



NEW WTO LAW DEVELOPMENT VECTORS AND SPECIFIC APPLICATION ISSUES WITH THE SUBSIDY INSTRUMENT

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ABSTRACT

The multilateral system of trade regulation is the most complex institution of international law. Over the past three decades, the members of the General Agreement on Tariffs and Trade have managed to form not only the format of negotiations — the World Trade Organization, but also the rules and regulations for doing business in the world market, including the rules for granting subsidies. However, the further development of the organization is undergoing a crisis. The equilibrium application of international trade rules is now impossible due to the current situation: some developing countries, which at the time of joining the WTO recorded a large number of exemptions and transition periods, have grown economically and can now compete on an equal footing with developed countries. On the other hand, it is impossible to talk about any violations, since these exemptions were “agreed”. The problem is exacerbated by the fact that the WTO, although it uses the concepts of “developing, developed and least developed countries”, does not have its own classification of countries according to economic development and cannot respond to changes in their development. The questions posed by the last round of multilateral trade negotiations (the Doha round) have already begun to affect such areas of regulation in which the equalization of the norms and rules of trade between developing countries and developed countries affects not only the economic but also the social sphere.

Since the formation of the multilateral trading system (first GATT, then WTO), there have been eight rounds of multilateral trade negotiations¹. Each of the rounds ended with

¹ Женева (1947); Аннеси (1949); Торки (1950–1951); Женева (1956); Женева (1960–1961), известный также как Диллон-раунд; Кеннеди-раунд (1964–1967); Токио-раунд (1973–1979) и Уругвайский раунд (1986–

another breakthrough in the legal provision of model approaches to state regulation of trade. More than 30 agreements and arrangements were adopted in key areas of trade, including the General Agreement on Tariffs and Trade (GATT) 1994 (hereinafter - GATT-94) with two dozen agreements on various issues of trade in goods, the General Agreement on Trade in Services, the Agreement on Trade-Related Aspects of Intellectual Property Rights and others. The adopted agreements expanded the coverage of issues laid down in GATT 1947 (hereinafter - GATT-47). In particular, the Agreement on Subsidies and Countervailing Measures (ASCM) established the concept of subsidies, rules for their granting, etc. The Agreement on Subsidies and Countervailing Measures (ASCM) was adopted.

Previously, under GATT-47, there was no definition of a subsidy, and only the first steps were taken in the international legal field towards enshrining a model approach to regulation. Article XVI of GATT-94 "Subsidies" has evolved in an evolutionary fashion. Initially, an attempt was made to establish model approaches to the regulation of subsidy support: in GATT-47, the article did not contain specific prohibitions or restrictions on the provision of subsidies, but obliged GATT members to inform each other of subsidies that increased exports or reduced imports. It was envisioned that the granting of subsidies for the export of any commodity could have a "harmful effect"² and cause unnecessary disruption of normal commercial interests. In 1955, the article was supplemented by provisions that GATT members "shall endeavor to avoid"³ subsidizing exports of primary commodities. At the same time, it was clarified that if such subsidies did occur, it was prohibited to subsidize commodity exports if the subsidies had the effect of changing the share of world exports of the commodity.

It should be noted that the imperative in the form of prohibition to subsidize exports is conditioned by the valuation factor - the share in world exports. This combination, in fact, contributed to the formation of the institution of dispute settlement: the determination of the share and the fact of its change required an independent assessment. Initially, Article XXIII of GATT-47 provided that if a dispute could not be resolved through consultations, the issue should be referred to the so-called contracting parties, which in accordance with Article XXV of GATT-47 were recognized as GATT members acting jointly, i.e. through multilateral negotiations. For example, in one of the earliest cases - the Czechoslovak government's request for export licenses to the United States (1949)⁴ - the chairman of the session at which the matter was considered noted that the joint contracting parties (i.e., the GATT members involved in this consideration) should investigate and either make appropriate recommendations to the contracting parties concerned or make a joint decision on the matter, as the case may be. In the end, the decision was adopted by vote. It should be noted that this issue was not the only one on the agenda of the session, i.e. the parties' disputes were not

1994) // URL: https://www.wto.org/english/docs_e/gattbilaterals_e/indexbyround_e.htm (дата обращения: 10.01.2022).

