

**Summary of Session 35 at the 2010 WTO Public Forum**  
**Organized by the International Food & Agricultural Trade Policy Council**  
**(IPC)**  
**"Clarifying WTO Rules for Biofuels" - 17 September 2010**

**Moderator:** Dr. Stefan Tangermann, University of Gottingen, IPC Member

**Speakers:** Dr. Tim Josling, Stanford University, IPC Member  
Mr. Ronald Steenblik, OECD  
Dr. Harsha Vardhana Singh, WTO

**Overview of the Session**

This session focused on the relationship of biofuels interventions to trade, WTO disciplines, and the WTO as an organization. Dr. Tangermann noted that the production of and trade in biofuels is expected to grow significantly during the coming decade. Despite the growing importance of biofuels, speakers agreed that it is unclear how WTO agreements apply to government interventions in this sector. The speakers agreed that this lack of clarity derived in part from the fact that the extent and structure of such policies are not fully known due to incomplete data.

Dr. Josling emphasized that information about government interventions in the biofuels sector is scattered and incomplete. He pointed out the gaps in WTO notifications and made several recommendations as to how to improve the information deficit about biofuels policies, including: coordination between the WTO subsidies and agriculture committees; coordination between the WTO, IEA, and OECD to gather and publish all information submitted on countries' biofuels policies; use of the TPR mechanism to better understand policies in the biofuels sector; clarification about the classification of biofuels (as ethanol and biodiesel are presently classified differently); and consideration of whether biofuels subsidies should also be counted as agricultural subsidies, therefore subjecting them to notification under the *Agreement on Agriculture*.

Mr. Steenblik traced the development of sustainability standards for biofuels, describing the theories underpinning successive phases of government support for biofuels. He explained that concerns about climate change are a relatively recent rationale for biofuels interventions and described how views on biofuels and their impact on greenhouse gas emissions continue to evolve. In recent years, as a result of an emerging focus on the inputs and technology used to process biofuels, three major trade economies have enacted sustainability standards for biofuels. However, there is a lack of scientific consensus regarding the nature and application of such standards. Specifically, the data and models used to assess conformity are subject to dispute among experts. Because such schemes impact trade and could be considered to discriminate among like end-products (biofuels), Mr. Steenblik suggested that they may be vulnerable to challenge at the WTO.

The question was raised as to whether the WTO should be more engaged on climate change issues. Dr. Singh responded that the WTO Secretariat has produced a substantive report recently with UNEP on certain climate change issues, and has been following the climate change discussions. Acknowledging that Members' notifications of their biofuels subsidies are often incomplete, contributing to a deficit of information about such interventions, Dr. Singh pointed to efforts by the Secretariat to promote better notification. As trade in biofuels is expected to increase, the speakers agreed that understanding the relationship of biofuels subsidies and other interventions to WTO disciplines and negotiations was key.

The discussion touched on both the economic and WTO legal analysis of various biofuels

interventions, including analysis of biofuels interventions and of Member's obligations in connection with such policies in the context of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement") and the *Agreement on Agriculture*. The speakers described how these agreements, and the *Agreement on Technical Barriers to Trade* ("TBT Agreement"), could possibly apply to biofuels subsidies. Dr. Singh noted that a successful Doha Round would greatly impact government interventions to support the biofuels sector, in that the agreement under discussion would impose new disciplines on the use of tariffs, standards and non-tariff barriers (NTBs), and other measures that are relevant to the biofuels sector. The speakers acknowledged the potential for conflict - including WTO disputes - in the coming years as trade in biofuels continues to grow and governments continue to intervene to support the sector.

Dr. Singh emphasized the need to distinguish between economic and WTO legal analysis, arguing that even though economic analysis may lead to the conclusion that a particular policy is inefficient, this does not mean that the policy in question is not allowed under WTO rules. Even though economists may agree that a subsidy impacts the production of and/or trade in biofuels, that subsidy must fit the definition of "subsidy" in order to be deemed prohibited or actionable under the SCM Agreement. For instance, a benefit must be conferred. Dr. Singh noted that whether this is the case in relation to biofuels subsidies is not entirely clear, something the other speakers had acknowledged as well.

Dr. Tangermann concluded the session by observing that there was much work to be done in terms of both economic and WTO legal analysis of biofuels interventions.

### **Summary of Presentation by Tim Josling**

Conflict over biofuels subsidies is likely to emerge in the coming years, as production and trade in biofuels subsidies increase and governments continue to intervene in the sector. Biofuels subsidies can provide downstream benefits to agricultural producers, whereas agricultural subsidies can provide upstream benefits to the biofuels industry. Information about biofuels interventions tends to be fragmented and difficult to interpret. While the Global Subsidies Initiative (GSI) has demonstrated that calculations are possible, such information is scattered and incomplete. Greater transparency is required not only for biofuels subsidies, but for the entire energy sector.

