.

BASIC SUBSIDY FRAMEWORK UNDER WTO (WORLD TRADE ORGANISATION)

Under GATT 1947, there was no enforceable multilateral legal discipline on domestic subsidies, which made the GATT's approach ambiguous. Under this approach, subsidies were seen as legitimate tools that would be essential to public policy. At the same time, the potential of subsidies to distort trade was also acknowledged. Importing countries at the same time could impose countervailing duties in case these subsidized imports would cause "material injury" to domestic industry. There was no obligation on the subsidizing state to withdraw the subsidy [1]itself. The Uruguay round and the SCM Agreement was, however, a turning point. Under this, binding multilateral rules on subsidies were introduced.

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[1] Siqi Li & Xinquan Tu, *Reforming WTO Subsidy Rules: Past Experiences and Prospects*, 53 J. World Trade 851 (2019).

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There were two categories of subsidies under SCM:- Prohibited Subsidies and Actionable Subsidies. Prohibited Subsidies included export subsidies, domestic content requirements, were automatically illegal and in the case of these subsidies, specificity was presumed and there was no need to prove it. Actionable subsidies, on the other hand, were not prohibited per se and can be challenged if they cause adverse effects. Article 1 of the SCM Agreement clearly defines the term "subsidy". For a measure to be challenged, three elements have to be met. First is financial contribution which includes direct transfers (grants, loans, equity infusions), foregone revenue (tax exemptions) and provision of goods/services below market price.

Second is benefit which means that the recipient must receive an advantage in comparison to the market and the benefit must be assessed against a market benchmark. Third is specificity which [2]means subsidy must be targeted. There are two kinds of specificities:- de jure specificity, that is, explicitly limited by law and de facto specificity, that is, used mainly by certain industries or firms. Article 2.1(b) lays out the objective criteria exception. It states that there is no specificity if the eligibility is based on objective, neutral criteria, the application is automatic and the criteria are clearly stated and can be verified. Under the SCM Agreement, a WTO dispute settlement mechanism is also available. According to Article 5 of the agreement, complainants must prove "adverse effects", which includes injury to domestic producers, nullification on impairment of tariff benefits or serious prejudice to another member.

The term serious prejudice is defined under Article 6.3 and it requires showing effects such as displacement of imports in the subsidizing country, displacement of exports in third- country markets, suppression of prices or undercutting and increase in world market share of subsidized products. Earlier, under Article 8, there were certain subsidies which were immune from challenge, such as, R & D subsidies, environmental protection subsidies and regional development subsidies, also termed as "non-actionable subsidies". However, this provision expired after five years and WTO members failed to agree on renewal. Hence, no subsidies enjoy absolute and explicit immunity now.

INDIA'S DEVELOPMENTAL USE OF AGRICULTURAL SUBSIDIES

The main aims of public investment in agriculture are improving long-term agricultural productivity, promoting capital accumulation, supporting direct subsidies that enhance

[2] Shenggen Fan, Ashok Gulati & Sukhadeo Thorat, *Investment, Subsidies, and Pro-Poor Growth in Rural India* (Int'l Food Pol'y Rsch. Inst., IFPRI Discussion Paper No. 716, 2007).

production and reducing rural poverty and sustaining growth. Public investment is generally equated with the concept of Public Sector Gross Fixed Capital Formation (GFCF) in agriculture. Nearly 90% of this public GFCF comes from irrigation projects by Departmental Commercial Undertakings and minor contributions to this GFCF comes from non-departmental commercial undertakings, horticulture, livestock, state farms.

When we examine the overall trend of input subsidies in Indian agriculture, we observe that input and output subsidies have sharply increased in the past two decades. Food subsidies increased more than ten times between 1990-91 and 2004-05. Wholesale Price Index (WPI) doubled as well during the same period. The key drivers of rising food subsidies are rising minimum support prices (MSP), excessive grain stocks and rising economic costs of FCI operations which includes costs of procurement, storage and distribution inefficiencies. These input subsidies are either provided directly or indirectly. These are provided directly to input manufacturers, parastatal agencies, private traders and farmers. These are provided indirectly through trade policies, price controls and marketing regulations. The levels of government involved include central government, state government and local government.

