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WTO SUBSIDY SPECIFICITY AND ARTICLE 6.2 OF THE AGREEMENT ON AGRICULTURE

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Abstract. *This article examines whether the special treatment granted to development-oriented agricultural domestic support under Article 6.2 of the Agreement on Agriculture affects the application of the Agreement on Subsidies and Countervailing Measures. It focuses on investment and agricultural input subsidies and asks how qualification under Article 6.2 interacts with specificity and the rules on prohibited and actionable subsidies. The study applies doctrinal treaty interpretation, analysis of WTO dispute-settlement reports and comparison of the eligibility requirements in Article 6.2 with the specificity rules in Article 2 of the SCM Agreement. The analysis shows that Article 6.2 exempts qualifying measures from domestic-support reduction commitments and excludes them from Current Total AMS, but does not confer general immunity from wider WTO subsidy disciplines. Qualification under Article 6.2 does not, by itself, establish specificity; the assessment depends on the programme's legal scope, eligible beneficiaries, relevant jurisdiction, eligibility criteria and operation in practice. The article further argues that the requirement that investment subsidies be "generally available to agriculture" should not automatically be understood as requiring exclusive availability to the agricultural sector. It also demonstrates that the expiry of Article 13 at the end of 2003 removed conditional protection against certain actionable-subsidy proceedings and countervailing action, while Article 13(b) did not extend to prohibited-subsidy claims. The principal practical risks arise from domestic-content conditions and countervailing investigations involving subsidised agricultural products. The findings are relevant to developing-country Members and acceding economies designing agricultural support programmes.*

Keywords: *international trade law, agricultural subsidies, special and differential treatment, domestic support, specificity, Article 6.2, countervailing measures, WTO accession*

Introduction

Article 6.2 of the Agreement on Agriculture, referred to in this article as the AoA, exempts three categories of development-oriented domestic support from reduction commitments and

excludes qualifying measures from the calculation of a Member's Current Total Aggregate Measurement of Support, commonly referred to as Current Total AMS (Agreement on Agriculture, 1994, art. 6.2). The provision constitutes an important source of agricultural policy space for developing-country Members, particularly those that have no bound Total AMS commitment. Such Members may not provide non-exempt domestic support above the applicable *de minimis* levels, which are calculated separately for product-specific and non-product-specific support and amount to 10 per cent of the value of production for developing-country Members (Agreement on Agriculture, 1994, arts. 6.4 and 7.2(b)).

The significance of Article 6.2 depends partly on the legal extent of the exemption it provides. Exemption from the quantitative domestic-support disciplines of the AoA does not necessarily entail exemption from the Agreement on Subsidies and Countervailing Measures, referred to in this article as the SCM Agreement. The SCM Agreement examines governmental support through established legal criteria, including whether a financial contribution confers a benefit, whether the resulting subsidy is specific, whether it is contingent on a prohibited condition, and whether its effects justify multilateral remedies or countervailing measures. The effect of qualification under Article 6.2 on this separate legal assessment has not been directly determined in WTO dispute settlement.

The issue became more significant after the expiry of Article 13 of the AoA. During the first nine years of the WTO, that provision afforded specified agricultural support temporary protection from certain actions under the SCM Agreement and the GATT 1994. The protection expired at the end of 2003 and has not been replaced by any general immunity applicable to measures qualifying under Article 6.2. The legal position of such measures must therefore be determined under the ordinary rules governing the concurrent application of the two agreements. This question has practical importance for developing countries designing agricultural support programmes and for acceding economies negotiating domestic-support commitments that may later be difficult to modify.

The purpose of this article is to determine how the special treatment provided under Article 6.2 of the AoA affects the application of the SCM Agreement to qualifying agricultural domestic support. The central problem is that exemption from domestic-support reduction commitments does not necessarily protect the same measure from the general WTO subsidy disciplines. The article therefore examines whether qualification under Article 6.2 affects the determination of specificity under Article 2 of the SCM Agreement, what legal consequences followed from the expiry of the temporary protection provided by Article 13 of the AoA, and which features of qualifying support programmes create the greatest risk of prohibited-subsidy claims, actionable-subsidy proceedings or countervailing measures.