Deficiencies exist in WTO notifications under both the SCM Agreement and the *Agreement on Agriculture*. The SCM Agreement requires that WTO Members notify their subsidies in enough detail to enable other Members to calculate the trade impacts of such support (Article 25). Although the United States and EU have notified their biofuels subsidies to the WTO under this agreement, there are major discrepancies between the figures notified and GSI (Global Subsidies Initiative) estimates of US and EU annual biofuels subsidies. For instance, the EU notified 54 million euro, whereas the GSI estimate was 5.2 billion euro.

Under the *Agreement on Agriculture*, Members are required to notify agricultural subsidies, classifying them into different boxes of support and calculating their total trade-distorting support (Aggregate Measure of Support, or AMS). Gaps in Members' notifications of biofuels subsidies under the *Agreement on Agriculture* undermine efforts to analyze the impact of these policies. Different factors contribute to such notification gaps, including classification of biodiesel as an industrial rather than agricultural product, and the issue of "leakage" of support provided to biofuels producers and blenders. The result is a lack of clarity as to what types of subsidies must be notified under the *Agreement on Agriculture*. As an example, in one US notification, the United States notified USD 150 million in bioenergy-related support to agriculture, but did not include any support for corn prices that resulted from ethanol mandates and tax credits (estimated at USD 3 billion). Similar gaps exist in relation to other Members' notifications as well.

Several approaches to improving transparency are proposed in a recent IPC paper on biofuels and WTO rules by Dr. Josling, together with J. Earley and D. Blandford. This paper is available at <http://www.agritrade.org/BiofuelSubsidiesUSEUBrazil.html>.

### **Summary of Presentation by Ronald Steenblik**

Governments initially provided support for the biofuels sector to decrease reliance on fossil fuel imports and to promote rural development, rather than to combat climate change. The belief that biofuels burn more cleanly and can therefore contribute to the reduction of greenhouse gas emissions is a relatively recent rationale. Although biofuels were at first perceived to be carbon-neutral, upon closer examination, it became apparent that this assessment ignored inputs for the processing of the crops and the biofuels.

During the past decade, more countries have embraced biofuels, in part to offset the escalating cost of oil. Governments have enacted various policies including excise tax exemptions, mandates, subsidies, and tariffs, providing a wide range of support for the sector. By the mid-2000s, scientists began to understand that while biofuels (the end-product) may be the same, the carbon-intensity of the processes and energy needed to grow and process different feedstocks is not. For example, some facilities use coal to process corn into biofuel. Scientists became concerned that certain feedstocks and production methods could actually increase greenhouse gas emissions.

The concept of the "carbon debt" was developed as a way to more fully consider the impact of biofuels. Scientists began estimating the amount of time that it would take to repay carbon removed from the earth to make feedstock for biofuel, via beneficial use of the relevant biofuel. Estimates ranged as high as 100 years. Sustainability standards were developed to address this problem. Under this approach, production methods including the greenhouse gas emissions resulting from each method would be part of determining which alternative fuels should count as true "biofuels" that reduce greenhouse gas emissions. Standards would be established to provide incentives for use of such biofuels.

A number of groups, including the Roundtable on Sustainable Biofuels, promoted the use of sustainability standards. Switzerland, the United States, and the EU have enacted sustainability standards for biofuels. While these standards do not *de jure* restrict imports, they do affect trade in that they determine eligibility for subsidies and mandates in these importing countries. Some standards address land use or other social issues, even though the measurement of indirect land-use change in response to biofuels incentives (ILUC) has been the subject of particular controversy. Low carbon fuel standards, currently under consideration in several jurisdictions, are a type of sustainability standard that determines the percentage improvement of a biofuel over fossil fuels and rewards biofuels producers and suppliers for each percentage point. The underlying lifecycle assessment models are a source of controversy.

Because of their impact on trade and, potentially, discrimination among biofuels based on PPMs, sustainability standards may be vulnerable to challenge at the WTO. More analysis of the applicability of WTO rules to this type of government intervention is warranted.

### **Summary of Comments by Harsha Vardhana Singh**

Economic analysis is separate from the legal obligations that apply to different types of measures. In terms of the application of the WTO agreements to biofuels interventions, economic analysis of government interventions is only the starting point. Ultimately the programs and policies must be judged against the legal requirements in the disciplines, which focus on transparency and good governance, but also non-discrimination, most-favored nation obligations, committee discussions, etc. Economic and legal analysis are necessarily different. The existing WTO agreements, plus the relevant jurisprudence, constitute a toolbox that can be applied to address various types of

government interventions, including those related to the biofuels sector.

The *Agreement on Agriculture* is specific to agriculture, and the SCM Agreement is the "umbrella" agreement that is applicable to subsidies for all types of goods. These agreements set forth different approaches to subsidies. The *Agreement on Agriculture* describes "green box" subsidies including, for instance, support related to research and development. Trade-distorting subsidies are notified and quantified under this Agreement using the Aggregate Measure of Support (AMS). Agricultural subsidies are also subject to the SCM Agreement, which sets out a very different approach for analyzing subsidies. For instance, the SCM Agreement identifies "prohibited subsidies", based on specific criteria. In the WTO context, therefore, there are different sets of disciplines that govern subsidies including those for biofuels. However, all subsidies, including for agriculture, have to be notified under the WTO's Subsidies and Countervailing Measures Agreement.

Several types of measures have been discussed in these presentations, many of which are being addressed in the Doha negotiations. On the table in the Doha Round, we have a system of disciplines that will change the nature of the measures we have been discussing today, as perceived under notification systems and also in terms of their legality under WTO rules. From both an economic and WTO legal perspective, successful conclusion of the Doha Round is extremely important.

With regard to biofuels subsidies and standards, there are certainly some issues that are less than straightforward. For instance, do blending requirements fit the definitions of "subsidy" under the SCM Agreement and the *Agreement on Agriculture*? This is not clear and will depend largely on the nature of the market. If there is no local content requirement, it is not clear how the benefit from biofuels support may be distributed to input suppliers. .

In addition, the quantification of support is not entirely straightforward. It's important to recognize that the GSI figures for biofuels support are higher than those notified to the WTO at least in part because they include things that are not required to be included in AMS under the provisions of the *Agreement on Agriculture*, or that are not required to be notified under the SCM Agreement. This doesn't necessarily mean that Members are not reporting programs or are otherwise hiding support. Rather, the basic framework for analysis is different.

This said, incomplete notifications are an issue. Members' fulfillment of this obligation at times leaves a lot to be desired, and the Secretariat recognizes that this is a problem and has been working on it. The WTO Secretariat has likewise kept itself informed to help address other such issues including biofuels support.

## Select Q&A

(1) European Association of Sugar Traders: My question concerns classification of biofuels in the HS. Why should biodiesel be classified as an agricultural product? Also, how do you think that second and third generation biofuels should be classified?

TJ: I would argue that biodiesel should be an agricultural product because it is made from agricultural inputs. Even though it is connected to agriculture, biodiesel was defined under the HS system not by its agricultural roots but rather as part of a bunch of unspecified products of a similar, industrial nature. It should be removed and considered an agricultural product. This would certainly make analyzing its effects on agricultural markets easier.

ST: A major implication of such reclassification would mean that biodiesel subsidies would have to be included in AMS classification. This could take away some of the "space" in the AMS classifications from other product support. (TJ pointed out that, until there are product-

specific limits for the AMS, which are under discussion in the Doha talks, the space between AMS limits and actual spending are huge and biodiesel subsidies could likely fit. For the EU, this would probably work for at least another 15 years, according to his projections. The United States also has some flexibility.)

RS: The WCO, in Chapter 38, has recently created a new line for biodiesel. This said, because the *Agreement on Agriculture* only covers Chapters 1 through 24, biodiesel would still not come under WTO agriculture disciplines. Also, commenting on what Tim said: if you are subsidizing the creation of something that is industrial but uses agricultural inputs, *i.e.* if you subsidize the industrial product, are you also subsidizing the agricultural input? Are you subsidizing agriculture?

(2) Rolf Moehler (IPC Member): Could the WTO set up a working group to look at climate change or other issues? Why does the WTO tend to wait for agreement among Members then start working on an important issue, rather than starting as soon as the problem is on the horizon?

HVS: Climate change is such a big issue that it can't be looked at only from a trade perspective. The WTO cannot jump in alone on this issue. Rather, let's see what the climate fora give us. Let's see what their assessment is as to the most targeted and appropriate ways of dealing with the issue. Then, we can see what trade measures would be involved and how they might relate to WTO disciplines and capacity. For instance, were the climate fora to say that border measures are a good way to deal with climate change, the WTO could assess what this means in terms of WTO disciplines and trade effects. It would be inappropriate for the WTO, a purely trade body, to be the organization coming up with recommendations as to the best way to address greenhouse gas emissions.

*Jennifer Brant*  
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