SCHOOL OF LAW

THE IMPACT OF AGRICULTURAL SUBSIDIES: A LEGAL ASSESSMENT OF THE SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) ON ZAMBIA'S TRADE AND ITS COMPLIANCE WITH WTO RULES

By:

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2025

DECLARATION

I declare that the dissertation titled **THE IMPACT OF AGRICULTURAL SUBSIDIES: A LEGAL ASSESSMENT OF THE SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) ON ZAMBIA'S TRADE AND ITS COMPLIANCE WITH WTO RULES** which is hereby submitted to the School of Law at the University of Lusaka as part of the requirements for the award of the Bachelor of Laws Degree (LLB), is my original work and has not previously been submitted for the award of a degree at this or any other tertiary institution. The sources that have been used or quoted have been indicated and duly acknowledged as complete references.

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KNOX KAMUSWEKE

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2025

RECOMMENDATION

I recommend that this dissertation prepared under my supervision by KNOX KAMUSWEKE entitled **THE IMPACT OF AGRICULTURAL SUBSIDIES: A LEGAL ASSESSMENT OF THE SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) ON ZAMBIA'S TRADE AND ITS COMPLIANCE WITH WTO RULES** be accepted for examination. I have checked it carefully and I'm satisfied that it fulfils the requirements pertaining to the format laid down in the regulations governing directed research.

Ms. INONGE MUTEMWA

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2025

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This achievement is not mine alone but a reflection of the collective support, sacrifice, and inspiration I have received. I remain forever grateful.

DEDICATION

To my dear parents, Mr. Davison Daniel Kamusweke and Mrs. Hildah Tiyane Chibanga-Kamusweke, this dissertation is dedicated to you with profound love and gratitude. Your unwavering support, sacrifices, and prayers have been the pillars of my journey. Thank you for instilling in me the values of perseverance, integrity, and faith. This achievement is as much yours as it is mine.

LIST OF ABBREVIATIONS

SAFF	Sustainable Agriculture Financing Facility
WTO	World Trade Organisation
AOA	Agreement on Agriculture
ASCM	Agreement on Subsidies and Countervailing Measures
ZCGS	Zambia Credit Guarantee Scheme
GATT	General Agreement on Tariffs and Trade
IMF	International Monetary Fund
OECD	Organisation for Economic Co-operation and Development
US	United States
AMS	Aggregate Measure of Support
FRA	Food Reserve Agency
FISP	Financial Input Support Programme
AfCFTA	The African Continental Free Trade Area
DSB	Dispute Settlement Body
COMESA	The Common Market for Eastern and Southern Africa

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CHAPTER ONE

1.0 INTRODUCTION

Agricultural subsidies have long been a subject of contention within International Trade discourse, influencing global market dynamics and the nature of relations among trading nations. In recent years, however, the pursuit of sustainable development has gained prominence as governments seek to reconcile economic progress with broader objectives of social equity and environmental responsibility.

In Zambia, agriculture remains a fundamental pillar of the national economy and a crucial source of livelihood for much of the population. In response to the sector's developmental needs, the government introduced the Sustainable Agriculture Financing Facility (SAFF), a strategic initiative designed to promote sustainable farming practices and enhance agricultural productivity through improved access to affordable financing.[1]

The programme is being implemented with a focus on the most critical needs such as fertilizer, seed, and irrigation, mechanisation (facilitating access to farm machinery such as tractors and ploughs to enhance productivity), aquaculture, and livestock.[2]

On 15th March 2025, the Agriculture Principal Public Relations Officer (PPRO) in the Ministry of Agriculture, Balewa Zyuulu, gave a statement on the Zambia National Broadcasting Corporation (ZNBC) television main news at 19:00hrs that the government had disbursed about ZMW755.3 million in the SAFF program, with ZMW640 million already utilized.

The SAFF was primarily established to advance sustainable agricultural development in Zambia. However, the implications of this initiative may extend beyond the country's borders, engaging with the broader and often complex framework of International Trade Law. Policies of this kind frequently raise debate within global trade discussions, as they have the potential to alter market dynamics by artificially lowering production

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[1] Ministerial Statement by Honorable. Reuben Mtolo Phiri, the Minister of Agriculture, on the status of Sustainable Agriculture Financing Facility (SAFF) delivered on Thursday 13th February 2025 in Parliament available at https://www.parliament.gov.zm/publications/all-ministerial-statements (accessed 11 April 2025).
[2] The Sustainable Agriculture Financing Facility (SAFF) available at https://www.agriculture.gov.zm/fisp/ (accessed 10 February 2025).

costs and, in turn, creating disparities in competitive conditions. While SAFF plays a vital role in strengthening Zambia's agricultural sector and promoting national food security, its implementation could inadvertently disadvantage other trading partners, thereby increasing the likelihood of trade disputes under World Trade Organization (WTO) provisions related to fair competition and market balance.

The WTO frameworks, notably the Agreement on Agriculture (AoA) and the Agreement on Subsidies and Countervailing Measures (ASCM), are designed to balance the pursuit of national policy objectives with the maintenance of equitable conditions in global trade. Nevertheless, persistent disagreements among member states highlight the ongoing challenges associated with reconciling domestic economic priorities and the broader principles of fair international competition.

This research examines the influence of the SAFF on Zambia's trade landscape, focusing on how the initiative shapes national trade policies, adherence to International Trade commitments, and the performance of agricultural exports.

1.1 BACKGROUND OF THE STUDY

Agriculture remains a central component of Zambia's economy, second only to copper mining, and continues to serve as a vital source of employment, food security, and foreign exchange earnings. Despite its significance, the sector faces persistent structural challenges, including limited access to affordable financing, inadequate infrastructure, and increasing exposure to climate-induced risks such as recurring droughts. In response, the Government of the Republic of Zambia introduced SAFF, a targeted policy initiative aimed at improving access to affordable and sustainable financial facility for both small and medium-scale farmers.[3] By encouraging the adoption of climate-resilient and market-oriented agricultural practices, SAFF seeks to promote inclusive economic growth while strengthening productivity and enhancing the international competitiveness of Zambia's agricultural industry.

The introduction of SAFF marks a notable step forward in integrating sustainability considerations into Zambia's national development strategy, with a particular focus on the agricultural sector. The initiative further reflects the country's dedication to meeting

[3] Ibid n (3).

its international commitments, including the United Nations Sustainable Development Goals (SDGs) on poverty reduction and food security, as well as the climate adaptation targets outlined in the Paris Agreement aimed at mitigating the effects of drought.[4] However, as Zambia expands its support for sustainable agriculture through this financing mechanism, it must navigate the intricate regulatory and economic frameworks that govern International Trade relations.

The SAFF raises significant legal considerations within the sphere of International Trade Law, particularly regarding its alignment with WTO regulations, the potential for it to be classified as a trade-distorting subsidy, and its broader effects on trade patterns and bilateral or multilateral trade relations. In this context, the present study examines the influence of SAFF on Zambia's trade practices and legal obligations, with particular attention to the regulatory frameworks that govern the financing of sustainable agriculture within the global trading system.

1.2 STATEMENT OF THE PROBLEM

In Zambia, the SAFF serves as a policy mechanism aimed at enhancing agricultural productivity by providing small and medium-scale farmers with improved access to financial resources. However, its implementation poses several potential legal challenges under International Trade Law, particularly concerning the compliance with WTO regulations. Of great concern is how Zambia's trade partners may view SAFF as a trade-distorting subsidy, potentially leading to disputes, retaliatory tariffs, or countervailing duties on Zambian agricultural exports. Another problem arising from its implementation and the potential for it to conflict with existing trade regulations is that which concerns transparency and non-discrimination.

The financial support extended through SAFF may be construed as a form of a subsidy, potentially leading to distortions within agricultural market. This could raise concerns regarding compliance with **Article 1** of the SCM Agreement,[5] which delineates the criteria for defining subsidies and articulates their potential ramifications for International Trade relations. Moreover, by enabling preferential pricing mechanisms or targeted support that influence the competitiveness of Zambia's

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[4] Indian School of Development Management, What Are SDGs? A Comprehensive Guide to Sustainable Development Goals (2024).
[5] Agreement on Subsidies and Countervailing Measures (ASCM), Art 1.

agricultural exports, the SAFF initiative may give rise to concerns under the SCM Agreement. Such measures could be perceived by trading partners as conferring unjust competitive advantages, thereby increasing the likelihood of trade disputes or the imposition of countervailing duties in response to alleged market distortions.

If determined that the SAFF confers preferential financial assistance to domestic farmers, such measures may constitute a breach of **Article 3** of the WTO's AoA.[6] This provision explicitly prohibits the use of export subsidies that distort international trade, thereby raising concerns about the compatibility of SAFF WTO obligations. These measures have the potential to trigger disputes with other WTO member states. Furthermore, if the implementation of SAFF results in disproportionate advantages for domestic producers relative to foreign competitors, it may contravene **Article III** of the General Agreement on Tariffs and Trade (GATT),[7] which stipulates that imported goods must receive treatment no less favourable than those accorded to like domestic products once they have entered the market. In addition, WTO disciplines require member states to notify the organisation of any agricultural support programs. A failure by Zambia to adequately disclose the operational details and financial commitments associated with SAFF could raise concerns over transparency and signal non-compliance with its WTO obligations.

The compatibility of the SAFF with Zambia's International Trade obligations under the WTO framework remains ambiguous. Consequently, the potential for legal disputes stemming from the SAFF's implementation underscores the imperative for a thorough evaluation of its design and conformity with WTO disciplines. Undertaking rigorous legal analyses and instituting strategic policy modifications can serve to minimise the likelihood of trade-related conflicts and reinforce Zambia's commitments to established global trade standards.

1.3 GENERAL OBJECTIVE

The overarching objective of this study is to critically examine the legal and regulatory policy underpinning the SAFF in Zambia, with a view to assessing its conformity with WTO provisions. The study aims to identify potential legal vulnerabilities or risks

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[6] Agreement on Agriculture (AoA), Art 3.

[7] General Agreement on Tariffs and Trade (GATT) 1994, Art III.

associated with the programme's implementation and to formulate policy recommendations that enhance legal accountability, institutional efficacy, and sustainable operationalization of SAFF within the global trade framework.

1.4 RESEARCH OBJECTIVES

1. To critically examine whether the SAFF programme in Zambia constitutes a subsidy under the WTO Agreements.
2. To evaluate the compliance of SAFF programme in Zambia with the WTO Agreements.
3. To assess the potential trade consequences Zambia may face from its trading partners due to the SAFF programme.

1.5 RESEARCH QUESTIONS

1. To what extent does the SAFF programme in Zambia constitute a subsidy under the WTO Agreements?
2. To what degree does the SAFF programme in Zambia align with disciplines on domestic support and obligations under the WTO legal framework?
3. To what degree would the SAFF programme provide trade consequences for Zambia?

1.6 SIGNIFICANCE OF STUDY

This study holds considerable significance both within the domestic sphere of Zambia's agricultural policy and in the broader context of International Trade law, particularly the WTO disciplines governing subsidies. By critically examining the intersections between the SAFF and WTO legal frameworks, the study seeks to formulate policy recommendations that advance sustainable agricultural development while safeguarding compliance with multilateral trade obligations and minimising market distortions through:

Advancing the discourse on domestic subsidies in developing economies: This study offers a comprehensive examination of Zambia's SAFF as a case study to illuminate the complex interplay between agricultural support mechanisms in developing countries and their obligations under International Trade law. By scrutinising the legal character of SAFF, the study contributes to a deeper understanding of how subsidy programmes are conceptualised within resource-constrained environments, and how they navigate the tension between pursuing national development objectives and adhering to multilateral trade disciplines.