There are different types of subsidies. These include fertilizer, credit, irrigation and power (electricity) subsidies. Fertilizer subsidy showed an increase of over thirty times in 24 years and the stabilization phase was the post-1998 phase in which the fertilizer subsidy was stabilized at Rs.80 billion per year. The 1950s Rural Credit Survey Committee emphasised cooperatives, PACs, strengthening cooperative credit and nationalisation of banks. Cooperatives remained dominant till the 1960s, commercial banks came into existence after 1969 nationalisation and regional rural banks aimed at districts with weak credit penetration. The share of agriculture in total bank credit by commercial banks was 15% by 1985, by rural banks it was 11.4% by 1989 and commercial banks provided 50% of total agricultural credit. Credit subsidies saw a sharp rise in the 1970s and then this trend was followed by a steady deceleration by the 1990s.

Irrigation subsidies in India included major irrigation projects, medium irrigation projects and minor irrigation schemes. Irrigation subsidies grew at an annual growth rate of 7.6% and then witnessed a sharp decline over time. Highest subsidy per agricultural population was in Himachal Pradesh and Jammu and Kashmir and lowest subsidy was in Assam and Maharashtra. When the extent of power (electricity) subsidy is examined, we can observe that in 1999, agriculture consumed 29% of total electricity generated, however, it contributed only 3.36% to electricity revenue. This indicates that electricity was constantly subsidized for agriculture. For example, a 2000-2001 study shows that electricity to agriculture was priced at less than 10% of actual cost. The fastest growth among all input subsidies is reflected by power (electricity) subsidy.

WTO AND INDIA'S STANCE ON USE OF AGRICULTURAL SUBSIDIES

WTO has always emphasised investment for subsidies. For sector growth and productivity, higher investment in agriculture and the rural infrastructure has always been seen as necessary. The perspective of the Indian government is centred around the fact that intervention through subsidies, price support mechanisms and public distribution system should be justified and that it helps poor farmers and alleviates distress. However, the WTO perspective is centred around the fact that government intervention including tariffs, subsidies, price controls is the core issue and that this intervention further perpetuates poverty and is seen as neglect by the organisation.

WTO believes that protection including subsidies and tariffs implies that the comparative advantage truly lacks and that removing protection will help shift resources to sectors with comparative advantage and will lead to greater efficiency. In the 2007 meeting of WTO, this critique continued and it was highlighted that agricultural growth was slow and erratic which led to more and more small and marginal farmers being distressed. The Secretariat Report quoted this and suggested that intervention was one of the main causes of distress. In the 1998 WTO meeting, it was quoted that "The needs and costs of poverty alleviation were greatest in rural areas." Hence, in this meeting, rural poverty was tightly linked to agriculture. The Indian response to criticism by the WTO has always been justified by stating that it is agriculture's [34]vulnerability that invites caution. India has also argued that reforms had been implemented, which poses a direct challenge to the "untouched sector" narrative.

Some of the reforms that India pointed out include improved Public Distribution System and support price systems for producers and consumers, relaxed restrictions across states thereby

[3] Christopher L. Blackden, *Transnational Policy Articulations: India, Agriculture, and the WTO* (Univ. of Ky. 2014).

[4]Parthapratim Pal, *Current WTO Negotiations on Domestic Subsidies in Agriculture: Implications for India* (Indian Council for Rsch. on Int'l Econ. Rels., Working Paper No. 177, 2005).

allowing greater food grain movement, removal of restrictions from agro-producing units and increased public investment in agriculture. India also pointed out that agricultural export zones were created for enhanced market integration. However, the WTO continued to see India's export zones and other initiatives as deviations from "liberalising orthodoxy" by the WTO Secretariat. India strongly defended its position in terms of WTO rules. The country stated that India only committed to binding tariffs and this was fully met and the actual tariffs were well within the bound rates. Moreover, India also highlighted that its domestic support measures were well below de minimis levels as per Uruguay Round Agreement on Agriculture and no export subsidies as such provided.

The main rationale behind domestic protection is the protection of farmer's incomes and help in ensuring affordable food for all, that is ensuring food security. More than 3/4th of India's population, moreover, heavily depends on agriculture. The major goals of these protectionist policies of India are to prevent food prices from rising too high and also to ensure that crop prices should remain adequate for farmers living. India, moreover, cited food and livelihood security to critique protection in developed countries and argued that the farmers of developed countries are not as vulnerable and India, moreover, also seeked reduction in high tariffs and subsidies abroad.

The PDS system of India has been viewed with suspicion by the WTO due to subsidies, price controls, state run operations and complex administration. WTO believes, as stated in the 1998 meeting that the PDS involves high fiscal costs and hence, is deeply ineffective in poverty alleviation. WTO argues that it also discourages farmers from producing or supplying crops.

TO WHAT EXTENT IS INDIA'S USE OF AGRICULTURAL SUBSIDIES JUSTIFIED WITHIN THE WTO FRAMEWORK?

India's food security framework consists of three key components which includes procurement, that is, government purchases food grains (wheat, rice, coarse cereals, pulses) at Minimum Support Price (MSP) from farmers, stockholding, that is, proper storage of procured grains in warehouses and silos and distribution, that is, to vulnerable populations via Public Distribution System (PDS) and other welfare schemes like National Food Security Act,2013. WTO's Agreement on Agriculture (AoA) categories include green box which includes policies deemed non-trade distorting and hence, are exempted from reduction commitments. Stockholding and distribution of food grains fall under this. The second category is the amber box which includes policies considered trade distorting and is limited by de minimis thresholds, that is , 10% of value of production for developing countries. Procurement at administered prices (MSP) falls under this.

The core issue here is that India has the potential to breach the 10% de minimis limit if it procures food grains at the administered prices, thereby, threatening food security programs. In the Bali Ministerial Conference of 2013, an interim solution known as the Bali Peace Clause was introduced. According to this clause, other WTO members are to refrain from dispute settlement actions against a developing country, like, India, which breaches the de minimis limit, for support to be provided to traditional staple food crops under public stakeholding programs. It thereby provides a temporary legal protection for MSP-based procurement. The conditions for the Bali Peace Clause included compliance with WTO notifications, transparency in programs, no anti-circumvention practices and safeguard provisions to prevent misuse.

India was the first WTO member to invoke the Bali Peace Clause for rice. In 2018-19, India's product-specific support to rice ended up exceeding the 10% de minimis limit. Hence, by invoking this clause, India avoided getting involved in legal disputes with other member countries. Therefore, this clause helps India to continue its price-support policies within the WTO framework. It has also been crucial during COVID 19 as it helped to enable programs like Pradhan Mantri Garib Kalyan Yojana (PMGKAY) and also ensured food security for two-thirds of India's population and helped in providing free or subsidized food grains to vulnerable populations.

WTO remedies that include anti- dumping, countervailing duties and safeguards require proving injury, however, this is particularly difficult for developing countries like India with small and marginal farmers. Many farmers cannot collect data on profit, market share on returns and hence, these remedies often become ineffective for them. Moreover, only 39 WTO members can access SSG (Special Safeguard mechanism). This mechanism allows duties above the bound rate during import surges or price drops without proving material injury. Moreover, even India does not have SSG access, and hence, it can only impose tariffs up to the bound level, however, this leads to inadequate protection for farmers within India. Therefore, agricultural subsidies are justified, in this case, within the WTO framework. [5]

CONCLUSION

The paper demonstrated that the SCM Agreement and the Uruguay round was a turning point in the evolution of the subsidy framework within the WTO (World Trade Organisation). The areas of public investment within Indian agriculture include fertilizer, irrigation, credit and power (electricity). WTO believes that government intervention including tariffs, subsidies, price controls is the core issue and that this intervention further perpetuates poverty and is seen as neglect by the organisation while India believes that intervention through subsidies, price support mechanisms and public distribution system should be justified and that it helps poor farmers and alleviates distress. The clash between these two perspectives gives rise to the broader debate between liberalization and protectionism within the WTO (World Trade Organisation). However, India is justified to use agricultural subsidies within the WTO framework to a certain extent due to the Bali Peace clause, the large population of India dependent on agriculture and the lack of access to the special safeguard mechanism.

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