The article makes three contributions to the existing literature. First, it applies the established framework governing the concurrent operation of the AoA and the SCM Agreement specifically to investment and agricultural input subsidies qualifying under Article 6.2. Second, it demonstrates that the requirement that investment subsidies be "generally available to agriculture" should not automatically be equated with a requirement that they be exclusively available to the agricultural sector. Whether such a programme is specific depends on its legally defined scope, the breadth of the eligible beneficiary class and its operation within the jurisdiction of the granting authority. Third, the article distinguishes the legal consequences of the expiry of Article 13 from exposure under Article 3.1(b) of the SCM Agreement. The expiry removed the conditional protection previously available against certain actionable-subsidy proceedings and countervailing action, but it did not create exposure to prohibited-subsidy claims, because Article 13(b) had never extended its protection to Article 3.

Although WTO disputes have addressed specificity and countervailing action in relation to agricultural subsidy programmes, including *United States – Ripe Olives from Spain*, WTO dispute settlement has not directly examined how the eligibility requirements of Article 6.2 interact with the specificity test under Article 2 of the SCM Agreement. The present analysis focuses on investment subsidies and agricultural input subsidies, whose requirements of general availability raise this issue most directly, and does not examine support intended to encourage diversification from the cultivation of illicit narcotic crops.

The literature relevant to this article covers three connected areas: special and differential treatment in agricultural trade, the policy space available to developing countries under the Agreement on Agriculture, and the relationship between that Agreement and the SCM Agreement. These studies explain the developmental rationale of Article 6.2 and the broader legal framework governing agricultural subsidies. However, limited attention has been given to the interaction between the eligibility requirements of Article 6.2 and the specificity rules contained in Article 2 of the SCM Agreement.

A substantial body of scholarship examines special and differential treatment as a response to the structural characteristics of agriculture in developing countries. Matthews (2002, 2005, 2007) discusses the principal reasons advanced in favour of differentiated agricultural disciplines, including food security, rural development, economic vulnerability, dependence on agriculture and differences in Members' capacity to support producers. Within this literature, Article 6.2 is generally understood as a development-oriented flexibility that allows developing-country Members to exclude qualifying investment subsidies and agricultural input subsidies from domestic-support reduction commitments.

Related studies focus on the limited policy space available to developing countries without significant bound Aggregate Measurement of Support entitlements. Chand and Phillip (2001) examine the classification of agricultural support and the asymmetry between Members with substantial scheduled support entitlements and those relying mainly on de minimis support and exempt categories. Sharma et al. (2021) analyse Article 6.5 as an additional source of policy space and consider the Blue Box an underused option for developing countries. Hopewell (2019) documents a substantial shift in the distribution of agricultural support towards emerging and developing economies, together with the resulting conflict over which Members are entitled to differential treatment, so that the support provided by developing-country Members has grown in both scale and commercial significance. Although these studies address different aspects of the Agreement on Agriculture, they concentrate primarily on the amount and type of support that Members may provide. They do not systematically examine whether support exempt from reduction commitments remains subject to the substantive and remedial disciplines of the SCM Agreement.

The possible exposure of development-oriented agricultural support following the expiry of Article 13 was recognised during the agricultural negotiations. Green and Priyadarshi (2001), in their proposal for a Development Box, observed that Article 13 temporarily restricted certain actions against agricultural subsidies under the SCM Agreement. They recommended that, after its expiry, measures adopted by developing countries under Article 6 and Annex 2 should continue to receive protection from such actions. The proposal is relevant because it demonstrates that the possible application of the SCM Agreement to agricultural support complying with the Agreement on Agriculture had already been identified before the peace clause expired. It nevertheless represented a negotiating position rather than an agreed interpretation or decision of WTO Members.

The consequences of the expiry were also examined in the academic literature, but from the opposite direction. Steinberg and Josling (2003) assessed the vulnerability of

European Communities and United States agricultural support to challenge under the SCM Agreement once the peace clause ceased to apply, concluding that the scope for such challenges would increase substantially. Their analysis concerned the support of developed-country Members rather than measures adopted under Article 6.2. Morrissey (2007) noted the same expiry from a developing-country perspective, observing that a low-income Member could impose countervailing duties against subsidised imports now that the peace clause had lapsed, although the cost of an investigation would be considerable. The expiry was therefore analysed both for the exposure it created for developed-country support and for the remedies it made available to developing countries. Its implications for the support that developing-country Members themselves provide under Article 6.2 received no comparable examination.

The most direct doctrinal examination of the relationship between the two agreements is provided by Bartels (2016). Focusing on Article 21.1 of the AoA, he argues that the agricultural rules prevail where the AoA contains an express right, exemption or authorisation that conflicts with an obligation under another Annex 1A agreement. In the absence of such a conflict, both agreements may apply to the same agricultural subsidy. The AoA therefore does not create a general exemption from the SCM Agreement: it does not authorise subsidies contingent on the use of domestic rather than imported goods, permit subsidies causing adverse effects to other Members, or provide general immunity from countervailing measures. This analysis supports the distinction between exemption from agricultural domestic-support reduction commitments and protection from the general WTO subsidy disciplines.

