

# Green subsidies under international trade law: Challenges and policy implications for Vietnam

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## ABSTRACT

Green subsidies represent pivotal financial tools governments employ to foster environmentally sustainable practices across industries and among consumers. These subsidies are not just financial aids, but urgent measures to mitigate the environmental impact of economic activities, encouraging the adoption of renewable resources and the development of green technologies. However, their intersection with international trade law presents challenges, particularly under the WTO's Agreement on Subsidies and Countervailing Measures (SCM Agreement). Disputes brought before the WTO, such as *Canada - Certain Measures Affecting the Renewable Energy Generation Sector* (DS412), *India - Certain Measures Relating to Solar Cells and Solar Modules* (DS456), and *United States - Certain Measures Relating to the Renewable Energy Sector* (DS510), have demonstrated how certain forms of green subsidies, especially those tied to local content requirements, can be found inconsistent with global trade rules.

For nations like Vietnam, which is increasingly integrated into the global economy, the design and deployment of green subsidies must carefully balance environmental ambitions with compliance with international trade laws. This challenge becomes even more significant considering Vietnam's major climate commitments, including its pledge at the 26th United Nations Climate Change Conference of the Parties to achieve net-zero greenhouse gas emissions by 2050 and reduce methane emissions by 30% by 2030. To achieve these goals, the Vietnamese government has introduced a framework to promote renewable energy.

This paper explores the intersection of green subsidies within WTO regulations, analyzes global trends in green subsidies, and assesses the legal compatibility of Vietnam's current policy instruments. This study, therefore, suggests Vietnam practical recommendations to its green development policies to be compliant with international trade law and contribute to both national sustainability goals and deeper integration into the global green economy.

**Key words:** Green Subsidies, World Trade Organization (WTO), Environmental Policy, Sustainable Development, Vietnam's Environmental Strategy

## INTRODUCTION

At the 2022 and 2023 UN Climate Change Conference (COP27 and COP28), participating countries affirmed their commitment to keep global temperature increase to no more than 1.5°C and emphasized the need for a rapid transition to clean energy<sup>1,2</sup>. In this context, renewable energy is seen as a sustainable alternative to fossil fuels, and many governments have implemented supportive policies to promote this sector. Among them, “green subsidies”, a form of state support to develop the clean energy industry, play a particularly important role. However, these measures may pose legal challenges under WTO regulations, especially SCM Agreement and new-generation FTAs. Several cases brought before the WTO Dispute Settlement Body, such as *Canada - Renewable Energy* (DS412), *India - Solar Cells* (DS456), and *US - Renewable Energy* (DS510) have demonstrated that cer-

tain forms of green subsidies may be considered violations of trade rules, particularly when they involve local content requirements. This raises important concerns for Vietnam, a country that is both heavily impacted by climate change and strongly committed to global environmental goals.

At the 26th United Nations Climate Change Conference of the Parties (COP26), Vietnam formally committed to achieving net-zero greenhouse gas emissions by 2050 and to reducing methane emissions by 30% by 2030<sup>3</sup>. In pursuit of these ambitious climate targets, the Vietnamese government has promulgated a comprehensive framework of support policies to facilitate the development of renewable and clean energy sectors. Notably, Decree No. 58/2025/ND-CP details several provisions of the Law on Electricity concerning the development of renewable and new energy sources. In parallel, Decree No. 57/2025/ND-CP establishes a mechanism for direct power pur-

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chase agreements between renewable energy generators and large electricity consumers. The Environmental Protection Law 2020 further reinforces these efforts by providing an updated regulatory foundation for environmental governance. Additionally, the State Bank of Vietnam has issued a series of regulatory instruments to integrate environmental and social considerations into financial practices. These include Directive No. 03/CT-NHNN, which emphasizes the promotion of green credit and the management of environmental and social risks in credit activities; Decision No. 1604/QĐ-NHNN promulgating the banking sector's Action Plan for implementing the National Strategy on Green Growth for the 2021-2030 period; Decision No. 986/QĐ-TTg, approving the Development Strategy for Vietnam's Banking Sector to 2025 with a vision to 2030; and Circular No. 17/2022/TT-NHNN, which sets forth regulations on environmental and social risk management in the credit granting activities of credit institutions.