Contribution to WTO law and interpretation: This study advances the scholarly discourse on International Trade law by evaluating the compliance of Zambia's SAFF with WTO subsidy disciplines. Through the practical application of key legal concepts such as "specific subsidies", "prohibited subsidies" and "non-actionable support", the study offers valuable insights into the operational boundaries and interpretive challenges of WTO rules. In doing so, it provides a contextualised analysis that aids legal scholars, policy makers and trade negotiators in understanding how subsidy frameworks function within the constraints of multilateral trade obligations.

Policy guidance for Zambia and similar economies: The insights generated by this study offer valuable guidance for Zambian policymakers in the formulation and refinement of agricultural support programs that align with national development objectives while remaining compliant with International Trade obligations. By elucidating the legal contours of subsidy-like mechanisms under WTO law, the study provides a framework for structuring state interventions in a manner that minimizes the risk of trade disputes, retaliatory measures such as countervailing tariffs, and reputational damage within the global trading system. These findings may also serve as a reference point for other developing economies seeking to balance domestic agricultural advancement with adherence to multilateral trade norms.

Filling a gap in literature on agricultural subsidies: Despite the growing relevance of agricultural support programs in developing economies, scholarly engagement with the intersection of domestic financing mechanisms and international subsidy regulations remains limited. This study addresses this gap by providing a country-specific legal analysis of Zambia's SAFF, thereby enriching the broader academic and legal discourse on subsidy governance. Through its focused examination of SAFF within the framework of WTO disciplines, the research offers nuanced insights into how resource-constrained states navigate the complexities of trade-compliant agricultural development.

This study, therefore, undertakes a critical legal analysis of SAFF in Zambia, with particular attention to its implications for non-agricultural sectors and its alignment with International Trade law, especially WTO disciplines on subsidies. Through this examination, the research seeks to generate policy recommendations that enable Zambia to reconcile agricultural support with overarching economic stability, while proactively addressing potential legal risks under multilateral trade frameworks. By guiding the strategic structuring of agricultural financing policies, the study aims to promote compliance with International Trade obligations and foster inclusive economic development across sectors, ultimately contributing to a more sustainable and equitable global trade environment.

1.7 SCOPE OF STUDY

The scope of study on the Sustainable Agriculture Financing Facility (SAFF) will be within the framework of the WTO Agreements focusing on evaluating how this programme can be structured and implemented in compliance with International Trade rules.

1.8 LITERATURE REVIEW

The existing scholarly work on agricultural subsidies within the context of International Trade offers a multidimensional analysis encompassing economic, legal, and political perspectives, with particular emphasis on the regulatory framework established by the WTO. Scholars have rigorously examined the definitional boundaries and classifications of subsidies under WTO provisions, assessing their coherence with trade liberalization objectives and their broader implications for food security and sustainable development. This literature review synthesises contemporary academic contributions to illuminate the evolving discourse on agricultural subsidies and their alignment with global trade norms, thereby providing a foundation for evaluating the legal and policy dimensions of subsidy programs in developing economies.

Christopher S. Tang, Yulan Wang and Ming Zhao[8] argue that to enhance agricultural productivity, improve food security, and reduce financial burdens on

[8] C Tang et al, ‘The Impact of Input and Output Farm Subsidies on Farmer Welfare, Income Disparity, and Consumer Surplus’ (2023)70 Management Science.

farmers, governments in many developing countries implement input and output subsidy programs. These subsidies are intended to support farmers in increasing yields and expanding access to food, while addressing cost-related constraints inherent in resource-limited agricultural systems. The scholars further contend that input subsidies are commonly employed to lower the cost burden associated with acquiring essential agricultural inputs, thereby facilitating increased productivity among farmers. However, the present research will demonstrate that the provision of input and/or output subsidies may generate adverse legal consequences within the realm of international trade. Specifically, such measures can conflict with the regulatory parameters established under WTO disciplines and regional trade agreements, potentially leading to disputes, trade distortions, and challenges to compliance with multilateral obligations.

The learned authors of **International Trade and Agriculture: Theories and Practices**[9] explain in their book the role of International Trade in the study of the agricultural sector where different theories and practical examples were developed to help support and understand how agriculture can be improved in the future in developing countries. This study distinguishes itself by foregrounding the imperative of adherence to WTO principles in the pursuit of sustainable development through agricultural subsidies. Unlike broader analyses that primarily address the economic or developmental dimensions of subsidy programs, this study emphasises the legal obligations of WTO member states to ensure that such support mechanisms are structured in a manner consistent with multilateral trade rules. By doing so, it contributes to a more nuanced understanding of how sustainable agricultural financing can be reconciled with international legal commitments.

Robert Gulotty,[10] argues that the GATT/WTO system has relied on a rules-based approach designed to disentangle programs with legitimate social goals from protectionist policies. This research distinguishes itself by focusing on the legal ambiguities surrounding Zambia's SAFF, particularly in determining whether its provisions constitute permissible subsidies under WTO rules. It emphasises the critical need for transparency, definitional clarity, and explicit policy intent in the design and

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[9] WW Koo and PL Kennedy, *International trade and agriculture: theories and methods* (2nd edition, Blackwell publishing) 256
[10] R. Gulotty,'WTO Subsidy Disciplines' (2022)21 Cambridge University Press pp. 330 – 341.

implementation of subsidy programs. By interrogating the legal character of SAFF, the study contributes to a more precise understanding of how developing countries can structure agricultural support mechanisms that are both effective and compliant with International Trade obligations.

According to **David Amaglobeli et al**,[11] the rules guiding the provision of subsidies are laid out in the joint International Monetary Fund (IMF), Organisation for Economic Co-operation and Development (OECD), and World Bank. The research being undertaken differs from the scholar's position as it focuses on the International Trade Agreement principles and the impact for non-compliance. This research further emphasizes that measures should be implemented transparently, including timely notification of agricultural domestic support measures to the WTO.

Facundo Calvo[12] has argued that discussions on agricultural subsidies are crucial among the trading partners given that most agricultural policies are heavily biased toward measures that are distorting market competition and international trade. Given the potential benefits of repurposing agricultural subsidies in a more sustainable way, as well as the trade-related implications of repurposing, this study focuses on showing that it is worthy asking to what extent Zambia, being a WTO member, is prepared to address this issue.

Kym Anderson et al[13] analyzed the impact of agricultural subsidies and tariffs on global trade in their work. The research being undertaken will expand on by arguing that while tariffs have decreased, domestic subsidies have become more prominent, raising concerns about their trade-distorting effects. The research will therefore re-emphasize that Zambia's SAFF initiative needs to be carefully designed to support farmers without violating WTO commitments.

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[11] David A et al. 'Agricultural Producer Subsidies: Navigating Challenges and Policy Considerations' (2024) available at https://www.imf.org/en/Publications/IMF-Notes/Issues/2024/08/26/Agricultural-Producer-Subsidies-Navigating-Challenges-and-Policy-Considerations-553529 (accessed 8 April 2025).
[12] F Calvo , 'World Trade Organization Talks on Agricultural Subsidies Should Consider Trade-Offs Among Trade, Food Security, and the Environment' (2022) available at https://www.iisd.org/articles/policy-analysis/wto-agricultural-subsidies-trade-offs (accessed 14 April 2025).
[13] K Anderson et al 'The Relative Importance of Global Agricultural Subsidies and Tariffs, Revisited'(2023)22 Cambridge University Press pp. 382 – 394.

Richard Chanda[14] underscores the persistent challenges faced by smallholder farmers in Zambia in accessing agricultural financing, citing barriers such as limited financial inclusivity. His work advocates for innovative financing models including mobile money lending and group-based lending schemes as viable solutions to promote financial access and support sustainable agricultural practices. In contrast, the present study diverges by concentrating on the unintended legal and trade-related consequences of agricultural financial assistance. Specifically, it examines how such support mechanisms, while beneficial domestically, may conflict with International Trade obligations under frameworks such as the WTO, thereby introducing risks of non-compliance and trade disputes.

1.9 RESEARCH METHODOLGY

1.9.1 RESEARCH APPROACH

This qualitative research will use primary sources like interviews and questionnaires, and secondary sources such as books, legal texts, reports, and scholarly materials to analyse SAFF implementation.

1.9.2 RESEARCH DESIGN

This study will be evaluative research since it is accustomed to bringing out the unintended legal implications of agricultural subsidies and suggest some recommendations which may reduce these threats. It shall explore the compliance challenges and consequences of violating the WTO agreement.

1.9.3 RESEARCH TYPE

The type of research that will be carried out will be a descriptive study of the WTO disciplines on subsidies.

[14] R Chanda, 'A Study of the Factors that Affect Agribusiness Financing in Zambia (A Case Study of Smallholder Farmers in Chibombo District)' (2024)4 Management Journal for Advanced Research.

1.9.4 STUDY POPULATION

The study population for this study is Zambia where the SAFF programme is being implemented.

1.9.5 STUDY SIZE

This study will have a sample size of 10 people from the beneficiaries (small and medium-scale farmers) and relevant institutions such as the Ministry of Agriculture and National Savings and Credit Bank.

1.9.6 SAMPLE TECHNIQUE

The research will use a purposive technique which will carefully consider the best persons based on their knowledge and expertise to respond to the questions.

1.9.7 RESEARCH TOOL

Interviews will be used as research tools to collect data. Content data analysis methods will be used to critically analyze the data collected. The researcher will investigate ministerial statements, media reports (newspapers and websites), and official public statements to analyze the discourse surrounding topic at hand.

1.10 ETHICAL CONSIDERATION

The researcher will only use the data and materials acquired for scholarly purposes to uphold the highest ethical standards. Additionally, confidentiality will always be protected while this study is being conducted. Throughout the research process, the author will take due care to ensure that everyone who helps with the study retains the ability to retract their statement at any moment. The researcher will not fabricate data in the study but properly credit other people's work using referencing style that has been approved by the university.

1.11 CONCLUSION

Chapter one offers a foundational overview of the study, presenting the contextual background, articulating the research problem in alignment with the study’s focus, and delineating its objectives and guiding questions. It also underscores the significance of the study within both academic and policy domains. A subsequent review of pertinent literature highlights the existing scholarly gap and situates the current research within broader academic discourse. The chapter concludes by outlining the methodological framework that will guide the investigation.

CHAPTER TWO

THE SAFF PROGRAM AND WTO SUBSIDY RULES: A LEGAL FRAMEWORK AND ANALYSIS

2.0 INTRODUCTION

This chapter lays the foundational framework for evaluating whether Zambia's SAFF constitutes a subsidy within the meaning of WTO regulations. It begins by defining subsidies under WTO law, examines relevant legal instruments including the SCM Agreement and AoA, and explores the potential classifications applicable to domestic agricultural support programs such as SAFF. The chapter further analyses interpretative guidance and jurisprudence that shape the legal assessment of subsidies in International Trade, thereby establishing the analytical lens through which SAFF's compliance will be examined.