² Пункт 2 ст. XVI Генерального соглашения по тарифам и торговле 1947 г. // URL: <https://www.hse.ru/data/2011/11/15/1272897051/%D0%93%D0%90%D0%A2%D0%A2-47%20%28rus%29.pdf> (дата обращения: 10.01.2022).

³ Глазатов М. В. Практика субсидирования: некоторые аспекты разрешения споров ВТО // Торговая политика. 2017. № 1/9. С. 75–101.

⁴ Summary Record of the Twenty-Second Meeting CP.3/SR22-II/28 // URL: https://www.wto.org/english/tratop_e/dispu_e/gatt_e/49expres.pdf (дата обращения: 10.01.2022).

considered separately from other issues and were not singled out as a separate legal institution.

It is obvious that GATT members, considering the disputed issue on a multilateral platform, could not fully give it due attention and conduct a thorough independent assessment of the circumstances of the dispute. Thus, it was necessary to create an independent institution, which later became “panels” (arbitration panels) and the Appellate Body,⁵ consisting of independent experts with specified terms of reference. The considered norms of GATT-47 were developed within the framework of the FCMC. The SCM established that prohibited subsidies included not only export-related subsidies but also subsidies involving the use of goods of domestic origin. In addition, it was established at the international level that subsidies include those actions of the State or its public authorities whose financial contribution provides certain benefits, and clarified that subsidies can be specific and non-specific. Only specific subsidies are covered by the provisions of the SCM⁶.

In addition, decisions were taken on specific requirements in different sectors, e.g. measures in favor of least developed countries, decision on notification procedures, etc. Thus, during the time of GATT-47 and GATT-94 (WTO), the rules for regulating international trade have become standardized, more predictable and transparent. However, the last round of multilateral trade negotiations - the Doha Round - showed that for further breakthroughs the approaches to the formation of international trade regulation should be changed or modified. Within the Doha Round, several negotiation tracks were formed in the following main areas: liberalization of trade in agricultural and non-food products, services, trade and investment, trade and competition, and others. Emphasis was placed on supporting developing and least developed members of the organization. According to the adopted work programme, the needs and interests of developing and least developed members of the organization were to be placed at the center of the work programme⁷.

Main provisions of the Doha Round negotiating tracks

⁵ GATT disputes: 1948–1995. Volume 1 : Overview and one-page case summaries. World Trade Organization 2018 // URL: https://www.wto.org/english/res_e/booksp_e/gatt4895vol1_e.pdf (дата обращения: 10.01.2022).

⁶ Статья 1.2 Соглашения по субсидиям и компенсационным мерам // URL: <http://docs.cntd.ru/document/902340088> (дата обращения: 10.01.2022).

⁷ URL: https://www.wto.org/english/thewto_e/minist_e/min01_e/mindecl_e.htm

Agriculture	<ul style="list-style-type: none"> - Improving market access; - Reducing all forms of export subsidies with a view to ending them; - Significant reduction of distortive domestic support
Services	<ul style="list-style-type: none"> - Advancing economic development; - liberalization of trade in services
Market access for non-food products	Reduction or elimination of tariffs, including reduction or elimination of tariff peaks, high tariff rates and tariff escalation, as well as non-tariff barriers, in particular for goods of export interest to developing countries
Trade-related aspects of intellectual property rights	Establishment of a multilateral system for the notification and registration of geographical indications for wine and spirits
Trade and investment	Establishing a multilateral system that provides a transparent, stable and predictable environment for long-term cross-border investment, in particular foreign direct investment
Trade and competition; interaction between trade and competition policy	Establishing a multilateral framework for enhancing the contribution of competition policy to international trade and development
Transparency in public procurement	Conclusion of a multilateral agreement on transparency in public procurement
Trade facilitation	Further acceleration of trade turnover, customs clearance of goods, including transit goods
WTO rules	<ul style="list-style-type: none"> - Clarification and improvement of disciplines under the Anti-Dumping Agreement and the Agreement on Subsidies and Countervailing Measures, while maintaining the basic concepts, principles and effectiveness of these agreements, their instruments and objectives, and taking into account the needs of developing and least developed Members; and taking into account the needs of developing and least developed Members; - clarifying and improving WTO disciplines on fisheries subsidies
Dispute resolution system	Improvement and clarification of the dispute resolution system
Trade and the environment	<ul style="list-style-type: none"> - Relationship between existing WTO rules and obligations under multilateral environmental agreements; - Procedures for regular information exchange between the secretariats of these agreements and the relevant WTO committees; - reduction or, where necessary, elimination of tariff and