Collectively, these legal and policy instruments are designed to stimulate the growth of international trade in both exports and imports of renewable energy products, including solar panels, wind turbines, and other clean energy technologies, thereby contributing to Vietnam's sustainable development objectives and its integration into the global green economy.

This research aims to analyze the legal framework for green subsidies according to WTO regulations, assess the current practice in the world, and propose appropriate policy solutions for Vietnam, thereby helping to harmonize sustainable development goals and obligations to comply with international trade regulations.

## METHODS

This research adopts two principal methods:

*First*, the doctrinal legal method is applied to examine written legal texts, focusing on the interpretation and application of relevant legal documents governing green subsidies, particularly SCM Agreement.

*Second*, the comparative legal research method is applied to analyze and contrast the legal frameworks and policy practices related to selected case law on green subsidies with those currently in place in Vietnam. The combination of these methods allows for a comprehensive assessment of Vietnam's legal compatibility within the WTO framework and supports the formulation of appropriate policy recommendations.

## RESULTS AND DISCUSSIONS

### An overview of green subsidies

Green subsidies are policy instruments that emerged in the late 1970s, notably with the enactment of the

Public Utility Regulatory Policies Act of 1978, which facilitated the integration of renewable energy into the electricity market by requiring utilities to purchase electricity from qualifying small-scale renewable facilities<sup>4</sup>. Green subsidies became more widespread after the adoption of the Renewable Energy Sources Act in Germany in 2000, which strongly promoted the development of clean energy sources such as wind and solar power<sup>5</sup>.

According to Charnovitz, green subsidies refer to the allocation of public resources aimed at enhancing the sustainability of goods and services<sup>(6, p.479)</sup>. These public resources may include state-owned assets or assets administered by public authorities, typically financed through public revenues such as taxation and public budgets. Globally, green subsidies have been increasingly adopted as instruments to promote the development of clean energy industries, facilitate the transition away from fossil fuels, mitigate climate change, and promote sustainable production and consumption<sup>7</sup>. According to the World Bank and the International Energy Agency, clean energy encompasses not only renewable energy but also non-carbon-emitting sources, including nuclear, geothermal, solar, and wind energy. Accordingly, green subsidies are primarily directed at supporting industries that generate energy without emitting greenhouse gases<sup>(8,9, p.149)</sup>. Yamaguchi and Baccus agree that green subsidies serve to address market failures and promote green technologies and have advocated for WTO exemptions for such subsidies<sup>(10, p.15; 11)</sup>. The nature of green subsidies is fiscal policy - an economic intervention employed by governments to correct market failures<sup>(7, p.1; 12)</sup>. In the environmental context, green subsidies are used to correct market failures associated with environmental degradation. One common failure is the existence of negative externalities, where the production or consumption of goods imposes environmental costs on third parties without appropriate compensation<sup>13</sup>. Government intervention is justified in such cases to correct market distortions<sup>(6, p.493)</sup>. Two primary reasons support the need for Government intervention in the clean and renewable energy sectors: (i) the high infrastructure costs of renewable energy projects compared to conventional energy projects; and (ii) the higher prices at which clean energy must be sold due to these investment costs. Government support is therefore essential to enhance the competitiveness of clean energy relative to fossil fuels and to facilitate the sector's development<sup>(6, p.493)</sup>. Green subsidies are regarded as one of the most effective measures to assist enterprises in transitioning to clean energy and reducing price-based competition pressures.

Thus, green subsidy policies deliver positive environmental externalities while also promoting economic growth. Therefore, the implementation of green subsidies by states is deemed necessary to drive green economic transition and amplify positive environmental impacts.

Moreover, it is essential to acknowledge that green subsidies vary in form and function according to the stage of green technology development. For instance, R&D grants are typically applied at the early stage of innovation to support the development of emerging technologies<sup>14</sup>. Investment tax credits often assist with demonstration and scaling-up phases, helping to reduce the high capital costs of deploying clean energy infrastructure<sup>15</sup>, p.2; <sup>16</sup>, p.6). Production tax credits, on the other hand, is effective for technologies with lower upfront investment costs and predictable electric output over their lifetime<sup>16</sup>, p.6).