2.1 UNDERSTANDING SUBSIDIES UNDER WTO LAW

2.1.1 DEFINITION UNDER THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (SCM AGREEMENT)

According to **Article 1** SCM Agreement, a subsidy is a monetary contribution made by a government or public entity operating inside a member's borders that benefits a particular beneficiary.[15] In accordance with GATT 1994 **Article XVI**, a subsidy is income or price support that results in a benefit.[16] A direct donation of money, the forfeiture of government revenue, or the supply of products or services can all be considered financial contributions. When the recipient obtains an advantage not found in the marketplace otherwise, the benefit occurs. As a result, there must be three components: (i) a monetary donation, (ii) the conferment of a benefit, and (iii) a designated beneficiary. Any direct transfer of funds or liabilities, such as grants, loans, or loan guarantees, the foregoing or non-collection of government revenue, such as through tax exemptions, the provision of goods or services, or the establishment of a mechanism to finance such support, are all considered financial contributions by the

[15] Agreement on Subsidies and Countervailing Measures (ASCM), Art 1.
[16] General Agreement on Tariffs and Trade (GATT) 1994, Art XVI.

government or public body under Article 1 of the SCM Agreement. The agreement requires that this direct transfer of funds must be effected from a government or public body as a part of criteria for a subsidy. For these activities to be considered subsidies under the WTO framework, a benefit must be provided.

According to the WTO panel report **US – Ripe Olives from Spain**,[17] a subsidy under Article 1 must have both (i) a financial commitment from the government and (ii) a benefit that the recipient really receives because of that contribution. Determining the existence and amount of a subsidy to the receiver is therefore a fundamental duty. Therefore, for a beneficiary to profit, a government must make a financial commitment. In **India (Sugar and Sugarcane)**,[18] it was decided that a financial contribution might be considered to exist if a government activity involved a direct transfer of monies or implied one. In addition, the WTO panel report on **Canada – Aircraft**[19] concluded that when a "financial contribution" is given on terms that are better than what the recipient would otherwise be able to get on the market, it confers a "benefit" and is considered a subsidy under Article 1 of the SCM Agreement. The word "conferred" in connection with "thereby" calls for an investigation into what was conferred on the recipient, not the expense to the government, the Appellate Body decided when affirming this judgment. For a financial contribution to qualify as a subsidy, it must also be made by or under the supervision of a government or other public entity operating inside a member's territory.

The appellate body in the **US – Tax Treatment for "Foreign Sales Corporations"**[20] examined who qualifies as a "recipient" of such a subsidy, effectively identifying which organizations get the government's financial assistance as either natural or artificial persons. Usually, the same organisation will receive both the benefit and the direct financial transfer.

[17] Appellate Body Report, United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain, *WT/DS577/R/Add.1, 2021.*

[18] India – Measures Concerning Sugar and Sugarcane *WT/DS579, DS580, and DS581/R 2021.*

[19] Panel Report, Canada – Measures Affecting the Export of Civilian Aircraft, *WT/DS70/R, adopted 20 August 1999, upheld by Appellate Body Report WT/DS70/AB/R.*

[20] Appellate Body Report, United States – Tax Treatment for "Foreign Sales Corporations", *WT/DS108/AB/R, adopted 20 March 2000.*

2.1.2 THE NOTION OF "SPECIFICITY"

Under **Article 2**[21] of the SCM Agreement, a subsidy is considered specific if it is limited to an enterprise, industry, or group of enterprises or industries within the jurisdiction of the granting authority. The principle of specificity serves as a critical criterion in assessing the actionability of a subsidy under the framework of WTO regulations.

The SAFF primarily targets small and medium-scale farmers in Zambia with a particular emphasis on those engaged staple crop production, such as maize. These beneficiaries often participate in government supported initiatives aimed at improving market access and input supply. The programme is strategically designed to enhance access to financial capital, agricultural inputs, and structured markets for a defined subset of producers. Eligibility and support are typically influenced by criteria such as crop type, landholding size, and integration into specific agricultural value chains.[22]

The targeted eligibility criteria embedded within Zambia's SAFF initiative meet the threshold for a "specific" subsidy as defined under **Article 2.1(a)** of the WTO SCM Agreement. According to this provision, a subsidy is deemed specific when access is explicitly limited by the government or legislation to particular enterprises or groups, rather than being broadly available across sectors.[23] The SAFF focuses on small to medium-scale and emerging farmers engaged in specific crop production and value chains exemplifies such restricted access, thereby invoking the legal scrutiny associated with specificity under WTO disciplines.

WTO panels may determine that a subsidy is de facto specific under **Article 2.1(c)**[24] of the SCM Agreement if, despite being formally available to all, it is predominantly accessed by a distinct group of farmers such as smallholders or maize producers especially when the programme lacks broad accessibility across different sectors or geographic areas. Moreover, if the SAFF initiative disproportionately benefits certain socioeconomic groups and fails to offer equal access to all farmers irrespective of farm size, geographic location, or crop type, it reinforces its characterisation as a targeted support measure. For example, a program that predominantly engages cooperatives

[21] Agreement on Subsidies and Countervailing Measures (ASCM), Art 2.
[22] Ibid n (1).
[23] Agreement on Subsidies and Countervailing Measures (ASCM), Art 2.1(a).
[24] Ibid, Art 2.1(c).

linked to government procurement schemes or operates primarily in high-yield production zones would not qualify as a general support program under WTO regulations. Such selective implementation underscores the program's specificity and invites closer scrutiny under International Trade law.

Under the SCM Agreement, the SAFF project in Zambia most certainly qualifies as a special subsidy both de jure (by design) and maybe de facto (by its actual impacts), given the targeting strategy and eligibility requirements. The programme's enforceability and vulnerability to WTO sanctions largely hinges on its specificity, especially if other member states claim it causes trade distortions or adverse impacts.

2.2 AGRICULTURAL SUBSIDIES AND THE WTO: THE AGREEMENT ON AGRICULTURE (AOA)

2.2.1 OVERVIEW OF THE AOA

The AoA framework is based on three pillars viz. market access, domestic support and export subsidies. These pillars are designed to lessen agricultural trade distortions. To boost output and safeguard homegrown producers, the reform effort must concentrate on three distinct but related agriculture policies. To protect home manufacturers from competition, market access entails the application of obstacles (such as import bans and tariffs). To encourage producers to increase their output while keeping internal prices high, production-linked payments are used in conjunction with domestic support. Export subsidies stimulate the export of excess production demands due to the rising output and the need to keep domestic prices above certain threshold.[25]

2.2.2 DOMESTIC SUPPORT CATEGORIES

The AoA divides domestic assistance into three categories: Green Box, Amber Box, and Blue Box measures. Green Box initiatives, such as research, training, and infrastructure, have minor trade distorting effects and do not require reduction pledges. Amber Box policies are deemed trade damaging and are subject to reduction requirements. As a result, an Amber Box is the category of domestic help that is set to

[25] Rajesh Aggarwal, A sector-perspective: Agriculture in the WTO.

be reduced. Expenditures for Amber Box measures are subject to decrease based on a calculation known as the "Aggregate Measure of Support" (AMS). The AMS computes a figure for money spent by governments on agricultural output, excluding spending that is exempt under other articles of the agreement (the Blue Box and Green Box). Blue Box measures are production-limiting programs that are also free from reductions.[26]

2.2.3 CLASSIFICATION OF SAFF UNDER AOA CATEGORIES

The WTO AoA requires member nations to discipline and report their domestic agricultural subsidies, particularly if it is considered trade-distorting. This is accomplished mostly through the Aggregate Measurement of Support (AMS), which measures the monetary worth of some domestic support policies thought to distort production and trade (also known as "Amber Box" subsidies). Input subsidies, such as those provided by SAFF, may be classified as Amber Box or, depending on its structure, Green Box. Strategic grain purchases could be interpreted as market price support, which usually belongs in the Amber Box. Zambia, like most developing countries, was not compelled to make reductions in domestic support pledges during the Uruguay Round discussions.

According to **Article 6.4(b)** of the AoA, [27] developing countries may provide trade-distorting support up to 10% of the total value of agricultural production each year (product-specific and non-product-specific support have separate 10% restrictions). Support measures that remain below the 10% threshold are exempt from reduction commitments. The SAFF includes a variety of support mechanisms, including input subsidies (for example, fertilizer and seed under FISP), concessional credit schemes, and grain purchases by the Food Reserve Agency (FRA), all of which may qualify as Amber Box support, particularly when they are directly linked to production or market prices. The following key essentials should be considered:

- SAFF input subsidies may be product-specific, such as for maize crops.

[26] Agreement on Agriculture glossary, Excerpted from Sailing Close to the Wind: Navigating the Hong Kong WTO Ministerial.
[27] Agreement on Agriculture (AoA), Art 6.4(b).

- The FRA's grain purchases may be considered market price support and count as AMS if the government pays above-market prices.
- Concessional loans or credit guarantees may be considered financial contributions under **Article 1** of the SCM Agreement,[28] potentially contributing to AMS if used for production purposes.

2.3 OVERVIEW OF THE SAFF PROGRAM IN ZAMBIA

The Zambian government, through the Ministry of Agriculture, provides budgeted funding to SAFF, in collaboration with the Zambia Credit Guarantee Scheme (ZCGS), to enable small and medium-scale farmers to obtain credit. Beneficiaries must sign into bonding or off-take arrangements with the FRA before selling their produce, particularly maize.

Despite the appearance of openness, the design of SAFF and eligibility rules confine its benefits to a restricted group of producers, thus fitting the criteria for "specificity" under **Article 2.1(a)** of the SCM Agreement, which states that a subsidy is specific when access is explicitly limited by law or policy to a particular enterprise or group of enterprises.[29] Government-backed loan guarantees and sponsored input schemes qualify as financial contributions under **Article 1** of the SCM Agreement. Furthermore, the practical implementation of the program may give rise to de facto specificity under **Article 2.1(c)** of the SCM Agreement if the benefits are accessed predominantly by a particular subset of the agricultural sector, such as maize growers or producers in selected locations.[30]

2.4 LEGAL ANALYSIS: CAN SAFF QUALIFY AS A SUBSIDY UNDER WTO LAW?

2.4.1 APPLICATION OF ARTICLE 1 OF THE SCM AGREEMENT TO SAFF

To determine whether the SAFF constitutes a subsidy under the SCM Agreement, it is necessary to examine whether it meets the two cumulative criteria outlined in **Article 1.1**[31] of the SCM Agreement:

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[28] Agreement on Subsidies and Countervailing Measures (ASMC), Art 1.
[29] Ibid, Art 2.1(a).
[30] Ibid, Art 2.1(c).
[31] Ibid, Art 1.1.

a) There must be a financial contribution by a government or public body; and
b) A benefit is thereby conferred.

Both elements must be present for a measure to qualify as a subsidy under WTO law.

2.4.1.1 FINANCIAL CONTRIBUTION BY THE GOVERNMENT

According to **Article 1.1(a)** of the SCM Agreement, a "financial contribution" occurs where:

i. The government transfers funds (e.g., grants, loans, equity injection) or forgoes revenue (e.g., tax credits).
ii. The government delivers products or services (except general infrastructure).
iii. The government pays a funding mechanism or directs a private group to perform the same duty.

As previously stated in **section 2.2** of this chapter, a financial contribution may be identified where a government practice comprises or indicates a direct transfer of funds, as per the **India (Sugar and Sugarcane)** panel report.[32] The SAFF program clearly comprises a variety of financial donations.