	<p>non-tariff barriers to environmental goods and services; - clarification and improvement of the rules that apply to fisheries subsidies</p>
E-commerce	<p>- Exploring all issues related to international e-commerce; - Maintaining the practice of not levying customs duties on electronic transactions</p>
Small economies	<p>Identify issues regarding trade in small economies with a view to better integrating vulnerable countries into the multilateral trading system</p>
Trade, debt and finance	<p>Analyzing the issue of the relationship between trade, debt and finance and other questions as to what steps could be taken to Analyzing the issue of the relationship between trade, debt and finance and other questions on what steps can be taken to improve the ability of the multilateral trading system to help address external debt the ability of the multilateral trading system to help address the external debt problems of developing and least developed countries developing and least developed countries, as well as to enhance international trade and financial policy coherence, with a view to protecting the multilateral trading system from the effects of the effects of the debt crisis on developing and least developed countries. Protect the multilateral trading system from the effects of financial and currency instability</p>
Trade and technology transfer	<p>Analysis of the relationship between trade and technology transfer, as well as any recommendations on steps to increase technology flows to developing countries</p>
Technical cooperation and capacity building	<p>Support domestic efforts to mainstream trade into national economic development plans and poverty reduction strategies</p>
Least developed countries	<p>- Additional measures to improve market access; - Facilitate and accelerate negotiations with acceding countries</p>

In fact, during the Doha Round, the multilateral system of trade regulation should have been further advanced towards trade liberalization, which would have further strengthened the influence of harmonized international rules on national legislation. However, the Doha

Round negotiations reached an impasse, and it can be assumed that one of the main reasons was that the proposed rules already directly affected economic sovereignty issues. But it cannot be said that this problem is new for the WTO. It should be noted that earlier, during the Tokyo Round (1973-1979), attempts were already made to transform separate tracks of negotiations from the multilateral format into the plurilateral format, which, being more flexible, forms different-level opportunities for transition to unified regulation, countries ready for unification sign the proposed agreement; countries that are considering the possibility of signing can make a decision at a convenient moment for them, countries that are not ready for a unified solution can continue to remain members of the WTO. This mechanism can be called an “international regulatory sandbox”, allowing to work out the “golden ratio” of unification in a certain area of regulation. It should be noted that the Tokyo Round was one of the most interesting and advanced rounds of multilateral trade negotiations, as the negotiations produced a common approach to subsidy regulation, which then formed the basis of the SCM, as well as the first time an illustrative list of prohibited export subsidies was formed.

The rapid development of international trade in the last quarter of the twentieth century created the conditions for a significant change in the profile of the group of developing countries, which became most evident during the long course of the Doha Round. The round revealed obvious contradictions in the organization: developed countries were no longer willing to make serious concessions in favor of developing countries, since the rapid economic development of certain “developing” members should obviously move them to another category, but this does not happen, and these “gazelles” continue to benefit. In 2019, U.S. President D. Trump declared that the rich countries cheat the WTO when they claim to be developing countries in order to get preferential treatment⁸.

It is noteworthy that the WTO, despite the wide use of the concepts of “developing”, “developed” and “least developed countries”, does not have its own classification of economic development of countries, but adheres to the global approach, allowing countries during the accession period to independently determine their economic status and fix in accordance with it the obligations that are already of legal (legally significant) nature. Thus, for developing members of the organization, the WTO agreements provide special provisions that give them special rights and the opportunity to trade with other members of the organization in a preferential regime. These provisions are called “special and differential treatment” and include, for example, longer implementation periods for agreements and commitments or other measures that enhance the trade opportunities of developing countries. For example, the SCM has a separate article on this issue⁹.