This distinction is also reflected in WTO jurisprudence. In *European Communities – Bananas III*, the Appellate Body stated that the general trade rules continue to apply unless the Agreement on Agriculture contains specific provisions dealing specifically with the same matter (*European Communities – Bananas III*, 1997, paras. 155, 157). In *United States – Upland Cotton*, the Appellate Body accepted that Article 21.1 may apply where the Agreement on Agriculture contains an explicit exemption, where simultaneous compliance with both agreements is impossible, or where the agricultural rules expressly authorise conduct otherwise prohibited by the SCM Agreement (*United States – Upland Cotton*, 2005, para. 532). It nevertheless found that the domestic-support provisions of the Agreement on Agriculture did not displace the prohibition on subsidies contingent on the use of domestic over imported goods (*United States – Upland Cotton*, 2005, paras. 539–546).

General scholarship on WTO subsidy law provides the analytical foundation for the remaining inquiry. Mavroidis (2016) discusses the concurrent operation of the Agreement on Agriculture and the SCM Agreement, while Rubini (2009) and Coppens (2014) analyse the principal concepts and remedies of the general subsidy regime. These works show that the two agreements perform distinct functions. The Agreement on Agriculture classifies agricultural support and regulates its permissible amount, whereas the SCM Agreement determines whether a measure constitutes a specific subsidy and whether its design or effects give rise to legal remedies.

The literature does not, however, fully examine how the eligibility requirements of Article 6.2 interact with the specificity test in Article 2 of the SCM Agreement. The requirements that investment subsidies be generally available to agriculture and that agricultural input subsidies be generally available to low-income or resource-poor producers may be relevant to specificity, but they do not determine it automatically. This article addresses that gap by comparing the operative requirements of the two provisions and examining whether the design of an Article 6.2 programme may create exposure under the wider WTO subsidy disciplines.

Methods

This study applies a doctrinal legal methodology, supplemented by comparative and documentary analysis. The study examines the relationship between the special treatment of agricultural domestic support under Article 6.2 of the Agreement on Agriculture and the general subsidy disciplines contained in the Agreement on Subsidies and Countervailing Measures.

The doctrinal analysis interprets the relevant treaty provisions in accordance with the general rule of interpretation contained in Article 31 of the Vienna Convention on the Law of Treaties. It focuses on Articles 6.2, 7.2(b), 13 and 21.1 of the Agreement on Agriculture and Articles 1, 2, 3, 5–7 and the relevant provisions of Parts V and VIII of the SCM Agreement. The analysis distinguishes between exemption from agricultural domestic-support reduction commitments and protection from the substantive and remedial disciplines of the SCM Agreement.

WTO dispute-settlement reports are examined to determine how the AoA and the SCM Agreement operate concurrently and how specificity is assessed in relation to agricultural support programmes. *European Communities – Bananas III* and *United States – Upland Cotton* are analysed in connection with Article 21.1 of the AoA and the relationship between WTO agreements. *United States – Anti-Dumping and Countervailing Duties (China)* is used to examine the integrated operation of Articles 2.1(a) and 2.1(b) of the SCM Agreement, while *United States – Ripe Olives from Spain* and *Mexico – Olive Oil* are considered in relation to specificity, countervailing investigations and the transmission of subsidy benefits involving agricultural products. Additional WTO reports are examined where relevant to de facto specificity and programme eligibility.

Comparative analysis is used to examine the relationship between the requirement of general availability under Article 6.2 and the rules governing de jure and de facto specificity under Article 2 of the SCM Agreement. It considers the scope of eligible recipients, the jurisdiction of the granting authority, the nature of the eligibility criteria and their application in practice.

Documentary analysis places the doctrinal findings in their developmental and practical context. The materials considered include the 2001 proposal for a Development Box, official WTO summaries of relevant jurisprudence and publicly available accession materials. Uzbekistan is used as a limited practical illustration of the issues facing an acceding developing economy when designing agricultural support programmes. The interpretation and conclusions of the study remain based on the treaty provisions and WTO jurisprudence.

Results

The legal effect of Article 6.2

The textual analysis establishes that Article 6.2 expressly confers two legal consequences, both operating within the domestic-support framework of the AoA. Qualifying support is exempt from the reduction commitments that would otherwise apply, and the second sentence of the provision states that such support need not be included in the calculation of a Member's Current Total AMS.

These consequences are legally distinct. Exemption from a reduction commitment concerns whether a Member must reduce the relevant support, whereas exclusion from Current Total AMS concerns whether that support must be included in the calculation used to assess compliance with domestic-support commitments. By addressing both matters expressly, Article 6.2 confirms that qualifying measures are excluded from the quantitative disciplines applicable to non-exempt domestic support.

The provision does not, however, address the legal treatment of the same measures under the SCM Agreement. It does not determine whether a qualifying measure

constitutes a subsidy under Article 1, whether it is specific under Article 2, whether it falls within the prohibitions contained in Article 3, or whether it may give rise to proceedings under Part III or countervailing measures under Part V.

Two eligibility requirements are particularly relevant to the analysis that follows. Investment subsidies must be generally available to agriculture, while agricultural input subsidies must be generally available to low-income or resource-poor producers. Neither “generally available” nor “low-income or resource-poor producers” is defined in the AoA, and neither expression has been directly interpreted in WTO dispute settlement. Their application therefore depends on the legal design of the programme, the category of eligible beneficiaries and the conditions governing access to support. The relationship between these conditions and the specificity inquiry under Article 2 of the SCM Agreement is examined in Section 3.3.

Concurrent application of the Agreement on Agriculture and the SCM Agreement

The relationship between the Agreement on Agriculture and the SCM Agreement is governed principally by Article 21.1 of the Agreement on Agriculture. It provides that the GATT 1994 and the other multilateral trade agreements contained in Annex 1A apply subject to the provisions of the Agreement on Agriculture. This formulation does not establish a general exclusion of the SCM Agreement whenever a measure concerns agriculture. Rather, the Agreement on Agriculture prevails only to the extent of a conflict or where it contains a specific provision dealing specifically with the same matter as a rule in another Annex 1A agreement.

In *European Communities – Bananas III*, the Appellate Body stated that the general trade rules continue to apply to agricultural measures unless the Agreement on Agriculture contains specific provisions dealing specifically with the same matter (*European Communities – Bananas III*, 1997, paras. 155, 157). The agricultural character of a measure is therefore not sufficient, by itself, to exclude the application of another WTO agreement.

The relationship was considered more directly in *United States – Upland Cotton*. The Appellate Body accepted that Article 21.1 could give priority to the Agreement on Agriculture where that Agreement contains an explicit exemption from the relevant SCM discipline, where simultaneous compliance with both agreements is impossible, or where it expressly authorises conduct that would otherwise be prohibited under the SCM Agreement (*United States – Upland Cotton*, 2005, para. 532). It nevertheless concluded that the domestic-support provisions examined in that dispute did not deal specifically with subsidies contingent on the use of domestic rather than imported goods. Compliance with the agricultural domestic-support rules therefore did not exclude the application of Article 3.1(b) of the SCM Agreement (*United States – Upland Cotton*, 2005, paras. 539–546).

The same reasoning applies to Article 6.2. That provision exempts qualifying support from domestic-support reduction commitments and excludes it from the calculation of Current Total Aggregate Measurement of Support. It does not contain an express exemption from the SCM Agreement, authorise conduct prohibited by that Agreement, or make simultaneous compliance with the two agreements impossible. A Member may comply with Article 6.2 while also ensuring that the programme is not contingent on the use of domestic goods, does not cause adverse effects and satisfies the requirements applicable in countervailing proceedings.

The introductory phrase of Article 3.1 of the SCM Agreement “except as provided in the Agreement on Agriculture” does not alter this conclusion in relation to import-substitution subsidies. Article 6.2 does not provide for, authorise or regulate conditions requiring the use of domestic rather than imported agricultural inputs. It addresses the eligibility and

quantitative treatment of development-oriented support, not the source of the goods that beneficiaries must purchase. Accordingly, a programme may qualify under Article 6.2 and nevertheless fall within Article 3.1(b) if its benefits are contingent on the use of domestic over imported goods.

In the absence of a specific conflict, exemption or authorisation under the Agreement on Agriculture, qualification under Article 6.2 does not exclude the application of the SCM Agreement to the same measure.

General availability and specificity under the SCM Agreement

Specificity is a condition for the application of Parts II, III and V of the SCM Agreement. Under Article 2.1(a), a subsidy is specific in law where the granting authority, or the legislation pursuant to which it operates, explicitly limits access to certain enterprises. Article 2.1(b), however, provides that specificity does not exist where objective criteria or conditions govern eligibility for, and the amount of, the subsidy, provided that eligibility is automatic, those criteria are strictly adhered to and they are clearly stated in law, regulation or another official document so as to permit verification. Article 2.1(c) allows a finding of specificity in fact where, despite an appearance of non-specificity, the programme is used by a limited number of certain enterprises, predominantly used by certain enterprises, grants disproportionately large amounts to certain enterprises or is administered through discretionary decisions. Under Article 2.4, any specificity determination must be clearly substantiated on the basis of positive evidence.

The eligibility requirements of Article 6.2 may be relevant to this inquiry, but they do not produce an automatic finding of specificity. The central question remains whether the legal design or practical operation of the programme limits access to an enterprise, industry or group of enterprises or industries within the jurisdiction of the granting authority.

The first relevant category under Article 6.2 comprises investment subsidies generally available to agriculture. Where the legislation expressly limits access to agricultural enterprises, that sectoral limitation may indicate *de jure* specificity under Article 2.1(a), because the programme identifies its eligible recipients by reference to an industry or group of industries. The phrase “generally available to agriculture” is, however, capable of more than one interpretation. On one reading, it refers to a programme whose legally defined scope is confined to agriculture. On another, an economy-wide investment programme that is genuinely accessible to agricultural enterprises may also be regarded as generally available to agriculture, even though it is not restricted to that sector. The text of Article 6.2 does not conclusively resolve this issue. The analysis must therefore determine whether the relevant legislation limits access to agricultural enterprises or includes them within a broader, horizontally available programme.

The breadth of the eligible beneficiary class must also be assessed in context. In *United States – Upland Cotton*, the Panel explained that specificity is not susceptible to a rigid quantitative definition and must be determined on a case-by-case basis. It recognised that a subsidy may become sufficiently broadly available throughout an economy that it no longer benefits a particular limited group of producers (*United States – Upland Cotton*, Panel Report, paras. 7.1142–7.1143). Accordingly, the classification of agriculture as an industry or group of industries is relevant to the inquiry, but it does not eliminate the need to examine the programme’s legal and economic breadth within the jurisdiction of the granting authority.

Agricultural input subsidies raise a more complex issue because Article 6.2 requires them to be generally available to low-income or resource-poor producers. A programme must therefore identify the category of producers eligible for support, although Article 6.2 does not prescribe the criteria by which low-income or resource-poor status must be

determined. Depending on the programme's design, eligibility may be defined by reference to income, landholding, assets, access to productive resources, production capacity or comparable economic indicators.

Such criteria are central to the specificity inquiry because Articles 2.1(a) and 2.1(b) direct attention to the eligibility requirements imposed by the granting authority or by the legislation pursuant to which it operates. The inquiry focuses on whether access to the subsidy is explicitly limited to certain enterprises and, where relevant, whether objective criteria or conditions make eligibility automatic and non-selective. These principles must be considered together in light of the legal and factual characteristics of the programme (*United States – Anti-Dumping and Countervailing Duties (China)*, 2011, paras. 366–371).

The assessment must consequently consider whether the criteria governing eligibility and the amount of support are neutral, economic in nature and horizontal in application; whether they are clearly stated in law, regulation or another official document; whether eligibility is automatic; and whether the criteria are strictly applied. A scheme based on transparent and verifiable thresholds presents a different specificity inquiry from one that permits the granting authority to select beneficiaries through broad discretion. Similarly, a programme available to an objectively defined category of producers differs from one limited to producers of a particular commodity, agricultural subsector or selected group of enterprises. The number of eligible or actual beneficiaries may be relevant, but it is not decisive; the inquiry concerns the legal and practical nature of the limitation on access. A panel has also considered the relevance of eligibility criteria expressly excluding enterprises engaged in specified activities, although that report was appealed and was not adopted (*US – Softwood Lumber VII*, Panel Report, para. 7.730).

The need for a complete examination of programme design is illustrated by *United States – Ripe Olives from Spain*. In that dispute, the Panel found that the investigating authority had failed properly to examine the rules governing the allocation and valuation of subsidy entitlements and had not provided a reasoned and adequate explanation, based on positive evidence, of why access to the programmes was explicitly limited to olive growers. The case confirms that the agricultural orientation of a programme, or the rules governing the calculation of payments, cannot substitute for a substantiated examination of the enterprises legally eligible for support (*United States – Ripe Olives from Spain*, 2021).

Article 2.1(c) becomes relevant where a programme appears non-specific in law but in practice is used by a limited number of enterprises, is predominantly used by particular enterprises, grants disproportionately large amounts to certain recipients or is administered through discretionary decisions. The assessment must also take account of the extent of diversification of economic activities within the jurisdiction of the granting authority and the length of time during which the programme has operated. Economic diversification may be particularly relevant in developing economies where agriculture accounts for a substantial share of production and employment, but it is only one element of the inquiry and does not replace examination of the programme's legislation, administration and actual distribution of benefits.

A separate rule applies where support is contingent on the use of domestic rather than imported inputs. Under Article 2.3, subsidies falling within Article 3 are deemed specific. Once a domestic-content condition prohibited by Article 3.1(b) is established, no separate demonstration of specificity under Article 2.1 is required. The decisive question in such a case is whether receipt of the subsidy depends, in law or in fact, on the use of domestic goods.

The analysis therefore reveals a relationship of tension rather than equivalence between the two provisions. Qualification under Article 6.2 does not conclusively determine specificity under Article 2. Nevertheless, sectoral and beneficiary limitations used in the design of Article 6.2 programmes may provide significant evidence of de jure or de facto specificity. A separate determination must consider the programme's legal scope, the jurisdiction of the granting authority, the eligible beneficiary class, the nature of the eligibility criteria and the programme's operation in practice.

The expiry of Article 13 and its consequences

Article 13 of the Agreement on Agriculture temporarily regulated the availability of certain remedies under the GATT 1994 and the SCM Agreement in relation to agricultural support conforming to specified provisions of the AoA. For the purposes of Article 13, the implementation period was defined as the nine-year period beginning in 1995. The provision therefore applied until the end of 2003.

The degree of protection differed according to the category of support concerned. Domestic support conforming fully to Annex 2 was treated as non-actionable for the purposes of countervailing duties and was exempt from actions under Article XVI of the GATT 1994 and Part III of the SCM Agreement. Domestic support conforming to Article 6, including measures consistent with Article 6.2, received narrower and conditional protection. Countervailing duties could be imposed where injury or threat of injury was established in accordance with Article VI of the GATT 1994 and Part V of the SCM Agreement, although due restraint was required in the initiation of investigations. Article 6 support was also protected from actions under Article XVI:1 of the GATT 1994 and Articles 5 and 6 of the SCM Agreement, provided that the support granted to a specific commodity did not exceed the level decided during the 1992 marketing year (Agreement on Agriculture, 1994, art. 13(a)–(b)).

The express inclusion of support conforming to Article 6.2 within Article 13(b) is relevant to the relationship between the two agreements. It confirms that qualification under Article 6.2 did not, by itself, exclude the availability of remedies under the SCM Agreement. Article 6.2 determined the treatment of qualifying measures under the domestic-support commitments of the AoA, whereas Article 13 separately and temporarily restricted particular forms of legal action against those measures.

The scope of that protection was not comprehensive. Article 13(b) referred to Articles 5 and 6 of the SCM Agreement but did not exempt domestic support from Article 3. Consequently, Article 13 did not provide a safe harbour for support contingent on the use of domestic rather than imported goods. An Article 6.2 programme containing such a condition could therefore fall within Article 3.1(b) of the SCM Agreement even during the implementation period.

The expiry of Article 13 removed the special protection previously afforded to Article 6.2 support against actionable-subsidy proceedings and countervailing action. It did not alter the conditions for qualification under Article 6.2, establish that qualifying measures were specific, or automatically render them prohibited or actionable. Rather, after the end of 2003, the ordinary requirements of the SCM Agreement became applicable without the additional restraints previously imposed by Article 13.

Accordingly, subject to the limitations applicable to developing-country Members under Article 27.9 of the SCM Agreement, Article 6.2 support may be challenged through the actionable-subsidy procedures where the relevant requirements are met. Subsidised agricultural products may also be subject to countervailing measures where subsidisation, specificity, injury and causation are established. Exposure under Article 3.1(b), by contrast, did not arise from the expiry of Article 13, because domestic support conforming to Article

6 had never been exempted from that prohibition. The expiry of Article 13 nevertheless increased the practical importance of assessing development-oriented agricultural support under both agreements when such programmes are designed.

Discussion

Relative legal exposure and implications for programme design

The results show that the three principal forms of exposure under the SCM Agreement do not present the same degree of legal or practical risk. The strictest route arises under Article 3.1(b), which prohibits subsidies contingent, whether solely or as one of several conditions, on the use of domestic rather than imported goods. Where that condition is established, the subsidy is deemed specific under Article 2.3, and the complaining Member is not required to demonstrate adverse effects or injury. The remedy is withdrawal of the prohibited subsidy without delay under Article 4.7 (Agreement on Subsidies and Countervailing Measures, 1994, arts. 2.3, 3.1(b), 4.7; Coppens, 2014).

This risk is particularly relevant to agricultural input-support programmes. A subsidy may satisfy Article 6.2 because it assists low-income or resource-poor producers, but still violate Article 3.1(b) if entitlement depends on purchasing domestically produced fertiliser, seeds, machinery or other inputs. The fact that a domestic-content condition pursues agricultural development or industrial-policy objectives does not alter its legal character. In *United States – Upland Cotton*, the agricultural context of the Step 2 payments did not prevent their treatment as subsidies contingent on the use of domestic rather than imported goods (*United States – Upland Cotton*, 2005). Article 6.2 programmes should therefore define eligible inputs by reference to their function, quality, cost or technical characteristics rather than their national origin.

For programmes that contain no prohibited condition, countervailing action under Part V is likely to constitute the more immediate practical exposure. An importing Member may investigate whether a subsidised agricultural product causes injury to its domestic industry, provided that the authority establishes the existence of a subsidy, specificity, injury and causation. The litigation concerning olive oil and ripe olives demonstrates that agricultural support may generate complex questions concerning the attribution and transmission of benefits from primary producers or agricultural inputs to processed products (*Mexico – Olive Oil*, 2008; *United States – Ripe Olives from Spain*, 2021). In the latter dispute, the Panel confirmed that an investigating authority could not simply presume that the full benefit of subsidies granted to raw agricultural inputs had passed through to an independently produced downstream product; the existence and extent of pass-through had to be established through an analysis of the relevant facts and circumstances (*United States – Ripe Olives from Spain*, 2021, paras. 7.154–7.176).

Developing-country Members retain limited quantitative protection under Article 27.10. A countervailing investigation must be terminated where the overall level of subsidisation of the product does not exceed 2 per cent of its value on a per-unit basis or where the volume of subsidised imports falls below the applicable threshold. The Appellate Body clarified that this provision requires termination of the investigation rather than creating a presumption that low levels of subsidisation cannot cause injury (*United States – Carbon Steel*, 2002). Programme authorities should therefore monitor not only the total public expenditure involved but also the level of support attributable to each product that may enter export markets.

Multilateral proceedings concerning actionable subsidies present a comparatively narrower route where the subsidising Member is a developing-country Member. Article 27.9 provides that action under Article 7 may not be authorised or taken unless the subsidy causes nullification or impairment by displacing or impeding imports of a like product into the market of the subsidising Member, or causes injury to a domestic industry in the market

of an importing Member. The provision therefore does not permit action based solely on serious prejudice outside those specified circumstances, although it does not eliminate the possibility of multilateral challenge altogether (Agreement on Subsidies and Countervailing Measures, 1994, art. 27.9; Coppens, 2013). The expiry of Article 13 removed the additional protection previously available to qualifying agricultural support, but it did not displace the differentiated limits that Article 27.9 continues to provide for developing-country Members.

These differences should inform programme design. Eligibility for Article 6.2 support should be based on transparent and verifiable economic criteria; entitlement should be automatic once those criteria are satisfied; and unnecessary restrictions to particular commodities, subsectors or selected enterprises should be avoided. Authorities should also monitor whether benefits become concentrated among a limited group of recipients and retain records demonstrating how the programme is administered. Most importantly, support should not be conditioned on the use of domestic inputs. These safeguards cannot guarantee that a programme will be found non-specific or immune from countervailing action, but they reduce the risk that development-oriented support will acquire features that trigger the stricter disciplines of the SCM Agreement.

Implications for developing and acceding economies

The findings indicate that qualification under Article 6.2 should be treated as the first stage of the legal assessment rather than as its conclusion. Developing-country Members should subject proposed agricultural support programmes to two distinct reviews. The first should determine whether the measure satisfies Article 6.2 and may therefore be excluded from domestic-support reduction commitments and Current Total AMS. The second should assess whether the same measure constitutes a specific subsidy under the SCM Agreement, contains a prohibited condition or may expose subsidised products to actionable-subsidy proceedings or countervailing measures.

This distinction is particularly important for acceding economies. Domestic-support commitments negotiated during accession are incorporated into the Member's Schedule and become legally binding limits on subsidisation under Articles 3, 6 and 7 of the AoA. Securing adequate policy space in the Schedule is therefore important, especially where the acceding economy may otherwise depend on *de minimis* support and the exemptions contained in Article 6.2. However, a negotiated domestic-support entitlement cannot displace the independently applicable disciplines of the SCM Agreement. Accession negotiations and domestic programme design must consequently be approached as related but legally separate processes.

Uzbekistan provides a timely illustration, as its WTO accession negotiations continued in 2026, with the thirteenth meeting of the Working Party on its accession held in Geneva on 27–28 July 2026 (World Trade Organization, 2026). The practical task is not only to negotiate appropriate domestic-support commitments but also to ensure that agricultural investment and input programmes are designed in an origin-neutral, transparent and administratively verifiable manner.

The pass-through issue may also be relevant where support granted to producers of a primary agricultural product is alleged to confer an indirect benefit on independently operated downstream processors. In the context of Uzbekistan's cotton and textile value chains, for example, support provided at the agricultural production stage should not automatically be attributed to producers or exporters of yarn, fabric or other processed products. As *United States – Ripe Olives from Spain* demonstrates, the existence and extent of any indirect benefit must be established through an examination of all relevant facts and circumstances rather than presumed solely from the economic relationship between the primary product and the processed product.

Transparency obligations under the AoA reinforce the need for adequate programme documentation. Article 18.3 requires the prompt notification of any new domestic-support measure, or modification of an existing measure, for which exemption from reduction commitments is claimed, together with details of the measure and its conformity with Article 6 or Annex 2 (Agreement on Agriculture, 1994, art. 18.3). Domestic-support notification requirements also cover Current Total AMS and measures claimed as exempt from reduction commitments. Authorities should therefore maintain programme legislation, eligibility rules, expenditure data and beneficiary records capable of demonstrating why support qualifies under Article 6.2 and how the criteria operate in practice. The same documentation may become relevant in a specificity analysis or countervailing investigation.

The tension identified in this article does not justify treating all Article 6.2 support as immune from the SCM Agreement. A more proportionate response would be clearer guidance on the meaning of “generally available” and “low-income or resource-poor producers,” together with clarification of how objectively defined development criteria should be assessed under Article 2. Any enhanced protection should remain conditional on transparency, automatic and verifiable eligibility, and the absence of domestic-content or export-contingency requirements.

Conclusion

This article examined whether the special treatment granted to development-oriented agricultural domestic support under Article 6.2 of the Agreement on Agriculture affects the application of the Agreement on Subsidies and Countervailing Measures. The analysis establishes that Article 6.2 expressly exempts qualifying investment and agricultural input subsidies from domestic-support reduction commitments and excludes them from the calculation of Current Total AMS. These legal effects operate within the quantitative framework of the Agreement on Agriculture and do not, by themselves, confer immunity from the wider WTO subsidy disciplines.

Article 21.1 of the Agreement on Agriculture does not establish a general priority for agricultural rules over the SCM Agreement. In the absence of a specific conflict, exemption or authorisation, both agreements may apply concurrently to the same measure. Article 6.2 does not specifically regulate the matters addressed by the SCM Agreement, including specificity, domestic-content contingency, adverse effects and countervailing action. Qualification under Article 6.2 must therefore be distinguished from compliance with the substantive and remedial requirements of the general subsidy regime.

The relationship between Article 6.2 eligibility and specificity is more nuanced. Qualification under Article 6.2 does not automatically establish specificity under Article 2 of the SCM Agreement. Nevertheless, the sectoral and beneficiary limitations used to design qualifying programmes may provide significant evidence of *de jure* or *de facto* specificity. The outcome depends on the programme’s legal scope, the jurisdiction of the granting authority, the class of eligible recipients, the nature of the eligibility criteria and the manner in which the programme operates in practice. Where support falls within Article 3 of the SCM Agreement, specificity is deemed under Article 2.3, and no separate assessment under Article 2.1 is required.

The expiry of Article 13 at the end of 2003 removed the special protection previously afforded to Article 6.2 support against certain actionable-subsidy proceedings and countervailing action. Importantly, exposure to Article 3.1(b) was not created by the expiry of Article 13, because the protection granted to domestic support under Article 13(b) did not extend to prohibited-subsidy claims under Article 3. The expiry did not make qualifying support automatically unlawful, but increased the importance of assessing agricultural programmes under both agreements. Domestic-content conditions present the most

severe legal exposure, while countervailing investigations are likely to constitute the most immediate practical risk for otherwise permissible support.

Developing and acceding economies should therefore treat Article 6.2 qualification as the beginning rather than the conclusion of programme review. Agricultural support should be based on transparent, objective and verifiable eligibility criteria, administered consistently and designed without domestic-content or export-contingency requirements. Clearer WTO guidance on the relationship between Article 6.2 and specificity would improve legal predictability while preserving the development-oriented flexibility recognised by the Agreement on Agriculture.

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