Concessional Loans and Credit Guarantees: The Zambian government through the Ministry of Agriculture works with commercial banks and credit providers to provide subsidised loans, and credit guarantees to qualifying farmers. In his ministerial statement on the 13th of February 2025 when updating the house in parliament on the status of the SAFF, the Honourable Minister of Agriculture stated that "to ensure the sustainability of the facility, the Government engaged commercial banks to administer the loans to farmers who had and have the ability to repay using their resources." Currently, three banks are on board to give loans: the National Savings and Credit Bank (NATSAVE), Indo Zambia Bank, and Zambia National Commercial Bank Plc (ZANACO).[33] These are direct financial contributions made under **Article 1.1(a)(1)(i)** **[34]** of the SCM Agreement, and potentially **(iv)**,**[35]** in which private organizations are

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[32] India – Measures Concerning Sugar and Sugarcane *WT/DS579, DS580, and DS581/R 2021.*
[33] https://www.parliament.gov.zm/node/12171 (accessed 11 August 2025).
[34] Agreement on Subsidies and Countervailing Measures (ASMC), Art 1.1(a)(1)(i).
[35] Ibid, Art 1.1(a)(1)(iv).

tasked with financing with government backing. It is worth mentioning that the credit window is operated by the private sector through financial institutions, which the Government, through the Ministry of Agriculture, has selected as crucial in providing the money. Consequently, it can be stated that a legal document or practice that commits or implies budgetary transfers can satisfy **Article 1.1(a)(1)(i)** of the SCM Agreement even if the transfer is contingent or has not yet been distributed.

Loan Guarantee Scheme: Through the Zambia Credit Guarantee Scheme (ZCGS), the government accepts some of the risk involved with SAFF loans. This is a contingent liability under the SCM Agreement since it involves a possible direct transfer of funds in the case of default.

Input Financing and Subsidized Services: Input Financing and Subsidized Services: Government-funded SAFF components may include subsidized inputs, irrigation services, and mechanization, which constitute a provision of commodities or services and hence a financial contribution under **Article 1.1(a)(1)(iii)** of the SCM Agreement.[36] The structure and implementation of SAFF therefore fulfill the requirement of a financial contribution by the government or a public body.

2.4.1.2 BENEFIT CONFERRED

According to **Article 1.1(b)** of the SCM Agreement,[37] a subsidy exists only when the financial contribution provides a benefit to the recipient. The WTO Appellate Body clarified in **Canada - Aircraft**[38] and **US - Large Civil Aircraft**[39] that a benefit arises if the financial contribution puts the beneficiary in a more favourable position than they would have been under normal market conditions. In **India (Sugar and Sugarcane)**,[40] it was added that the benefit is assessed by comparing the cost spent by the receiver to the cost incurred on the market. The following should therefore be interrogated in the case of SAFF:

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[36] Agreement on Subsidies and Countervailing Measures (ASMC), Art 1.1(a)(1)(iii).
[37] Ibid, Art 1.1(b).
[38] Appellate Body Report, Canada – Measures Affecting the Export of Civilian Aircraft (Canada Aircraft), *Report of the Panel WT/DS70/R,1999.*
[39] Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint), *Report of the Panel WT/DS353/35, 2020.*
[40] India – Measures Concerning Sugar and Sugarcane *WT/DS579, DS580, and DS581/R 2021.*

Subsidized Loans: If loans under SAFF are issued at lower interest rates than those available on the market for borrowers with similar risk profiles, this would be advantageous. Such below-market funding enhances the recipient's economic position when compared to unsubsidized alternatives.

Credit Guarantees: A government-backed credit guarantee enables farmers to obtain loans that they would not otherwise be eligible for, or to do so on more favourable conditions. This distributes credit risk from the lender to the government, resulting in lower financial barriers and better loan conditions.

Off-Take Agreements with FRA: Although not constituting direct financial transfers, these off-take agreements could function as a price support mechanism when they guarantee minimum prices above prevailing market rates. This arrangement helps protect farmers from market fluctuations, offering income stability and reducing exposure to price volatility.

Provision of Inputs or Services at Below-Market Cost: The subsidized provision of agricultural inputs such as seeds, fertilizers, irrigation infrastructure, or equipment at below-market prices or no cost can significantly benefit farmers by reducing production expenses and enhancing productivity. Such measures, however, may be scrutinised under WTO rules if they confer a financial advantage not generally available, potentially qualifying as a subsidy under the SCM Agreement.

2.4.1.3 RECIPIENT

The financial contributions identified in this chapter provide a direct "benefit" to the small and medium-scale farmers who benefit from the SAFF program, according to **Article 1.1(b)** of the SCM Agreement. It is beyond doubt that the farmers are better off because of these financial contributions. According to the Minister's ministerial statement, "the payments made by the Government through to financial institutions cover the costs of farming inputs and essentially replace the payments that would have been otherwise required from farmers".[41] To that purpose, panels treat the direct transferee (the person who receives the money or loan) as the recipient unless there

[41] Ibid n (33).

is clear proof of an intermediate or secondary beneficiary, as in **Turkey (Pharmaceuticals)**.[42] The recipient of the direct transfer of funds and the recipient of the benefit will usually be the same entity.[43] The obligation to determine the existence and amount of a subsidy to the recipient is therefore a cornerstone.[44]

2.5 CONCLUSION

To summarise, the SAFF programme benefits Zambian farmers by providing financial support, guarantees, and subsidized services that would not be available under conventional commercial terms. Based on the analysis above, the SAFF meets both elements of the definition of a subsidy under Article 1 of the SCM Agreement: (i) the Zambian government makes a financial contribution in the form of loans, guarantees, and service provision, and (ii) this contribution benefits the recipients by improving access to finance, reducing risk, and potentially guaranteeing favourable prices. As a result, SAFF meets WTO criteria for a subsidy. The next chapter will assess Zambia's SAFF conformity with WTO standards.

[42] Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products,*WT/DS583/12/Add.1, 2022.*
[43] Turkey – Certain Measures Concerning the Production, Importation and Marketing of Pharmaceutical Products,*WT/DS583/12/Add.1, 2022.*
[44] Appellate Body Report, United States – Anti-Dumping and Countervailing Duties on Ripe Olives from Spain, *WT/DS577/R/Add.1, 2021.*

CHAPTER THREE

ALIGNMENT OF ZAMBIA'S SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) WITH WTO DISCIPLINES ON DOMESTIC SUPPORT AND AGRICULTURAL SUBSIDIES

3.0 INTRODUCTION

The WTO disciplines on agricultural subsidies are primarily governed by two agreements viz. Agreement on Agriculture (AoA) and Agreement on Subsidies and Countervailing Measures (SCM). These agreements aim to ensure that domestic support and subsidies do not distort International Trade or unfairly disadvantage other WTO members.

In this chapter, we will delve in the legal assessment of SAFF within the context of the WTO subsidy disciplines. The chapter critically investigates whether the SAFF initiative, a government-backed concessional loan program aimed at assisting farmers and agricultural firms, complies with or deviates from WTO rules on domestic support and agricultural subsidy. The chapter further investigates whether SAFF's design, implementation, and notification methods match the transparency and substantive standards required by these regulatory frameworks.

3.1 THE OVERVIEW OF WTO DISCIPLINES ON AGRICULTURAL SUPPORT

3.1.1 THE SCM AGREEMENT

The SCM Agreement governs subsidies provided to non-agricultural sectors but also complements the AoA in regulating trade-distorting support in agriculture. **Article 1** of the SCM Agreement defines a subsidy as a "financial contribution" by a government or public body that "confers a benefit" upon the recipient. Such support may include grants, loans, loan guarantees, tax breaks, or subsidized goods and services beyond basic infrastructure.[45]

Article 2 further requires that the subsidy be "specific" to an enterprise, industry, or group of enterprises or industries to fall under the Agreement's disciplines. Specificity

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[45] Agreement on Subsidies and Countervailing Measures (ASCM), Art 1.

can be determined by law (de jure) or in fact (de facto), based on whether the subsidy is limited to certain enterprises or sectors.[46]

The SCM Agreement categorises subsidies into three main types:

I. Prohibited subsidies, such as those contingent on export performance or the use of domestic over imported goods (**Article 3**).[47]
II. Actionable subsidies, which are not prohibited per se but may cause adverse effects to other Members (**Article 5**).[48]
III. Non-actionable subsidies (although these expired in 2000), which were deemed permissible under specific conditions.

Article 25 of SCM Agreement imposes a crucial obligation on members to notify all specific subsidies to the WTO Committee on Subsidies and Countervailing Measures, including details on the form, amount, purpose, and beneficiaries of such support.[49]

3.1.2 THE AGREEMENT ON AGRICULTURE (AOA)

While the SCM Agreement establishes global subsidy rules, the AoA is more specific to domestic agricultural support. Its primary goal is to decrease trade-distorting subsidies and promote market orientation. The support is categorised in boxes. Green Box (Annex 2) for acceptable subsidies with minimum trade or production distortion, such as research, infrastructure, and environmental programs. Blue Box for production-limiting support linked to specific base levels of production. Amber Box for trade-distorting subsidies subject to reduction commitments.

Members must include amber box support within their Aggregate Measurement of Support (AMS) and notify all domestic support measures annually to the WTO's Committee on Agriculture.[50] Notifications are essential for transparency, peer review, and the multilateral surveillance process.

[46] Agreement on Subsidies and Countervailing Measures (ASCM), Art 2.
[47] Ibid, Art 3.
[48] Ibid, Art 5.
[49] Ibid, Art 25.
[50] Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint), *Report of the Panel WT/DS353/35, 2020.*

The AoA disciplines domestic support (the "domestic support" pillar) primarily through **Article 6 and Annex 2**.[51] A central question facing the global trade regime is whether subsidies should be subject to different rules than other policy instruments or indeed should be constrained at all. The GATT/WTO rules on subsidies do offer three mechanisms to distinguish distortionary subsidies.

The first is to categorize subsidies as more or less distortionary and to explicitly allow funds tied to certain policy goals. This was accomplished in the Uruguay Round with the rules for agricultural subsidies. Domestic support programs such as the SAFF would fall into one of three categories, the Amber Box, the Blue Box, and the Green Box as explained above. These are the familiar boxes into which measures are sorted operationally. Amber Box included subsidies that were tied to prices or production volume.[52] These trade-distorting subsidies are subject to reduction commitments. The Blue Box covered subsidies that were tied to a supply control policy and were required to be based on fixed acreage and yield or paid on a maximum of 85% of production.[53] Measures with minimal or no trade-distorting effects such as general services, research, and extension are exempt from reduction commitments if they meet the Green Box criteria outlined in **Annex 2** of the AoA.[54]

The second mechanism is public notification. GATT **Article XVI:1** obliged contracting parties to notify the 'nature and effect' of subsidies that 'operate to increase its exports or decrease its imports'. Upon notification, contracting parties were to engage in good faith discussions regarding the possibility of limiting subsidisation.[55]

The third mechanism taken by the GATT/WTO is to try to constrain the use of retaliatory tariffs. The GATT has, since its founding, allowed governments to unilaterally impose a form of temporary duties on imports affected by unfair trade practices that have demonstrated some negative effect (material injury) for domestic industry. GATT/WTO rules on subsidies emphasize government prioritisation of domestic firms, exporters or import competing firms, over foreign producers.

[51] Agreement on Agriculture (AoA), Art 6 and Annex 2.
[52] R Gulotty, 'WTO Subsidy Disciplines' (2022)21 World Trade Review 330–341.
[53] Agreement on Agriculture, Art 6.5.
[54] Ibid n (54).
[55] General Agreement on Tariffs and Trade (GATT), Art XVI.