Notable examples of such subsidies include: pollution-reduction subsidies such as the United States' Production Tax Credit; conservation-incentive subsidies like Costa Rica's Payment for Environmental Services; compliance assistance schemes such as the EU's ECO-Innovation program; and green consumption incentives such as Japan's Eco-Point program. Collectively, these programs contribute to emission reductions, resource conservation, and the promotion of sustainable consumption.

## International trade law on green subsidies

### WTO Rules on subsidies

Under the WTO framework, as prescribed in Articles VI and XVI of the GATT 1994 and SCM Agreement, a measure constitutes a "subsidy" only if it satisfies four conditions set out in Articles 1.1 and 1.2 of SCM Agreement:

*First*, there must be a financial contribution as defined under Article 1.1(a)(1), which includes: "(i) direct transfers of funds (e.g., grants, loans, equity infusion); (ii) potential direct transfers of liabilities (e.g., loan guarantees); (iii) government revenue foregone (e.g., tax exemptions); (iv) the provision of goods or services other than general infrastructure, or government purchase of goods; and (v) entrustment or direction of a private body to carry out any of these functions."

*Second*, the contribution must originate from a government or any public body within the territory of a Member. In US - Anti-Dumping and Countervailing Duties (China), the Appellate Body clarified that whether an entity qualifies as a public body depends on its functions and whether it exercises governmental authority, rather than merely on formal ownership or structure<sup>17</sup>, para 286). Hence, the "financial

contribution" must originate from an entity exercising governmental authority in order to fall within the scope of the SCM Agreement.

*The third* condition under Article 1.1(b), SCM Agreement is that the financial contribution must confer a benefit on the recipient. According to WTO rules, particularly Canada - Aircraft (in 1999), a benefit exists where the financial terms provided are more favourable than those available under normal market conditions<sup>18</sup>, para 157). It is insufficient for a transfer of value to occur; the recipient must be demonstrably advantaged relative to its position in the absence of such support. The analysis of benefit is thus comparative, market-based, and focused on economic advantage.

*The fourth condition*, specificity, is governed by Article 1.2 and detailed in Article 2 of the SCM Agreement. A subsidy is deemed specific if it is limited to certain enterprises, industries, or regions. Article 2.1 addresses de jure and de facto specificity: subsidies explicitly limited to certain entities are de jure specific, whereas de facto specificity may be determined based on factors such as a limited number of beneficiaries or an allocation that is disproportionate. Article 2.2 further provides that regional specificity exists when subsidies are confined to enterprises within a designated geographic area. In EC - Large Civil Aircraft (in 2011), the Panel affirmed that geographic limitations imposed by a local authority can give rise to specificity. Additionally, under Article 2.3, all prohibited subsidies under Article 3, namely export subsidies and import-substitution subsidies, are automatically deemed specific in nature.

The SCM Agreement classifies subsidies into two principal categories. First, subsidies are prohibited under Article 3, which includes subsidies contingent upon export performance or the use of domestic goods over imported ones. These are *per se* illegal. Second are actionable subsidies under Article 5, which are not automatically illegal but may be challenged if they cause adverse effects, including: (i) material injury to the domestic industry of another Member; (ii) nullification or impairment of benefits under the GATT 1994; or (iii) serious prejudice to the interests of another Member in a third-country market. The category of non-actionable subsidies under Article 8, previously recognized, expired in 2000 and is no longer in effect. To enforce subsidy disciplines, the WTO offers two primary mechanisms. First, multilateral remedies involve adjudication through the Dispute Settlement Body (DSB), which includes consultations, panel proceedings, and

compliance reviews. Second, unilateral remedies permit an affected Member to impose countervailing duties, provided that it establishes the existence of a subsidy, material injury, and a causal link between them.

### **WTO case law on Green Subsidies**

Below are three notable WTO cases concerning green subsidies:

In Canada - Renewable Energy and Canada - Feed-in Tariff Program, Japan and the European Union challenged Canada's feed-in tariff (FIT) scheme, alleging violations of the national treatment obligation and the imposition of local content requirements. Both the Panel and the Appellate Body concluded that the measures breached the TRIMs Agreement and Article III:4 of the GATT 1994<sup>19</sup>. However, the claims under the SCM Agreement were not upheld, as the measures did not meet the conditions to be deemed prohibited subsidies (<sup>19</sup>, Section VIII).

In India - Solar Cells, the United States contested India's requirement that solar energy equipment be domestically manufactured to qualify for government incentives. The WTO found that these measures violated the national treatment obligation under Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement (<sup>20</sup>, para 8.2(a); <sup>18</sup><sup>21</sup>, para 8.2). India's invocation of the general exceptions under Article XX(d) and XX(j) of the GATT 1994 was rejected, as it failed to demonstrate the necessity of the measures or any general or critical shortage of domestic products (<sup>21</sup>, para 6.4).

In US - Renewable Energy, India brought a claim against the United States regarding certain renewable energy support measures that were conditional upon domestic manufacturing. The Panel found that these measures accorded less favourable treatment to imported goods, thereby violating the national treatment obligation under Article III:4 of the GATT 1994 (<sup>22</sup>, para 7.338). The remaining claims under the TRIMs and SCM Agreements were not considered, as the GATT violation was deemed sufficient.

Several other disputes involving green subsidies at the WTO concluded at the consultation stage and did not proceed to panel adjudication. These include China - Wind Power Equipment (DS419), EU - Renewable Energy Sector (DS452), EU - Biodiesel Measures (DS459), US - Renewable Energy Sector (DS510), and US - Renewable Energy (DS563). These disputes typically concerned either subsidy schemes or local content requirements in the renewable energy sector, raising concerns regarding potential violations of Article III of the GATT 1994, Article 2 of the TRIMs

Agreement, and Article 3 of the SCM Agreement. In most of these cases, the challenged measures were alleged to discriminate against imported goods. Except for EU - Biodiesel (Indonesia) (DS618), which proceeded to the panel stage, the remaining cases were resolved through consultations without the issuance of a formal ruling. This pattern reflects a broader tendency among WTO Members to favour flexible, diplomatic solutions in disputes implicating environmental policy and energy transition concerns.

Based on the case law discussed, green subsidies may be broadly categorized into two groups:

*First*, green subsidies that may violate WTO rules, particularly where they are tied to local content requirements, as seen in Canada - Feed-in Tariff and India - Solar Cells, as such requirements contravene Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement. Additionally, export subsidies, such as those alleged in EU - Biodiesel (Indonesia), may breach Article 3 or 5 of the SCM Agreement if they result in injury to the domestic industry of another Member.

*Second*, green subsidies that do not violate WTO rules fall into two main categories: (i) those that do not meet the definition of a subsidy under Articles 1 and 2 of the SCM Agreement (e.g., where no benefit is conferred or where the measure lacks specificity); and (ii) those that are otherwise permissible under WTO law because they do not result in adverse effects on the trade interests of other Members (e.g., non-specific support measures, such as public investment in general grid infrastructure, or financial incentives granted to small and medium-sized enterprises that do not distort international trade).

### **Legal Framework Governing Subsidies under Free Trade Agreements**

As of April 2025, Vietnam is a party to 17 FTAs currently in force and is engaged in negotiations for 2 additional FTAs<sup>23</sup>. Among them, new-generation FTAs such as the CPTPP, EVFTA, and RCEP not only focus on tariff liberalization but also broaden their regulatory reach to encompass environmental issues, trade in services, and investment disciplines. A comparative analysis of subsidy-related provisions in these FTAs as compared to WTO rules reveals two distinct approaches: First, RCEP merely incorporates and reaffirms existing WTO disciplines on subsidies without expanding their substantive scope; Second, the CPTPP and EVFTA introduce more detailed and supplementary provisions, particularly concerning transparency requirements, regulation of state-owned enterprises (SOEs), environmental considerations, and commitments to sustainable development.

Regarding the CPTPP and EVFTA, both agreements expand subsidy regulations beyond those under the WTO framework, as follows:

While WTO rules primarily focus on subsidies that directly affect trade, the CPTPP and EVFTA broaden the scope of regulation to cover environmental and SOEs that are related to subsidies, reflecting a clear trend toward enhancing transparency and safeguarding sustainable development in next-generation FTAs. The CPTPP expands the list of prohibited subsidies by including export subsidies for agricultural products (Article 2.21), subsidies for fisheries that harm the environment (Article 20.5), and subsidies granted to SOEs that distort the market (Article 17.4). It also identifies as actionable those subsidies that distort international trade, particularly those provided to SOEs or that negatively impact the environment (Chapters 17 and 20). Similarly, the EVFTA prohibits export subsidies for agricultural products (Article 2.12) and considers as actionable any subsidies that distort trade between the EU and Vietnam or harm the environment (Chapter 10, Section B). Thus, several next-generation FTAs to which Vietnam is a party have begun to incorporate environmental objectives into their commitments. Many FTAs today include chapters or specific provisions on environmental protection.

Globally, some new-generation FTAs have begun to incorporate provisions related to green subsidies. For instance, the EU-Singapore FTA includes commitments to gradually phase out fossil fuel subsidies and to prohibit the application of local content requirements in the development of renewable energy (24, p.6). However, it does not address green subsidies, the provisions remain vague and lack clear definition.

### Implications for Vietnam

#### Recent Trends in the Adoption of Green Subsidies Worldwide

The United States, the European Union, and China have emerged as the leading global players in green subsidy initiatives. According to the International Energy Agency, these three economies accounted for approximately 80% of direct government spending on clean energy since 2020, reflecting their pivotal roles in shaping the global green transition<sup>25</sup>. The US, EU and China have adopted expansive green subsidy programs as part of broader strategies to achieve energy transition, promote clean technologies, and secure industrial competitiveness. Although all three countries focus on three core policy objectives: (i) supporting renewable energy, (ii) encouraging green innova-

tion, and (iii) limiting subsidies for polluting industries, their methods vary in how the policies are designed, how transparent they are, and how well they comply with international trade rules.

In the US, key instruments include the Inflation Reduction Act (IRA) of 2022, the Investment Tax Credit (ITC), and the Production Tax Credit (PTC). Among these, the IRA is regarded as the most significant climate legislation to date, offering long-term support and imposing local content requirements, provisions that have drawn scrutiny under WTO rules. Compared to ITC and PTC, the IRA features broader coverage and stronger incentives.

The EU, meanwhile, has enhanced its green subsidy framework to support the energy transition and green industrial policy. The 2022 Guidelines on State Aid for Climate, Environmental Protection, and Energy permit subsidies in sectors such as renewables and hydrogen, while restricting subsidies for fossil fuels. The EU has also implemented the Green Deal Industrial Plan and the Renewable Energy Financing Mechanism to boost investment and ensure benefit-sharing across member states. EU policy clusters green subsidies into three categories: (i) support for renewable energy, (ii) incentives for green innovation, and (iii) phase-out of fossil fuel subsidies. Notably, the EU has been the most active WTO member in initiating countervailing investigations in the renewables sector (26, p.4). More recently, the EU launched a subsidy investigation targeting Chinese electric vehicles amid concerns over injury to its automotive industry<sup>27</sup>.

China has aggressively pursued green industrial policies through a combination of legislative reforms<sup>28</sup>. As of 2025, China's New Energy Law has come into effect, consolidating various regulations related to renewable energy. It focuses on addressing carbon emissions, ensuring energy security, and promoting low-carbon development and energy technologies<sup>29</sup>. Key sectors receiving support include electric vehicles (EVs), wind turbines, and railway equipment. The EV sector, in particular, benefits from extensive subsidies, enabling China to export at highly competitive prices, prompting the EU to impose countervailing duties ranging from 17% to 35.3% in October 2023<sup>30</sup>. China is also the world leader in green credit issuance, reaching USD 3.3 trillion by the end of 2022<sup>31</sup>, and is scaling back support for high-emission industries. Concurrently, China has brought WTO claims against the EU and the US, alleging discriminatory green subsidy practices, particularly in relation to the IRA and electric vehicles. These disputes remain under WTO review.

The growing emphasis on green subsidies by the United States, the European Union, and China reflects a broader trend of leveraging fiscal policy to promote renewable energy, clean technologies, and emissions reduction. However, as these economies implement large-scale support measures, such as the Inflation Reduction Act, the EU Green Deal Industrial Plan, and China's industrial strategies, concerns are rising over their impact on global trade fairness<sup>32</sup>. This growing reliance on subsidies poses key risks to the multilateral trading system: First, it distorts trade by favoring domestic companies, especially through local content requirements; Second, it undermines past trade liberalization efforts by weakening market-access commitments; Third, it may trigger retaliatory measures, escalating subsidy wars and undermining global cooperation on climate action<sup>32</sup>. If governments do not manage the global race for green leadership carefully, it could escalate into a subsidy war that distorts international trade, hinders innovation in developing countries, and undermines global cooperation in addressing climate change.

Amid the intensifying green technology race among developed countries, Vietnam needs to closely monitor global policy trends to promptly adjust its domestic policies accordingly. This is not only crucial for ensuring compatibility with international trade regulations but also for protecting Vietnam's exports from the risk of trade defense measures imposed by major trading partners.

### **Vietnam's Policies Related to Green Subsidies**

Vietnam has increasingly incorporated green subsidy measures into its domestic legal and policy framework to promote renewable energy and sustainable development. These measures are primarily reflected in three key areas: (i) green credit policies, (ii) tax incentives, and (iii) land use and lease incentives.

*Green Credit Policy:* Vietnam has actively promoted green credit through several legal instruments, including Decree No. 58/2025/NĐ-CP, Decree No. 57/2025/NĐ-CP, the Law on Environmental Protection 2020, Directive No. 03/CT-NHNN, Decision No. 1604/QĐ-NHNN, Decision No. 986/QĐ-TTg, and Circular No. 17/2022/TT-NHNN. Green credit policies were primarily focused on projects in sectors such as renewable energy and clean energy, which accounted for the largest share of green lending<sup>33</sup>. However, this policy carries a high risk of being classified as an actionable subsidy under the SCM Agreement. Specifically, under Article 1.1(a)(1) of the SCM

Agreement, concessional lending by state-owned or state-invested commercial banks to renewable energy projects may constitute a "financial contribution" by a public body. If such loans confer a specific economic advantage, namely, a lower cost of capital than would be available under market conditions, this may constitute a "benefit" within the meaning of Article 1.1(b) of the SCM Agreement. Furthermore, where green credit is disproportionately directed toward renewable and clean energy projects, the measure may be deemed "specific" under Article 2.1(a) or 2.1(c) of the SCM Agreement.

International practice has already shown relevant precedent. In 2024, the United States imposed countervailing duties on imports of solar panels from Vietnam, citing preferential loans granted by Vietnamese state-owned banks as a violation of WTO subsidy rules. The U.S. argued that the Vietnamese government's substantial ownership and policy-driven lending constituted a "specific subsidy." This case highlights the legal risks Vietnam may face if green credit policies are not aligned with WTO disciplines. Accordingly, Vietnam should consider expanding the eligibility scope and ensuring transparent and market-based allocation mechanisms in green credit programs to reduce the risk of such policies being classified as actionable subsidies. *Tax Incentive Policy:* Vietnam has introduced a number of tax incentives to promote investment in environmentally friendly sectors, particularly renewable energy, in accordance with the Law on Corporate Income Tax No. 14/2008/QH12 dated June 3, 2008, as amended by Law No. 32/2013/QH13 dated June 19, 2013 and The Draft Law on Corporate Income Tax No. 67/2025/QH15 dated June 14, 2025, adopted by the National Assembly, is scheduled to take effect on October 1, 2025. These incentives include: a preferential corporate income tax rate of 10% for 15 years for income derived from the production of renewable and clean energy; a full tax exemption for up to 4 years; and a 50% reduction in corporate income tax for up to the following 9 years. In addition, the Draft Law on Corporate Income Tax 2025 introduces several new provisions, including a corporate income tax exemption for income derived from the first transfer of carbon credits after issuance.

Under the WTO's SCM Agreement, these measures may qualify as subsidies if they meet four conditions: (i) a financial contribution through forgone government revenue under Article 1.1(a)(1)(ii); (ii) implemented by a government or public body; (iii) confer a financial benefit to recipients under Article 1.1(b);

and (iv) are specific to certain sectors such as renewable energy under Article 2.1(a) or (c). Except for import/export tax incentives that do not impose export conditions, other incentives could be considered actionable subsidies if they are found to cause injury or distort competition.

*Land Use and Lease Incentives:* Vietnam currently implements land use and rental incentives for projects in sectors such as renewable energy, clean energy, new materials, and energy-efficient products, as stipulated under the 2024 Land Law and the 2020 Investment Law. Additionally, Decree No. 58/2025/NĐ-CP outlines specific incentives for new energy electricity projects that utilize 100% green hydrogen, green ammonia, or a combination thereof, supply power to the national grid, or are the first of their kind. The incentives include full exemption from land and sea area use fees for up to three years during the basic construction period, and a 50% reduction in sea use fees for the following nine years.

However, under the WTO SCM Agreement, these policies may qualify as subsidies if they meet four criteria: (i) the government foregoes revenue that would otherwise be due - constituting a “financial contribution” under Article 1.1(a)(1)(ii); (ii) the policy is enacted by a public authority; (iii) it confers a clear financial benefit to the recipient enterprise under Article 1.1(b); and (iv) it is specific - if the incentives are limited to certain sectors or enterprises under Article 2.1(a) or 2.1(c). As such, these policies carry potential legal risk and could be subject to WTO dispute settlement proceedings if found to cause adverse effects to other Members’ domestic industries.

### Recommendations

Vietnam should implement a coordinated set of two policy measures:

*First*, in improving domestic legal and policy frameworks, Vietnam should ensure that all three categories of green subsidies, namely green credit policies, tax incentives, and land use incentives, are carefully designed so as not to fall into the category of prohibited subsidies under Article 3 of the SCM Agreement. Specifically, these policies must not impose local content requirements, such as obliging enterprises to prioritize the use of domestic raw materials, technologies, or services as a condition for receiving government support.

This recommendation draws upon precedents from WTO cases such as Canada - Feed-in Tariff Program case, India - Solar Cells, which have consistently held that such local content requirements violate WTO rules. These measures were found to

breach Article III:4 of the GATT 1994 and Article 2.1 of the TRIMs Agreement, as they discriminated against foreign goods and services. To that end, implementation mechanisms must be strengthened to ensure transparency and fairness. Vietnam may also consider adopting competitive bidding mechanisms for renewable energy support, similar to the EU’s Renewable Energy Financing Mechanism (REFM), which promotes market-based, transparent, and non-discriminatory allocation of subsidies.

*Second*, since late 2019, the WTO Appellate Body has been effectively paralyzed due to the U.S. blocking the appointment of new judges, leaving it unable to hear appeals and weakening the WTO’s ability to resolve trade disputes<sup>34</sup>. As a result, countries have increasingly turned to bilateral or plurilateral dispute settlement mechanisms, including interim arbitration arrangements and deeper trade agreements, to fill this gap. Vietnam should advocate for the development of specific provisions on green subsidies in next-generation FTAs, such as the CPTPP and EVFTA. The inclusion of carve-outs for environmental subsidies would help establish a clear legal basis for implementing renewable and clean energy support policies in a transparent and legally secure manner. Criteria such as one-time disbursement, limits on support intensity, exclusion of operational costs, alignment with environmental objectives, and non-discrimination should be expressly stipulated. In this way, coordinated reforms at the domestic level, active engagement in international legal frameworks, and proactive legal design within FTAs will enable Vietnam to promote a green transition while safeguarding its national interests in global trade.

### CONCLUSIONS

In response to the challenges of climate change and the transition to a low-carbon economy, “green subsidies” have emerged as a crucial tool to promote renewable energy, clean energy, and sustainable development. However, such policies must comply with WTO rules and new-generation FTAs. This research clarifies the concept of green subsidies, analyzes international practices, and Vietnam’s current policies, such as green credit, tax incentives, and land use preferences. Based on the above analysis, the study puts forward two key recommendations as follows: (i) Domestically, Vietnam should revise its green subsidy policies to align with WTO rules, avoiding prohibited measures (e.g., local content requirements), ensuring broader eligibility, and enhancing transparency. It may also consider adopting competitive bidding

mechanisms like the EU's Renewable Energy Financing Mechanism. (ii) Internationally, Vietnam should advocate for the inclusion of clear provisions on green subsidies in FTAs like CPTPP and EVFTA. These provisions should define eligibility criteria, support limits, and align with environmental goals to provide legal certainty. Through coordinated domestic reforms and active legal engagement in FTAs, Vietnam can promote a green transition while protecting its trade interests.

## ABBREVIATION

COP Conference of the Parties

CPTPP Comprehensive and Progressive Agreement for Trans-Pacific Partnership

EVFTA EU-Vietnam Free Trade Agreement

FTA Free Trade Agreement

GATT General Agreement on Tariffs and Trade

SOE State-owned enterprises

WTO World Trade Organization

## COMPETING INTERESTS

The authors declare that they have no conflicts of interest.

## AUTHORS' CONTRIBUTIONS

Dr. Dao Gia Phuc is the first author and responsible for developing the comprehensive outline, preparing the detailed structure for each section, compiling the complete list of references in accordance with academic standards, and finalizing the full manuscript.

Ms. Nguyen Thi Minh Nghia is the second author and responsible for drafting the assigned sections in accordance with the provided guidelines, reviewing relevant literature, and revising the manuscript based on feedback.

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# Trợ cấp xanh trong thương mại quốc tế: Các thách thức và một số đề xuất cho Việt Nam

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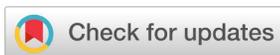
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## TÓM TẮT

Trợ cấp xanh được xem là công cụ tài chính then chốt mà các chính phủ sử dụng nhằm thúc đẩy các hoạt động sản xuất và tiêu dùng bền vững. Các khoản trợ cấp này không chỉ đơn thuần là hỗ trợ tài chính, mà còn là những biện pháp cấp thiết nhằm giảm thiểu tác động tiêu cực của hoạt động kinh tế đến môi trường, khuyến khích việc sử dụng nguồn năng lượng tái tạo và phát triển công nghệ xanh. Tuy nhiên, mối liên hệ giữa trợ cấp xanh và pháp luật thương mại quốc tế đặt ra nhiều thách thức, đặc biệt là trong khuôn khổ Hiệp định về Trợ cấp và Biện pháp đối kháng (SCM Agreement) của Tổ chức Thương mại Thế giới (WTO). Các vụ tranh chấp đã được đưa ra giải quyết tại WTO, tiêu biểu như án lệ Canada - Renewable Energy (DS412), India - Solar Cells (DS456) và United States - Renewable Energy (DS510), cho thấy rằng một số biện pháp trợ cấp xanh, đặc biệt là những biện pháp gắn với yêu cầu về hàm lượng nội địa, có thể bị coi là không phù hợp với các quy tắc thương mại quốc tế.

Đối với các quốc gia như Việt Nam trong bối cảnh hội nhập sâu rộng vào nền kinh tế toàn cầu, việc thiết kế và triển khai các biện pháp trợ cấp xanh cần bảo đảm sự cân bằng giữa mục tiêu bảo vệ môi trường và nghĩa vụ tuân thủ pháp luật thương mại quốc tế. Những thách thức này đồng thời ảnh hưởng đáng kể đến các chính sách nhằm thúc đẩy phát triển năng lượng tái tạo của Việt Nam trong bối cảnh nước ta đã đưa ra các cam kết khí hậu quan trọng. Chẳng hạn như tuyên bố đạt phát thải ròng bằng 0 vào năm 2050 và giảm 30% lượng phát thải khí methane vào năm 2030 tại Hội nghị lần thứ 26 các bên tham gia Công ước khung của Liên Hợp Quốc về Biến đổi Khí hậu.

Bài viết này phân tích mối tương quan giữa trợ cấp xanh và quy định trợ cấp của WTO, đánh giá xu hướng chính sách liên quan đến trợ cấp xanh, đồng thời xem xét mức độ tương thích của các công cụ chính sách hiện hành tại Việt Nam và đưa ra một số đề xuất cho Việt Nam.

**Từ khóa:** