



# BIOFUELS SUBSIDIES AND THE LAW OF THE WORLD TRADE ORGANIZATION

By Toni Harmer

GLOBAL PLATFORM ON CLIMATE CHANGE, TRADE & SUSTAINABLE ENERGY

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## EXECUTIVE SUMMARY

**In recent years, governments have eagerly embraced biofuels as a home-grown solution to a range of complex policy challenges, including climate change, dependence on foreign energy, and rural development. Biofuels have also been promoted to developing countries as a way of opening up new markets for their agricultural goods.**

Government subsidies and other incentives have promoted and supported investment in biofuels where such businesses would not otherwise have been commercially viable, but little attention has been paid to the trade and economic impacts of these measures and, in particular, their World Trade Organization (WTO) implications. The WTO disciplines on subsidies provide an important framework to constrain the proliferation of trade-distorting subsidies that can lead to global inequities, particularly for developing and least-developed countries.

This paper reviews biofuel measures that are commonly used in major producing countries against WTO subsidy disciplines. There is little evidence that domestic policymakers have taken into account WTO disciplines when crafting these measures. This paper identifies a number of issues for policymakers to consider, including the following:

- WTO subsidy disciplines do not prohibit all subsidies or support to biofuels. Rather, the WTO rules concern themselves with subsidies that have a trade-distorting effect.
- The green box provisions of the WTO Agreement on Agriculture (AoA) do not provide a broad category sheltering measures on the basis that they offer some environmental benefits. To qualify as green box support, requirements must be met. In particular, payments under environmental programs must be limited to the costs of compliance with the program.
- The issue of whether subsidies have been passed on to the benefit of other participants in the biofuel production chain may be particularly relevant in a biofuels context, where subsidies are provided at various stages of the production and use chain.
- Attempts to provide assistance by way of decoupled payments are likely to be scrutinized closely, and the requirement that a payment may not be “related to” production will be applied strictly. If there is some condition attached to the payment that would have an impact on production, positive or negative, direct or indirect, it is not likely to qualify as a decoupled payment.

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- Many countries have sought to foster domestic production and use of biofuels, raising the prospect of policies that favor domestically sourced biofuels. This may present problems.

In addition, this paper identifies some complex issues that arise from the interaction between trade rules and biofuel subsidies that warrant further examination. These include the following:

- How ethanol subsidies should be notified under the WTO, and in particular, the scope of ethanol subsidies that should be properly included in a WTO Member's aggregate measurement of support (AMS) calculation. Given that ethanol is an agricultural product, it is conceivable that some subsidies to ethanol producers are provided "in favor of the producer of the basic agricultural feedstock" and thus should be included in the AMS.
- The multiplicity of biofuel subsidies and other incentives can lead to situations where the interaction between two measures has a trade-distorting impact. In such a case, a question arises as to whether the combination of the measures could be an actionable subsidy, where taken individually neither measure would meet the threshold requirements.
- Given the shifting focus of support in many countries to second and third-generation biofuels, how would these biofuels and their feed stocks be classified for WTO purposes?

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The full study is available online at <http://ictsd.org/climate-change/agriculture-and-biofuels/>

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