3.2 ANALYSIS OF SAFF'S ALIGNMENT WITH SCM AGREEMENT

3.2.1 FINANCIAL CONTRIBUTION AND BENEFIT (ARTICLE 1)

SAFF involves the government transferring funds or guaranteeing loans on terms more favourable than those available on the market. This constitutes a financial contribution within the meaning of **Article 1.1(a)(i)** of the SCM Agreement.[56] Furthermore, by enabling farmers to access credit at below-market rates, the programme confers a benefit under **Article 1.1(b)**,[57] as established in Canada – Aircraft where the Appellate Body held that a benefit exists if the recipient is placed in a better position than it would have been in the market.[58] This was equally established in **EC and Certain Member States – Large Civil Aircraft** when the Appellate Body upheld the panel's findings that Airbus paid a lower interest rate for the A350XWB LA/MSF than would have been available to it on the market and, consequently, a benefit was thereby conferred within the meaning of **Article 1.1(b)**.[59]

3.2.2 SPECIFICITY (ARTICLE 2)

SAFF targets a single sector, agriculture and within that sector, specific categories of beneficiaries (small- and medium-scale farmers). This clearly satisfies the specificity test under Article 2. The Appellate Body in **US – Large Civil Aircraft** confirmed that sector-specific subsidies meet the specificity requirement even if broadly available within the targeted sector.[60]

3.2.3 ACTIONABLE SUBSIDY AND ADVERSE EFFECTS (ARTICLE 5)

While SAFF does not meet the criteria for a prohibited subsidy being neither export contingent nor aimed at import substitution, it may be considered an actionable subsidy under WTO rules. Pursuant to **Article 5(c)** of the SCM Agreement, subsidies that result in "serious prejudice" to other members, such as import displacement, price

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[56] Agreement on Subsidies and Countervailing Measures (ASCM), Art 1.1 (a)(i).
[57] Ibid, Art 1.1(b).
[58] Panel Report, Canada – Measures Affecting the Export of Civilian Aircraft, *WT/DS70/R, adopted 20 August 1999, upheld by Appellate Body Report WT/DS70/AB/R.*
[59] Appellate Body Report, European Communities and Certain Member States — Measures Affecting Trade in Large Civil Aircraft, *WT/DS316/44, adopted 25 August 2020.*
[60] Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint), *Report of the Panel WT/DS353/35, 2020.*

suppression, or disproportionate gains in global market share, are subject to legal challenge.[61]

Given that SAFF reduces production costs and potentially increases Zambia's exportable surplus, trading partners could argue that the programme distorts competition in regional or international markets. This was the basis for findings of serious prejudice in **EC – Large Civil Aircraft**[62] and **US – Upland Cotton**,[63] where government support increased production and affected global prices.

3.2.4 NOTIFICATION FAILURES UNDER THE SCM AGREEMENT

3.2.4.1 TRANSPARENCY OBLIGATIONS (ARTICLE 25)

Article 25.1 of the SCM Agreement obliges members to notify specific subsidies and to provide information detailed enough for other members to assess trade effects (form, amount, beneficiaries, duration, purpose and statistical data). Notifications are the principal transparency mechanism by which other members learn of and examine potential trade-distorting support. Notifications serve two purposes viz. they enable peer review and dialogue in the Committee on Subsidies and Countervailing Measures and help prevent disputes by increasing transparency.[64]

Zambia introduced SAFF in the 2023/24 agricultural season, and the government has made substantial payments under the programme. Despite that, the WTO subsidies/notifications portal and Zambia's notification status indicate the country has not submitted the types of subsidy notifications required for specific programmes under Article 25 (the WTO notifications portal lists required notifications and the member status entries as well as reporting by independent analysts shows many members fall behind on subsidy notifications).[65]

Article 25.10 of the SCM Agreement permits WTO members to highlight unnotified subsidy measures. Continued failure to notify may trigger increased scrutiny,

[61] Agreement on Subsidies and Countervailing Measures (ASCM), Art 5.
[62] Appellate Body Report, United States – Measures Affecting Trade in Large Civil Aircraft (Second Complaint), *Report of the Panel WT/DS353/35, 2020.*
[63] United States – Subsidies on Upland Cotton *(WT/DS267/46) Adopted 21 March 2005.*
[64] Agreement on Subsidies and Countervailing Measures (ACSM), Art 25.
[65] WTO Notification Portal – Zambia Member Profile available at https://notifications.wto.org/en/status-by-member/zambia (accessed 02 October 2025).

diplomatic objections, requests for disclosure, and potentially lead to formal dispute proceedings or countervailing duty investigations if injury to other members is alleged.[66]

Transparency is a core tenet of WTO law. Despite **Article 25.2** of the SCM Agreement mandating prompt notification of new or modified subsidy programs, Zambia has yet to notify the SAFF initiative. WTO jurisprudence has criticized such omissions, notably, in **United States – Countervailing Measures on Certain EC Products**,[67] the panel concluded that non-notification may imply concealment and justify adverse inferences. Zambia's lack of notification regarding the SAFF initiative invites scrutiny, particularly from grain-exporting WTO members that may be impacted by subsidised maize surpluses. Additionally, the absence of domestic transparency measures undermines Zambia's ability to claim good faith compliance under **Article 3.10** of the WTO Dispute Settlement Understanding (DSU).[68]

3.2.4.2 ZAMBIA'S NON-COMPLIANCE

Although official reports indicate substantial disbursements under the SAFF program, Zambia has yet to notify it to the WTO's SCM Committee. Current WTO records reveal that Zambia's latest subsidy notifications omit SAFF and comparable concessional credit schemes, raising concerns over compliance with transparency obligations.[69] This failure to notify constitutes a violation of Zambia's obligations under Article 25 of the SCM Agreement and erodes the transparency that underpins the integrity of the multilateral trading system.

The combined factors of SAFF's possible designation as an actionable subsidy, its trade-distorting potential, and Zambia's non-notification significantly increases the risk of WTO dispute proceedings. In line with **Articles 4** and **7** of the SCM Agreement,[70] these conditions may lead other members to pursue legal remedies if they can substantiate claims of harm or adverse effects stemming from Zambia's non-

[66] Agreement on Subsidies and Countervailing Measures (ASCM), Art 25.10.
[67] United States - Countervailing Measures Concerning Certain Products from the European Communities, *(WT/DS212/AB/R), adopted 8 January 2003.*
[68] Dispute Settlement Understanding (DSU), Art 3.10.
[69] WTO Notification Portal – Zambia Member Profile available at https://notifications.wto.org/en/status-by-member/zambia (accessed 02 October 2025).
[70] Agreement on Subsidies and Countervailing Measures (ASCM), Art 4 & 7.

compliance with regards to SAFF-backed exports, as seen in **South Africa - Anti-Dumping Duties on Frozen Meat of Fowls from Brazil**.[71] This could undermine Zambia's efforts to diversify agricultural exports, especially within the African Continental Free Trade Area (AfCFTA), by exposing the country to trade disputes and limiting market access.

3.3 ANALYSIS OF SAFF'S ALIGNMENT WITH AGREEMENT ON AGRICULTURE

3.3.1 NOTIFICATION AND REPORTING OBLIGATIONS

The Agreement on Agriculture (AoA) requires members to report domestic support measures under Article 6, which governs support commitments, and through Article 18 procedures for review by the Committee on Agriculture, including counter notifications. Article 18.2 specifically mandates disclosure of all domestic support, even those within de minimis limits.[72] Zambia's failure to include SAFF in its submissions indicates non-compliance with these reporting duties.[73]

Zambia's inconsistent reporting under Article 18.2 of the AoA particularly its failure to notify domestic support measures like SAFF, export subsidies, and food aid for several periods including 2025 reflects a breach of WTO transparency obligations.[74] This omission undermines compliance with subsidy disciplines, as both Committee practice and WTO jurisprudence emphasize that timely notification is essential to avoid unexpected trade impacts and to enable meaningful consultations.

Though centered on fisheries, the 2025 submission by the Policy Monitoring and Research Centre (PMRC) to the Parliamentary Committee on Agriculture highlights Zambia's wider difficulties in fulfilling WTO transparency and reporting duties, particularly the need to strengthen institutional capacity for meeting notification obligations.[75] The 2025 report by Zambia's Parliamentary Committee on Agriculture, Lands and Natural Resources underscores the country's limited institutional capacity

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[71] South Africa - Anti-Dumping Duties on Frozen Meat of Fowls from Brazil *(G/ADP/D92/1 G/L/990 WT/DS439/1), 25 June 2012.*
[72] The Agreement on Agriculture (AoA), Art 6, 18 & 18.2
[73] WTO Notification Portal – Zambia Member Profile available at https://notifications.wto.org/en/status-by-member/zambia (accessed 2 October 2025).
[74] Ibid.
[75] Policy Monitoring and Research Centre (PMRC), 'Submission to the Parliamentary Committee on Agriculture, Lands and Natural Resources: Ratification of the Agreement on Fisheries Subsidies Under the World Trade Organisation' (2025).

to fulfill WTO transparency requirements, a challenge that likely affects agricultural initiatives such as SAFF.[76]

Therefore, failure to notify not only breaches WTO obligations but also raises suspicion among trading partners, who may initiate countervailing duty investigations or challenge the measure through the Dispute Settlement Body (DSB).

3.3.2 CLASSIFICATION OF SAFF SUPPORT MEASURES

The SAFF concessional loans and input support are directly linked to production levels, indicating that the program may fall under the Amber Box category of domestic support, which includes trade-distorting subsidies subject to reduction commitments under the WTO Agreement on Agriculture. If Zambia's total support exceeds the 10% de minimis threshold, it may breach WTO obligations. A key aim of trade facilitation is the simplification of customs procedures and a keyway to simplify customs procedures is to exempt merchandise from indirect taxation e.g. customs duty, VAT, and sales taxes below specified minimum or de minimis value.[77]

The World Trade Organisation (WTO), the Organisation for Economic Co-operation and Development (OECD), the World Customs Organization (WCO), and the International Chamber of Commerce (ICC) have all recommended the adoption of such thresholds.[78]

SAFF provides below-market interest loans through state-backed banks (ZANACO, NATSAVE and INDO), which constitutes input subsidies. These subsidies increase production artificially, especially for maize, wheat, and soybeans, breaching Amber Box limits.[79] In **China – Domestic Support,**[80] China was found to have exceeded its de minimis limits for wheat and rice. This case underscores the importance of accurate

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[76] National Assembly of Zambia, 'Report of the Committee on Agriculture, Lands and Natural Resources-Zambian Parliament: Ratification of the Internation Agreement on Fisheries Subsidies Under the World Trade Organisation' (2025).
[77] S Holloway and J Rae, 'De minimis thresholds in APEC' (2012) 6 World Customs Journal.
[78] Ibid.
[79] Ministerial Statement by Honorable. Reuben Mtolo Phiri, the Minister of Agriculture, on the status of Sustainable Agriculture Financing Facility (SAFF) delivered on Thursday 13th February 2025 in Parliament.
[80] China – Domestic Support for Agricultural Producers *WT/DS511/19.*

classification and notification of support measures areas where Zambia may face scrutiny.

3.2.3 MARKET PRICE SUPPORT THROUGH FRA

The requirement for farmers to sell to Food Reserve Agency (FRA), especially if FRA purchases at administered prices, may constitute market price support. Beneficiaries must sell their produce to the FRA, a government entity, under a bonding agreement. This mechanism resembles the Fair and Remunerative Price (FRP) system in India, which was found to violate WTO rules in the **India – Sugar Subsidies**, where WTO panels found violations due to excessive domestic support and export subsidies. The WTO panel found that India's support measures surpassed allowed thresholds, breaching obligations under both the AoA and the Subsidies and SCM Agreement.[81] Zambia's SAFF program mirrors similar structures through its reliance on government backed procurement and concessional credit. As a result, its influence on market prices and buyer selection contravenes WTO rules governing market price support and public procurement practices.

While SAFF does not directly link subsidies to exports, its bonding requirement mandating sales to the FRA may indirectly affect trade patterns. If FRA subsequently exports the acquired produce, this arrangement could be interpreted as an export subsidy, which is prohibited under both the AoA and the SCM Agreement.

The authors of "***Global Agricultural Prices and Policies During the WTO Regime: Explorative Research to Price Policy Advocacy"***[82] examined international agricultural pricing strategies, focusing on market price support systems and their consistency with WTO rules. In the Southern African, market price support and direct payments are the major policies to support farmers. For most of the commodities, domestic prices are aligned with global prices except for sugar, wheat and milk. Southern African Customs Union (SACU) common borders are the only price support policy for all commodities except sugar in South Africa. SACU facilitates the cross-border movement of goods between member countries such as Botswana, Lesotho, Eswatini, Namibia, and South Africa. SACU mainly promoted the integration of

[81] India – Measures Concerning Sugar and Sugarcane *WT/DS579, DS580, and DS581/R 2021.*
[82] MB Dastagiri and PVN Sindhuja, 'Global agricultural prices and policies during WTO regime: Explorative research to price policy advocacy' (2021)7 World Food Policy 1-89.

member countries into the global economy through investment and trade. Comprehensive Agricultural Support Programme (CASP) supports farmers, mainly the production of inputs and on- and off-farm infrastructure, marketing support and business development, skill development, targeted training, and capacity building, information and knowledge management, regulatory services and financial services, and technical advisory services.[83]

Moreover, although the scope is wider, the author of "***WTO's Contribution to the Challenges of Global Commons"*** addressed the WTO's changing role in global trade governance, highlighting its relevance to agricultural support policies and their connection to climate change and food security.[84]

3.4 LEGAL AND TRADE CONSEQUENCES OF NON-COMPLIANCE

SAFF has not been formally reported as a distinct subsidy to the SCM Committee, nor has it been included in Zambia's domestic support notifications under the AoA. This omission is a serious transparency shortfall under both agreements. Zambia's compliance with WTO notification requirements is therefore unclear. Failure to notify SAFF as a domestic support measure may constitute a procedural violation, as emphasised in **China – Domestic Support**[85] for agricultural producers.

Although the failure to notify does not automatically make a measure illegal on its face, it removes the chief mechanism for peer review and early diplomatic resolution and may be treated by other members as an aggravating transparency breach. Failure to notify significantly heightens Zambia's legal and commercial exposure. This lack of transparency damages its credibility and opens the door to dispute settlement proceedings over non-compliance. Clear reporting is vital for tracking and enforcing subsidy commitments under the SCM Agreement and related WTO rules.[86]

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[83] Ibid n (81).
[84] Ngozi Okonjo-Iweala, 'The WTO'S Contribution to the Challenges of Global Commons' (2023)26 Journal of International Economic Law 12-16.
[85] China - Domestic Support for Agricultural Producers *WT/DS511/19.*
[86] WTO Notification Portal – Zambia Member Profile available at https://notifications.wto.org/en/status-by-member/zambia (accessed 2 October 2025).

3.5 CONCLUSION

Based on available evidence, SAFF is a state-supported agricultural finance initiative that meets the SCM Agreement's criteria for both subsidy and specificity, as it provides financial benefits targeted at the farming sector. As such, it falls under WTO subsidy rules and should have been disclosed under Article 25 of the SCM Agreement and included in domestic support notifications under the AoA. Publishing disbursement data without corresponding WTO notifications creates a transparency gap and heightens Zambia's vulnerability to trade remedies, bilateral disputes, and formal litigation. To mitigate these risks while supporting development goals, Zambia should promptly notify SAFF, assess its alignment with AoA green-box provisions, and consider redesigning the program to minimize trade distortions or secure exemptions.

CHAPTER FOUR

THE EXTENT OF TRADE IMPLICATIONS OF THE SAFF PROGRAMME ON ZAMBIA'S MARKET ACCESS AND TRADE RELATIONS WITHIN WTO RULES AND REGIONAL FRAMEWORKS

4.0 INTRODUCTION

The WTO was established to support an equitable, market-driven global trade framework, placing special focus on agriculture due to its critical role in ensuring food security and sustaining economic stability. To achieve this, the organisation has developed rules aimed at reducing distortions in agricultural trade. However, governments frequently intervene in agriculture to stabilize food prices, secure farm incomes, and strengthen their domestic economies. Such interventions typically take the form of subsidies, which may include tariff and non-tariff barriers, tax measures, regulatory support, or direct financial assistance to producers and exporters.[87]

Agriculture has therefore always been a paradox in GATT-WTO history. On average, protectionism has increased in the agricultural sector while it has been significantly reduced or eliminated in most other sectors that have been the subject of multilateral negotiations, especially industrial goods. While the agricultural sector is taxed, sometimes quite heavily in many developed countries and forms an important source of government revenue, in the developing world it remains the coveted beneficiary of large amounts of government expenditure in the form of subsidies and other support programmes.[88]

The SAFF is one of Zambia's most ambitious initiatives, offering concessional loans to small and medium-scale farmers. Its primary objectives include increasing agricultural productivity and strengthening food security. However, despite its evident developmental benefits, the program's broader impact on trade dynamics warrants thorough evaluation. Agricultural subsidies such as the SAFF occupy a sensitive position in the international trading system. Under the WTO framework, the SCM

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[87] N.V. Ruswandana, 'Legal Issues on Subsidies of the Agricultural Products on the WTO Framework' (2021) 2(6) Journal of Social Science.
[88] M.G. Desta, 'The Law of International Trade in Agricultural Products: From 1947 to the WTO Agreement on Agriculture' (Kluwer Law International, 2002) at pages 5-8.

Agreement and the Agreement on Agriculture set out disciplines that restrict the use of certain forms of support. Measures that are export-contingent or that provide trade-distorting domestic support can attract challenges from trading partners under the WTO dispute settlement mechanism. Just as crucial, subsidies allowed under **Article 6.2** of the Agreement on Agriculture which provides special provisions for developing countries to offer input and investment support to low-income or resource-poor farmers must be thoughtfully structured and clearly reported to ensure transparency and prevent trade disputes.[89]

In addition to multilateral obligations, the legal ramifications of SAFF must be evaluated within Zambia's regional trade context. As a participant in both COMESA and SADC, Zambia is committed to advancing trade liberalisation, minimizing market distortions, and promoting regional integration. However, subsidized agricultural support could disrupt import flows from neighbouring countries or enhance Zambian exports in ways that might provoke anti-dumping investigations, safeguard actions, or disputes under WTO frameworks. Without any doubt, subsidies, in particular, export subsidies for agricultural products, have long been a source of contention between governments.[90] The growing record of intra-African trade disputes, such as the **Tunisia—Anti-Dumping Measures on School Exercise Books from Morocco**,[91] underscores the fact that African partners are increasingly willing to litigate when their trade interests are affected.

This chapter assesses the extent to which the SAFF program could generate trade-related impacts for Zambia, potentially influencing its trade relationships and market access at both regional and international levels. It investigates how SAFF aligns with Zambia's commitments under WTO law, the likelihood of triggering disputes or countervailing actions, and the risk of straining trade ties within Africa and beyond. By drawing insights from key WTO panel and Appellate Body cases such as **United States—Upland Cotton (involving African nations like Benin, Burkina Faso,**

[89] Agreement on Agriculture (AoA), Art 6.2.
[90] J Simon, E Fritz and J Fritz, *Subsidies and Market Access Towards an Inventory of Corporate Subsidies by China, the European Union and the United States: The 28th Global Trade Alert Report* (CEPR Press 2021).
[91] Morocco—Definitive Anti-Dumping Measures on School Exercise Books from Tunisia *(WT/DS578/6, 2021).*

Chad, and Mali as third parties),[92] **European Communities—Sugar Subsidies**,[93] and **Egypt—Steel Rebar**,[94] the chapter explores how Zambia can navigate the delicate balance between advancing domestic development goals and adhering to global and regional trade obligations.

Using evidence from intergovernmental disputes over subsidies, this chapter argues that such support measures are increasingly fuelling trade tensions. Numerous conflicts have unfolded within the WTO framework, underscoring its pivotal role in addressing subsidy-related issues.[95] While some distortions caused by subsidies can pertain to an individual jurisdiction, many (if not most) subsidies have a cross-border effect. Although the exact welfare effect of such subsidies depends on several factors, including the type of subsidy and the situation in a country (e.g., whether a country is a net importer or exporter and whether the subsidies can affect the world price), many disrupt other economies by distorting international competition and trade. This has often led to trade tensions.[96]

4.1 ANALYTICAL ASSESSMENT: POTENTIAL TRADE IMPACTS OF SAFF ON ZAMBIA

Subsidies are of concern to the members of the WTO/GATT[97] system for three reasons. First, subsidies can undermine market access commitments by importing nations. Second, and related, subsidies can divert customers from one exporting nation to another. The benefits to exporters of market access commitments secured through international negotiations are threatened just as much by subsidies to competing exporters in third countries as by subsidies to import-competing industries in the nations that make commitments. Finally, and somewhat more amorphously, subsidies are said by many observers to create unfair advantage in a way that is unfair or otherwise objectionable, quite independently of whether they frustrate the market access expectations associated with WTO/GATT commitments on products or

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92 United States—Subsidies on Upland Cotton *(WT/DS267/46) Adopted 21 March 2005.*
93 European Communities - Export Subsidies on Sugar *(DS265/266/283), 9 June 2006.*
94 Egypt - Definitive Anti-Dumping Measures on Steel Rebar from Turkey *WT/DS211/7/Add.3, 2003*.
95 S Evenett and J Fritz, *Subsidies and Market Access: Towards an Inventory of Corporate Subsidies by China, the European Union and the United States* (CEPR Press, 2021).
96 Ibid.
97 General Agreement on Tariffs and Trade (GATT) 1994.

services. It is well known among economists, for example, that subsidies can distort resource allocation by diverting resources from higher valued to lower valued uses. Elements of all three concerns are reflected in the WTO/GATT legal system.[98]

4.1.1 EXPORT-CONTINGENT AND TRADE-DISTORTING SUPPORT

If SAFF inadvertently incentivises exports for example, by creating large surpluses that are sold abroad, it risks being classified as an export subsidy under **Article 3.1(a)** of the SCM Agreement.[99] Such subsidies are prohibited regardless of their developmental justification, exposing Zambia to disputes or retaliatory measures. Beyond possibly being distortive and inefficient for domestic objectives, SAFF could have negative spillovers across borders.

The SAFF could create the uneven playing field and affect the commercial interests of countries in the region that compete with subsidized products in foreign markets. This does not need to be only in direct competition in the same market, as a disproportionately large number of subsidy programs are implemented by large trading countries with the potential to influence world prices.[100] The SAFF program may also affect domestic sales in industries that cannot compete on fair terms with such subsidized support. In **the United States—Upland Cotton**,[101] Brazil challenged U.S. cotton subsidies, including marketing-loan and counter-cyclical payments, as well as export credit guarantees. The WTO found these supports caused serious prejudice under **Article 5(c)** of SCM Agreement by depressing world cotton prices. For African cotton growers particularly the “C-4” countries of Benin, Burkina Faso, Chad, and Mali, who participated as third parties in the dispute, the case offered formal acknowledgment that subsidies have a direct negative impact on export revenues, reinforcing their persistent calls for reform in cotton subsidy practices.[102]

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[98] A.O. Sykes, 'The Economics of WTO Rules on Subsidies and Counter O Rules on Subsidies and Countervailing Measures' (2003) (John M. Olin Program in Law and Economics Working Paper No. 186).
[99] SCM Agreement, Art 3.1(a).
[100] Unfair Advantage: Distortive Subsidies and Their Effects on Global Trade, 2023 International Bank for Reconstruction and Development / The World Bank.
[101] United States - Subsidies on Upland Cotton *(WT/DS267/46) Adopted 21 March 2005.*
[102] Ibid.

At a more disaggregated level, the SAFF subsidy for agricultural products, including meat and several horticultural products, will be found to be particularly trade-distorting. Beyond estimating the trade effects of subsidies in the broad agriculture category, additional estimates by subsectors aim to highlight groups of products for the distorting effect of subsidies on trade that can be established with statistical significance. The distortive effects of SAFF can be found for the sector subgroups that contain meats, livestock products, and live animals, as well as for the sector that includes maize, fresh fruits and vegetables, pulses and legumes, nuts, cotton, tobacco leaf, and spices, among other agricultural products not elsewhere classified. For these subgroups, the estimated effect of an additional subsidy measure is to promote exports by 3 to 4 percent. An estimated ad valorem equivalent of subsidies for plant products would be about 13 percent.[103]

Trade-distorting subsidies like SAFF can displace trade and production in other trading partners, with important repercussions for developing countries like Zambia. In Zambia, the domestic SAFF subsidy, beyond possibly being distortive and inefficient for domestic objectives, will have negative spillovers across borders. Furthermore, subsidies by other countries will also affect domestic sales in import-competing industries that cannot compete on fair terms with such subsidized products. Both channels, displacing exports and displacing domestic sales, can be important for developing countries like Zambia. The potential legal consequences are illustrated by the **United States—Subsidies on Upland Cotton** case,[104] where both the WTO panel and Appellate Body determined that the U.S cotton subsidies such as export credit guarantees and direct payments distorted trade and significantly harmed the interests of other WTO members. These subsidies depressed global cotton prices, undermining export and production opportunities for countries like Benin and Chad, which were involved as third parties in the proceedings. The WTO acknowledged that the disruption of trade and production constitutes serious prejudice, making it subject to legal action under its rules.[105]

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[103] Unfair Advantage: Distortive Subsidies and Their Effects on Global Trade, 2023 International Bank for Reconstruction and Development / The World Bank.

[104] United States - Subsidies on Upland Cotton *(WT/DS267/46) Adopted 21 March 2005.*

[105] Calvo F, 'World Trade Organization Talks on Agricultural Subsidies Should Consider Trade-Offs Among Trade, Food Security, and the Environment' (2022) available at

4.1.2 ADVERSE EFFECTS ON WORLD PRICES AND MARKET ACCESS

In terms of market access and trade competitiveness, state-supported financing initiatives like SAFF can produce effects like conventional subsidies. By strengthening the capabilities of local producers especially small and medium-scale farmers, SAFF may shape domestic output levels and pricing in ways that influence regional trade patterns. Although the initiative aims to foster inclusive agricultural development and enhance food security, its influence on Zambia's export performance and regional market positioning might be viewed by trading partners as shifting the distribution of trade advantages. This highlights the need for ongoing international collaboration and the establishment of transparent trade regulations that reflect the changing nature of domestic support schemes like SAFF, ensuring consistency with WTO standards while supporting national development goals. The ruling in **United States – Subsidies on Upland Cotton**[106] emphasized that trade-distorting subsidies impair market access and undermine competitive conditions, especially for developing countries reliant on agricultural exports.

The adverse effects of trade distorting subsidies on market access could be seen in South Africa and Malawi when the countries lost access to Dar es Salaam's market. In April 2025, Tanzania enacted a broad ban on agricultural imports from South Africa and Malawi in response to those countries' subsidy practices and restrictions on Tanzanian exports. This move escalated an ongoing trade dispute, posing serious risks to regional supply chains and market access. Tanzania's agriculture minister, Hussein Bashe, emphasized that the measure was not meant to incite a trade conflict but was intended to safeguard Tanzania's market interests and promote fair, reciprocal trade relations.[107]

Even without a direct link to export conditions, SAFF may still be classified as an actionable subsidy if it causes substantial price depression or disrupts market dynamics. For example, subsidized maize exports from Zambia could displace producers in nearby countries, resulting in negative impacts as outlined in **Article 5(c)**

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https://www.iisd.org/articles/policy-analysis/wto-agricultural-subsidies-trade-offs (accessed 3 September 2025).

[106] United States - Subsidies on Upland Cotton *(WT/DS267/46) Adopted 21 March 2005.*

[107] I Salima and BC Mia, 'Tanzania Bans Malawi Produce' *The Daily Times* (Lilongwe, 25 April 2025).

of the SCM Agreement. In response, trading partners might impose countervailing duties or seek consultations through the WTO. Past WTO disputes offer valuable insights. For example, in **European Communities – Sugar Subsidies**,[108] export subsidies were found to hinder market access for exporters from developing countries. Likewise, the **Tunisia—Exercise Books** case highlights that African regional partners are becoming more willing to pursue legal action when their market access is at risk,[109] while **Egypt—Steel Rebar** emphasises the critical role of transparency and adherence to proper procedures.[110] Collectively, these cases serve as a warning that Zambia is not exempt from multilateral or regional scrutiny. They demonstrate that even well-intentioned initiatives like SAFF, if not carefully structured, can lead to significant trade distortions.

Under the WTO's SCM Agreement, Zambia's use of subsidies like SAFF for agricultural development may be constrained because such measures can distort competition and hinder market access by displacing trade. As a result, Zambia's flexibility to support domestic producers through initiatives like SAFF could be significantly reduced.[111] Therefore, regardless of their rationale and the various ways in which governments may provide them to firms, subsidies are prone to distorting trade and competition in the markets where their recipients operate. This distortion can be either the primary intent of a given policy or the collateral or unintended effect of the pursuit of other goals.[112]

4.1.3 ENVIRONMENT IMPACT OF SAFF

SAFF is expected to encourage the use of chemical inputs such as fertilizers and pesticides, along with intensive agricultural methods that may contribute to soil degradation, water pollution, and deforestation among small- and medium-scale farmers. These environmental consequences are well-established and could

[108] European Communities - Export Subsidies on Sugar *(DS265/266/283), 9 June 2006.*
[109] Morocco - Definitive Anti-Dumping Measures on School Exercise Books from Tunisia *(WT/DS578/6) 18 August 2021.*
[110] Egypt - Definitive Anti-Dumping Measures on Steel Rebar from Turkey *(WT/DS211/7/Add.3) 19 August 2003.*
[111] M Prakash, 'Impact of WTO Agreements on Developing Countries' Trade Policies' (2019)6 IJRAR 1.
[112] Subsidies, Competition and Trade: OECD Competition Policy Roundtable Background Note (2022) available at https://www.oecd.org/en/topics/competition.html (accessed 3 September 2025).

potentially breach environmental regulations or international accords like the **Paris Agreement**[113] and the **Convention on Biological Diversity.**[114]

With agriculture subsidies estimated to increase by US$ 2 trillion in 2030, many countries are critical of policies such as market price support and input subsidies due to their adverse environmental impacts, climate change, and biodiversity loss. Recently, in addition to trade distortion, environmental concerns are playing a crucial role in disciplining agriculture subsidies at the WTO.[115] Many members and international organisations will call for a substantial reduction in the subsidy entitlement of Zambia as a member to address these concerns. has become entirely untenable as, increasingly, the varied impacts of climate change disrupt world trade. The economy and the environment, it turns out, are not distinct, they are one and the same. In fact, the economy is contained within the ecosystems of the Earth's environment. Thus, the economic actions of trade must be viewed within their broader environmental context.[116]

The first paragraph in the preamble on the first page of the Marrakesh Agreement of 1994 that established the World Trade Organization proclaims that "trade and economic endeavour should be conducted with a view to allowing for the optimal use of the world's resources in accordance with the objective of sustainable development, seeking both to protect and preserve the environment and to enhance the means for doing so."[117] This should be done "in a manner consistent with" the "respective needs and concerns" of WTO members "at different levels of economic development."[118] The WTO Appellate Body has explained in **United States—Import Prohibition of Certain Shrimp and Shrimp Products**,[119] that this language in the preamble gives colour,

[113] Paris Agreement (December 12, 2015).
[114] Convention on Biological Diversity.
[115] S.K. Sharma, P Mathur, A.A. Shajahan et al., 'WTO negotiations and repurposing agriculture subsidies for a sustainable future' (2024) 24, pp. 349–372.
[116] Bacchus J, 'Sustainability and the WTO Trading System: The WTO at COP27' available at https://drive.google.com/file/d/1Fc2Wh3BDT7am9Zmv7laNYAu3YvqdAegY/view?pli=1 (accessed 1 September 2025).
[117] Marrakesh Agreement Establishing the World Trade Organization, at WTO | legal texts - Marrakesh Agreement.
[118] Ibid.
[119] United States—Import Prohibition of Certain Shrimp and Shrimp Products, *WT/DS58/AB/R 1998, at para. 153.*

texture, and shading to the rights and obligations of members under the WTO Agreement.

4.2 CONCLUSION

The SAFF places Zambia at a critical juncture between two priorities viz. advancing agricultural development to uplift rural communities and adhering to its obligations under international and regional trade frameworks. While **Article 6.2**[120] of the WTO's AoA offers Zambia a legal basis to implement input and investment subsidies for low income and resource poor farmers provided these are well-designed and development focused there are limits. If SAFF incorporates export-linked incentives or significantly distorts market prices, it could fall under the WTO's SCM Agreement as either prohibited (**Article 3**)[121] or actionable subsidies (**Articles 5–7**),[122] potentially triggering trade disputes or retaliatory measures from other countries.

Within SADC and COMESA, subsidised Zambian exports risk displacing regional competitors, potentially prompting trade defences like anti-dumping or safeguard measures. This could restrict Zambia's export prospects and undermine its reputation as a reliable partner in African integration.

Ultimately, the trade impact of SAFF hinges on how it is designed and implemented. If tailored to small and medium-scale farmers and aligned with WTO rules, it can support development with minimal friction. However, a broad, market-distorting approach risks breaching international obligations and triggering disputes. Balancing domestic goals with trade commitments is key to Zambia's successful agricultural transformation and global trade standing.

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[120] Agreement on Agriculture (AoA), Art 6.2.
[121] Agreement on Subsidies and Countervailing Measures (ASCM), Art 3.
[122] Ibid, Art 5-7.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.0 INTRODUCTION

This chapter provides the overall conclusions of the study and offers recommendations based on the findings presented in the previous chapters. This study aimed to critically assess the Sustainable Agriculture Financing Facility (SAFF) considering WTO subsidy rules and its implications for Zambia's trade relationships.

5.1 GENERAL CONCLUSIONS

This study sought to critically examine the SAFF in Zambia through the lens of WTO law, particularly the AoA and SCM Agreement. The study also examined how SAFF affects Zambia's trade and its possible vulnerability to legal challenges or retaliatory measures under WTO dispute resolution procedures.

Consistent with the research objectives, the study established that SAFF constitutes a subsidy under WTO law and has the potential to distort trade. Furthermore, the study established that the implementation of SAFF raises serious concerns regarding Zambia's compliance with transparency and notification obligations under WTO law.

5.2 SUMMARY OF CHAPTERS

Five chapters make up this study, which examines Zambia's SAFF from the perspective of WTO law, specifically the AoA and SCM Agreement.

5.2.1 CHAPTER ONE

Chapter one starts by outlining the research study and offering background context, emphasising that agricultural subsidies have historically been a source of tension in global trade, affecting market dynamics and relationships among WTO members. It also notes that while Zambia's adoption of SAFF represents a significant move toward embedding sustainability in its agricultural development strategy, it raises important concerns under International Trade law particularly regarding WTO compliance, the risk of trade-distorting subsidies, and the broader implications for trade flows and partnerships. The chapter has further outlined the statement of the problem concerning gaps in implementing SAFF in line with WTO subsidy disciplines and how Zambia's trade partners may view this as a trade-distorting subsidy, potentially leading to disputes, retaliatory tariffs, or countervailing duties on Zambian agricultural exports.

5.2.2 CHAPTER TWO

Chapter two was focused on the overview of the SAFF programme in Zambia and laid the legal and conceptual foundation necessary to evaluate whether the SAFF in Zambia constitutes a subsidy under World WTO disciplines. The chapter provided a definition of subsidies within the WTO framework, reviewed applicable agreements, and evaluated how agricultural support programs like SAFF are classified. It also examined legal interpretations and case law that shape the assessment of such subsidies under International Trade rules. Applying the criteria from the SCM Agreement, the analysis concluded that SAFF constitutes a government financial contribution that offers a benefit to agricultural producers. Whether through concessional loans, interest rate support, or direct grants, SAFF meets the definitional threshold of a subsidy under **Article 1.1**[123] of the SCM Agreement as it involves:

- A financial contribution by the government through concessional credit, loan guarantees, and interest rate subsidies.
- A benefit conferred to selected agricultural producers who receive more favourable financial terms than market conditions would otherwise permit.

In addition, it was established that SAFF is a specific subsidy under **Article 2**[124] of the SCM Agreement as it targets a clearly defined group i.e. small-scale and emerging farmers within selected agricultural value chains. Therefore, SAFF falls under the category of trade-related subsidies subject to WTO disciplines.

[123] Agreement on Subsidies and Countervailing Measures (ASCM), Art 1.1
[124] Ibid, Art 2.

5.2.3 CHAPTER THREE

Chapter three delved in the legal assessment of the SAFF within the context of WTO subsidy disciplines. The chapter undertook a critical examination of how the SAFF program, a government-supported concessional financing scheme for farmers and agricultural companies, adheres to or deviates from WTO norms on domestic support and agricultural subsidies. It also examined SAFF's structure, implementation, and reporting procedures to ensure they met the transparency and substantive standards established by WTO legal frameworks. While the WTO allows certain subsidies under the Green Box provisions of the AoA, it was established that the structure and implementation of SAFF do not fully align with the criteria for non-trade-distorting support. By reducing production costs for selected crops (notably maize), SAFF encourages overproduction, which may displace imports from other WTO members. The lack of transparency and the potential for market price support raise concerns about its classification and legality under WTO rules. This chapter therefore revealed the non-compliance by Zambia with WTO rules.

5.2.4 CHAPTER FOUR

Trade consequences of the SAFF on Zambia’s market access and trade relations under WTO disciplines and regional relations was the main topic of this chapter. This chapter therefore examined the degree to which SAFF may produce trade consequences for Zambia, thereby affecting trade relations and marketing access within regional and global markets. Drawing up on the evidence, it was argued that subsidies were a growing source of trade tensions. It was established that in the context of market access and trade competitiveness, government-backed financing mechanisms such as SAFF could have negative trade effects comparable to traditional subsidies. The analysis further revealed that a broad, market-distorting SAFF could jeopardize Zambia’s International Trade commitments, potentially leading to disputes and tensions with regional and global partners. If WTO members or trading partners view SAFF as an actionable subsidy causing harm to their domestic industries, they may launch countervailing investigations, impose duties, or formally contest the program under the WTO Dispute Settlement Understanding (DSU), as illustrated by the **South Africa – Anti-Dumping Duties on Frozen Meat of Fowls from Brazil** case.[125] This could result in reputational damage, trade sanctions, or forced policy adjustments. Based on the findings, the study concludes that:

- SAFF is legally a subsidy under WTO law due to its financial contribution and benefit conferred.
- SAFF is potentially trade-distorting and therefore subject to SCM and AoA disciplines.
- Zambia has not complied with key WTO reporting obligations, increasing exposure to litigation and retaliatory trade measures.

5.3 RECOMMENDATIONS

Having highlighted the gaps in the implementation of SAFF considering the WTO disciplines and the imminent legal challenges, the author will proceed to make recommendations. The recommendations will be mainly bordered on how Zambia could align with the WTO disciplines while safeguarding its developmental and agricultural policy objectives. To ensure that SAFF complies with WTO rules and to safeguard Zambia from retaliatory measures, the following recommendations are made:

5.3.1 LEGAL AND POLICY REFORMS

Reclassify SAFF under Green Box criteria: To reduce trade distortion risk, Zambia should restructure SAFF to fit **Annex 2**[126] of the AoA (Green Box), by:

- Decoupling financial support from specific commodity production.
- Offering income support and public services—such as research, training, and infrastructure that do not influence production levels.
- Focusing on climate resilience, sustainable practices, and food security in accordance with paragraph 2 of Annex 2.[127]

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[125] South Africa - Anti-Dumping Duties on Frozen Meat of Fowls from Brazil *(G/ADP/D92/1 G/L/990 WT/DS439/1), 25 June 2012.*
[126] Agreement on Agriculture (AoA), Art 2.
[127] R Meléndez-Ortiz, C Bellmann and J Hepburn, *Agricultural Subsidies in the WTO Green Box: Ensuring Coherence with Sustainable Development Goals* (ICTSD 2019).

Classifying SAFF as a 'Green Box' subsidy indicates that it does not interfere with production levels or trade flows.[128]

Enhance transparency and reporting: Zambia should improve its notification practices under WTO obligations. Timely and accurate reporting of SAFF's financial details, objectives, and beneficiaries will help build trust and reduce the risk of disputes. Zambia should further, submit delayed notifications of SAFF as domestic support under **Article 18.2**[129] of AoA. Zambia should also notify SAFF to the SCM Committee under **Article 25**[130] of the SCM Agreement as a development subsidy targeted at poverty alleviation. A publication of annual reports on SAFF financing and beneficiaries should be done and a national subsidy register created.

Conduct impact assessments: Regular legal and economic evaluations of SAFF should be institutionalised to monitor its effects on trade and compliance. These assessments should be shared with stakeholders and WTO bodies to demonstrate Zambia's commitment to fair trade practices.

5.2.2 INSTITUTIONAL STRENGTHENING

Establish a WTO compliance unit: A specialized team within the Ministry of Commerce, Trade and Industry should be responsible for ensuring that trade-related initiatives, including SAFF, conform to WTO regulations. Essentially, Zambia needs to implement a national framework for notifying subsidies under WTO rules, coordinated between the Ministry of Commerce, Trade and Industry and the Ministry of Agriculture. This unit should collaborate with legal professionals, economists, and international consultants, highlighting the critical role of institutional capacity in navigating shifting global trade landscapes.[131]

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[128] R Banga, 'Do Green Box Subsidies Distort Agricultural Production and International Trade?' (2014)114 Commonwealth Trade Hot Topics.
[129] Agreement on Agriculture (AoA), Art 18.2.
[130] Ibid, Art 25.
[131] L Tony-Francis, 'An analysis of the institutional mechanisms of the world trade organisation and its roles in the international trading system' (2023)9 International Journal of Law 1-6.

Involve stakeholders: The participation of farmers, exporters, and civil society is essential in shaping and overseeing SAFF to ensure it aligns with national development priorities and complies with International Trade commitments.

5.2.3 INTERNATIONAL COOPERATION

Request technical support from WTO and development partners: Zambia should work with WTO specialists and donor organizations to restructure SAFF, so it fosters sustainable agriculture while remaining compliant with International Trade regulations.

Pursue bilateral engagement: To avoid potential conflicts, Zambia should initiate diplomatic discussions with major trading partners to clarify the objectives of SAFF and work toward mutual agreements or exemptions when feasible.

5.4 CONCLUSION

This study has shown that while Zambia's SAFF initiative is driven by positive development goals, it must be carefully structured to comply with WTO regulations in order to protect the country's trade interests. Legal adherence and development objectives can go hand in hand. With thoughtful reforms, Zambia can enhance its agricultural sector while respecting International Trade obligations. Applying the proposed recommendations will help maintain SAFF's developmental impact while ensuring it remains WTO-compliant. This will not only protect Zambia from trade disputes but also enhance its credibility and leadership in promoting sustainable agriculture within the global trading system.

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3 11 17 20 24 29 34 53 58 SCHOOL OF LAW THE IMPACT OF AGRICULTURAL SUBSIDIES: A LEGAL ASSESSMENT OF THE SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) ON ZAMBIA'S TRADE AND ITS COMPLIANCE WITH WTO RULES By: KNOX KAMUSWEKE LLB22114338 AN OBLIGATORY ESSAY SUBMITTED TO THE UNIVERSITY OF LUSAKA IN PARTIAL FULFILMENT OF THE REQUIREMENTS FOR THE AWARD OF THE BACHELOR OF LAWS (LLB) DEGREE. 3 6 8 9 10 11 12 14 17 18 19 22 24 25 26 27 28 30 31 32 33 34 37 38 40 41 44 45 46 47 51 55 57 59 2025 DECLARATION I declare that

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UNIVERSITY OF LUSAKA

SCHOOL OF LAW

L400B – DIRECTED RESEARCH (OBLIGATORY ESSAY)

RESEARCH CLEARANCE FORM

NAME: KNOX KAMUSWEKE **STUDENT NUMBER:** LLB22114338

SUPERVISOR: Ms. INONGE MUTEMWA

TOPIC: THE IMPACT OF AGRICULTURAL SUBSIDIES: A LEGAL ASSESSMENT OF THE SUSTAINABLE AGRICULTURE FINANCING FACILITY (SAFF) ON ZAMBIA'S TRADE AND ITS COMPLIANCE WITH WTO RULES

Stage	**Comment**	**Supervisor's signature and date**	**Student's signature and date**
Chapter one	Approved.	01/09/2025	01/09/2025
Chapter two	Approved after making the following recommended corrections: -Adding the articles referenced in the footnotes as well. -Placing page numbers.	13/08/2025	13/08/2025

	-Inclusion of list of references at the end of chapters for review. -Spacing between headings.		
Chapter three	Approved. Advised to make use of 'ibid' in references or 'n#' to allow more page space.	15/10/2025	15/10/2025
Chapter four	Approved the corrections on footnotes and url in reference.	17/09/2025	17/09/2025
Chapter five – Conclusions & Recommendations	Approved.	05/11/2025	05/11/2025
Table of Contents, Bibliography and Appendices	Make all headings and subheadings in caps. Approved correction of missing url in one reference.	05/11/2025	05/11/2025

First Draft	Make final changes on certain sections and prepare final draft.	05/11/2025	05/11/2025
Second Draft	Approved.	05/11/2025	05/11/2025
Final Draft	Good job. Proceed to submit for examination.	11/11/2025	11/11/2025