For developing country members of the WTO, according to the UN classification, there is a temporary exemption from the prohibition of export subsidies, for least developed countries - permanent, as well as certain relaxations in countervailing investigations, providing for termination of the investigation if the total subsidy does not exceed 2 per cent of the unit value or if the import subsidy is less than 4 per cent of total imports. The system of ranking

⁸ URL: <https://www.rbc.ru/politics/27/07/2019/5d3b79e29a79471f34d25c31>

⁹ Article 27 SCM agreement

countries into developed, developing and least developed countries began to emerge in the 1970s within the framework of the UN, OECD and other international organizations. Since 1971, the UN has considered least developed countries as a category of countries that are extremely disadvantaged in their development process due to structural, historical and geographical reasons. Currently UN counts 46 least developed countries¹⁰. The UN statistical report "World Economic Situation and Prospects" categorizes countries for analytical purposes as follows: developed economies, transition economies and developing economies¹¹. This arrangement is intended to reflect the basic economic conditions of the states.

According to the Glossary of the Organization for Economic Cooperation and Development (OECD), there are no internationally fixed concepts of "developed" and "developing" countries or areas. Japan, Canada, the United States, Australia, New Zealand and Europe are in practice considered as developed regions.

In international trade statistics, the Southern African Customs Union and Israel are also considered developed, while the countries, resulting from the collapse of the Yugoslav Republic and the countries of Eastern Europe and the former Soviet camp are not included in the list of developed countries. The International Monetary Fund (IMF) divides the world into two main groups: advanced economies and emerging market and developing economies. The IMF defines advanced economies as the United States, Japan, Germany, France, Italy, England and Canada (the "Group of Seven"). This group also includes the Eurozone countries. This sample is based on a country's GDP based on the market exchange rate. In the group of emerging and developing economies, the IMF includes the CIS countries, emerging markets in Asia, Europe, Latin America and the Caribbean, the Middle East, North Africa, Afghanistan, Pakistan, and Black Africa. This sample is based on such measures as export earnings, differences between net creditor and net debtor.

The use of the division of countries into developed and developing countries, established in the practice of international organizations, was imposed on the rigid structure of the WTO, which, because it did not establish the status of acceding countries, has no possibility to change (revise) it over time and, thus, does not take into account the rapid changes in international markets, especially those that have occurred over the past 20 years.

The WTO currently covers 166 countries out of 193 countries in the world, representing 98% of all world trade¹². About 2/3 of all WTO members have the status of developing members of the organization¹³. Among the non-aligned Kiribati, Marshall Islands, Eritrea, Eritrea, Micronesia, Monaco, Nauru, Palau, San Marino, North Korea, Somalia, South Sudan, Tuvalu, Turkmenistan and Eritrea remain among the countries that have not acceded to the WTO. Algeria, Azerbaijan, Belarus, Bhutan, Ethiopia, Iraq, Libya, Serbia, Somalia, Somalia, South Sudan, Sudan, Uzbekistan are negotiating accession. It is quite obvious that

¹⁰ URL: <https://unctad.org/en/pages/aldc/Least%20Developed%20Countries/UN-list-of-Least-Developed-Countries.aspx>

¹¹ URL: https://she.mumc.maastrichtuniversity.nl/sites/intranet.mumc.maastrichtuniversity.nl/files/she_mumc_maastrichtuniversity_nl/2014_wesp_country_classification.pdf

¹² World Trade Statistical Review, 2019 // URL: https://www.wto.org/english/res_e/statis_e/wts2019_e/wts19_toc_e.htm

¹³ URL: https://www.wto.org/english/thewto_e/whatis_e/tif_e/dev1_e.htm

some countries that joined the WTO in the early 2000s as developing countries have already significantly increased their economic power and today, even according to the most stringent criteria, cannot in any way, even according to the most stringent criteria, join the WTO. Even by the most stringent criteria, cannot be classified as developing economies, but only as developed economies.

Developing countries' exports, according to UNCTAD statistical reports, have grown from \$1.4 trillion in 1995 to \$9.1 trillion in 2019, with the exports of developing countries increasing from \$1.4 trillion in 1995 to \$9.1 trillion in 2019. In the same period, world exports grew from \$5.1 trillion to \$18.9 trillion, while global exports increased from \$5.1 trillion to \$9.1 trillion in 1995 to \$9.1 trillion in 2019. the increase in global exports over the same period from us\$5.1 trillion to us\$18.9 trillion¹⁴. Thus, the share of these countries in the world trade turnover has almost doubled in 24 years: from 28% to 52%. For example, China is still considered one of the "developing" members of the WTO. However, over the past 20 years, it has significantly increased its economic power. According to the World Bank, China's GDP grew 11 times between 2001 and 2019 (from \$1.3 trillion to \$14.3 trillion). According to the international accounting firm PricewaterhouseCoopers (PwC), the center of gravity of the global economy is gradually shifting towards states emerging economies¹⁵. By 2050. China will be in first place in terms of GDP, India will be in second place, and Indonesia will be in fourth place. At the same time, the United States will fall to third place. For example, China's subsidies for R&D and high-tech development alone for 2018 amounted to 789 million yuan (\$114.8 million). The amount for 2019 is 869 million yuan (US\$124.5 million), 2019 is 869 million yuan (US\$124.5 million)¹⁶.

This result of the economic transformation of the world and the growth of developing countries cannot but affect the interests of developed countries. The US has taken the initiative to limit access to preferences in the framework of special and differential treatment for members of the "G20", members of the OECD, high-income countries according to the World Bank classification and those WTO members that account for more than 0.5% of the volume of world trade in goods¹⁷.

more than 0.5% of world trade in goods. According to the US, there is now a system in which WTO rules are fully applicable only to some members (developed) and only a number of rules to the majority (developing). The US believes that such a system does not meet the criteria of mutual benefit and reduction of trade barriers and discriminatory treatment in international trade relations.

The US position on skewing the full effect of WTO rules for only a small group of countries can be argued by the ratio of the number of developing and developed countries: of the 166 WTO members, as indicated on the official WTO website, about 150 members are developing, which is 91,4 %. At the same time, as mentioned above, it should be taken into account that when joining the organization, a country or association independently declares

¹⁴ URL: <https://data.worldbank.org/indicator/NY.GDP.MKTP.CD>

¹⁵ URL: <https://www.pwc.com/world2050>

¹⁶WTO G/SCM/N/315/ CHN, G/SCM/N/343/CHN.

¹⁷ Draft General Council Decision. Procedures to strengthen the negotiating function of the WTO. 25 November 2019. № WT/GC/W/764/Rev.1

whether it is developed or developing. It is noted that this status can be questioned, and other WTO members can challenge the decision of a member to use the provisions of the WTO agreement available to developing countries. However, in practice, there have been no precedents for a challenge. Moreover, it is doubtful that such a possibility exists¹⁸.

Except in certain cases where a list of developing countries is annexed to a WTO Agreement (e.g., Annex VII of the SCM, which identifies certain developing countries for purposes of special and differential treatment), there is no WTO provision that could provide a legal basis for such a dispute or protection against it. It should be recalled that Article 6 of the WTO Understanding on Rules and Procedures Governing Dispute Settlement requires the complainant to “provide a brief statement of the legal basis of the complaint sufficient to present the issue clearly”. In the AO's report in the Korean Beef case (DS169: Korea - Measures Affecting Imports of Fresh, Chilled and Frozen Beef), which analyzed Korea's practice, the EU noted during discussions that the “panel” considered Korea as a developing country for the purposes of the Agreement on Agriculture. The EU emphasized its disagreement with Korea's self-assessment as a developing country. However, the EU was not a party to the dispute in this particular case, and the “panel” does not have the legal capacity to decide *motu proprio* on an issue that the disputing party did not raise. Therefore, the issue was left out of the proceedings and no decisions were made.

Indeed, a difficult situation arises because, on the one hand, due to the numerical preponderance of developing countries, which at the time of accession stipulate a large number of exceptions and transition periods, the WTO rules do not work in full for the majority of members, and as a result it is not possible to talk about the equilibrium application of international trade rules, on the other hand, “so agreed”, and it is impossible to talk about any violations. Thus, the structure of participation of countries and their associations in the WTO has a rigid character and reacts slowly to economic realities. Of course, on the one hand, a WTO member can reconsider its commitments. For example, the provisions of Article XXVIII of GATT-94 allow to revise the lists of tariff concessions, and Article XXI of GATS the lists of concessions in the sphere of services. On the other hand, the revision is accompanied by “heavy” procedures of negotiations and agreements, provided that the overall level of mutual concessions or compensations is maintained. In other words, the WTO turned out to be a rather dogmatic institution, which does not imply effective maneuvering for a single country, except for those opportunities that this country “bargained” for itself during the accession period, for example, by securing the status of a developing member. Parallel development of other well-known and active on the world stage international organizations and their introduction of terminological approaches into the practice of communications, that the WTO has incorporated into its activities has in a certain way additionally “burdened the WTO agreements and the terms and conditions of membership of membership in the organization.

The lingering debate between developed and developing WTO members is that developed countries need access to developing members' markets to remain prosperous,

¹⁸ URL: <https://ielp.worldtradelaw.net/2017/12/could-wto-members-challenge-in-the-dispute-settlement-process-the-self-election-status-of-a-developi.html>

while developing countries, on the contrary, seek to maximize their own production and compete with developed countries. Thus, according to the WTO's G-2026 Trade Measures Report, between July 2017 and July 2018, 253 new trade investigations were initiated, of which 45 (18%) relate to the application of subsidies (countervailing investigations). In addition, during the same period, 191 trade protection measures were introduced, of which 20 measures are countervailing measures, i.e. measures that respond to the application of subsidies. The issues raised by the Doha Round have begun to affect already sensitive areas of regulation (substantial reduction of domestic support in agriculture, revision of access regimes in favor of developing countries, etc.), i.e. areas where equalization of regulation of developing countries with developed countries could lead to significant shifts in the regulatory environment. Regulation of developing countries with developed countries could lead to significant shifts not only in the economic sphere, but also in the social sphere. However, as mentioned above, the economic status of developing countries is also changing, which should be taken into account in the multilateral negotiation process.

In addition, at a deeper level of typification of regulatory rules, interaction mechanisms are beginning to operate that go beyond the activities of an international organization, which is the WTO, because their legal nature is more characteristic of another form of international cooperation - integration associations. For example, with regard to non-discriminatory implementation by member States of their industrial policies. It is obvious that a state, entering into integration, is ready to transfer part of its managerial sovereignty in favor of a supranational regulator. The WTO as an international organization does not imply this and uses other mechanisms: harmonization, unification, equivalence of legal norms. Returning to individual issues of the Doha Round, it should be noted that negotiations on such an important instrument of trade policy as subsidies have not yet led to any significant results, although since 2002 WTO members have been considering the issue of clarifying the rules of subsidies and the very concept of subsidies. Already at the beginning of the negotiations, the following subsidies were raised: "hidden" subsidies¹⁹, i.e. subsidies provided for research and development that are actually intended to support certain products; the inclusion of state-controlled enterprises in the concept of "government" contained in Article 1 of the SCM; "environmental" subsidies, which were proposed to be included in the group of non-actionable subsidies, and others.

On these issues, the EU has argued, inter alia, that "general support" benefits the entire commercial activity of an enterprise and hides the link between the subsidy and a specific product, so that subsidy rules should be revised to limit such "hidden" funding. In addition, according to the EU, there is a "grey area" in the subsidy disciplines regarding the issue of providing subsidies through entities that may be controlled or act at the behest of the government (e.g., providing loans or other financial support through financial institutions that operate on non-commercial terms). The provisions of the SCM do not apply to state-owned enterprises operating in the market on commercial terms. In order for financing to be recognized as a subsidy, it is necessary to prove the existence of clear directives from the

¹⁹ World Trade Organization. Negotiating Group on Rules. Summary report of the meeting held on 25–27 November 2002. № TN/RL/M/5 // URL: <https://docs.wto.org/dol2fe/Pages/SS/directdoc.aspx?filename=Q:/TN/RL/M5.pdf&Open=True>.

government, the existence of which is often difficult to identify. While it is clear that state-owned enterprises should not be considered part of the government, it may be possible to clarify Article 1 of the SCM, taking into account WTO jurisprudence, to ensure that subsidy rules are not circumvented.

Venezuela, as a developing member of WTO, has advocated for the expansion of non-actionable subsidies, which can be an instrument of development policy within the multilateral trading system, contributing to the transformation of the economic structure of developing countries, including diversification of production and increased value-added output²⁰. The current structure of subsidies does not reflect the specific interests and circumstances of all members, which hinders their realization. It should be noted here that the Doha Round has, however, made progress on some sectoral issues of subsidies. For example, in 2015, the Tenth WTO Ministerial Conference resulted in the Nairobi Package decision on export competition. This decision is historic and represents a significant step in reforming the issue of agricultural trade subsidies. The main thrust of the decision is the elimination of export subsidies in agriculture, the essence of which is to level the playing field for agricultural competition. This is particularly important for farmers in poor countries who cannot afford to compete with subsidized farmers in rich countries.

Under the Export Competition Decision, developed WTO Members eliminate their export subsidies immediately (from the date of its adoption), except for certain agricultural products, while developing Members have until the end of 2018 and 2022.³² In addition, those developing WTO Members that benefit from the provisions of Article 9.4 "Export Subsidy Obligations" of the Agreement on Agriculture have a transitional period until the end of 2023. As a result, the conditions for the application of subsidies in the FCTA and the Agreement on Agriculture were partially equalized. Export competition has been a long-standing issue in the WTO negotiations on agriculture. The proliferation of export subsidies which began in the Uruguay Round years, became a key issue in the Doha Round and remained a hot topic in recent years until the Nairobi decisions. While export subsidies for industrial products had been banned for more than 50 years, the same subsidies for agricultural products were subject to only limited regulation.

Another issue on the Doha Round's "subsidies" agenda - fish subsidies - has also been the subject of negotiations that are still ongoing. These negotiations are considering the prohibition of certain fisheries subsidies that contribute to overcapacity and overfishing. Thus, the negotiations have centered around the following main elements: a) the prohibition of subsidies that contribute to overcapacity and overproduction; b) the prohibition of subsidies for vessels and operators engaged in illegal, unreported and unregulated fishing. One of the challenges in these negotiations was to combat subsidization in developing countries such as China. China's practice of massive subsidization of the fishing industry is a serious irritant to both developed and developing countries. In the end, despite some sectoral decoupling in the subsidy negotiations, the SCM itself was never renegotiated. WTO members proved to be insufficiently ambitious and unprepared to revise the basic subsidy rules. New

²⁰ World Trade Organization. Negotiating Group on Rules. Improved rules under the agreement on subsidies and countervailing measures — non-actionable subsidies. Proposal by Venezuela. № TN/RL/W/41 // URL: <https://docs.wto.org/>

initiatives, such as the EU's proposal for a new category of prohibited subsidies - subsidies to loss-making enterprises were not supported because WTO members were opposed to singling out any form of financing and tightening subsidy disciplines, which may not be a specific subsidy in the WTO sense.

The now stalled Doha Round and the US blockade of the appointment of arbitrators to the Appellate Body (AB), which has effectively brought it to a standstill, has paralyzed the development of the organization. As a result, trade liberalization trade liberalization is being promoted through bilateral and regional agreements, while import substitution and strengthening domestic production are at the top of the trade agenda of individual WTO members. Despite this, the formation of multilateral trade rules is still a work in progress, with activity taking place, for obvious reasons, in the most sensitive areas within the framework of various initiatives.

Since 2018, individual WTO Members have taken initiatives to continue reforming subsidy rules. Thus, in 2018. The US, the EU and Japan issued a joint statement on selected issues of WTO reform. This initiative covered the issues of non-market policies of third countries, which, according to these countries, lead to overproduction, create overcapacity, create unfair conditions of competition, hinder the development and use of innovative technologies, and undermine the functioning of international trade. Ministers from the U.S., the EU, and Japan called for an accelerated discussion on industrial subsidy rules. It was suggested that consideration should be given to making so-called "harmful" subsidies prohibited; new rules against subsidies that lead to overproduction should be developed; and ways should be found to strengthen the provisions of WTO rules on improving the collection of information on subsidies and their effects. Another important issue raised by the US, the EU and Japan is the activities of public companies, which, in their view, should fall under the concept of "public body" and their activities should accordingly be governed by the provisions of the FCMC. As already mentioned in the article "The Conceptual Framework of Subsidies: Evolution and Use in Multilateral Trade Rules regarding the issue of interpretation of the term 'public authority'²¹, the WTO Appellate Body (AB) has faced the problem of impossibility to come up with a universally applicable definition, since the characteristics of public authorities differ from one legal system to another. The characteristics of public bodies differ from one legal system to another. As a result, the AO concluded that a public authority is in some way related to the government and, therefore, must possess, exercise or be vested by the government with certain powers. The assessment of the organization in question and its connection with the government must be made on a case-by-case basis. A number of members of the organization disagreed with this position of the JSC. For example, the US believes that it is sufficient to assess companies' connection with the government on the basis of government control.

Later in 2019, China launched its WTO reform initiative with a very different approach to subsidy rule reform²². China, as well as Venezuela, proposed to reinstate the provisions on non actionable subsidies and expand their list, as well as clarify the rules on subsidies and

²¹ Глазатов М. В. Понятийный аппарат субсидии: эволюция и использование в рамках многосторонних правил торговли // Евразийский юридический журнал. Серия «Экономика и право». 2018. № 10

²² China's Proposal on WTO Reform. Communication From China 13 May 2019. № WT/GC/W/773.

countervailing measures with regard to the verification of receipt of an advantage and the application of the so-called “non-actionable” subsidies and the application of so-called “available facts” to reduce the abuse of countervailing measures. In addition, China has expressed the need to improve transparency and procedures for anti-dumping and countervailing duty investigations.

In January 2020. The EU, the US and Japan concretized their proposals to amend the WTO rules on subsidies²³, namely to expand the list of prohibited subsidies (in contrast to China's position), to clarify certain issues of countervailing investigations, as well as the concept of subsidy in terms of the definition of “public authority”. In this context, the idea of so-called competitive neutrality is becoming more active. The EU WTO Reform Agenda (the EU's proposal for WTO reform) has already been built on its basis. EU proposal for WTO reform. The Communication from the EU Commission to the European Parliament, the Council of the EU, the European Economic and Social Committee and the Committee of the Regions on “An Open, Stable and Active Trade Policy”²⁴ published in 2021 explicitly notes that the current WTO rules are not sufficiently effective in combating the negative effects of state intervention in the economy. The EU believes that government intervention distorts competition both in the domestic market of WTO Members and in the world market. In addition, these measures are often non-transparent. The EU Paper emphasizes that the WTO should take into account the different types of state ownership in the economy and effectively counter interventions that lead to negative spillover effects that distort competition by favoring domestic firms, goods or services over foreign ones. According to the EU, new rules on industrial subsidies are first of all needed to counteract the negative effects of subsidies that distort normal business rules in traditional industries and lead to overcapacity. The EU proposes that the new rules industrial subsidies based on the following key principles:

- Ensuring greater transparency in the application of subsidy measures and defining additional categories of prohibited subsidies;
- proposes to create a list of “allowed subsidies” (“green box”). But none of the WTO members proposes to create a list of distorting but possible to apply under certain conditions (“yellow box”) subsidies. It seems that since such subsidies, as practice shows, are actively used by governments in the implementation of industrial policies, it is their optimal and effective regulation that is important for the further evolution of the multilateral trading system.

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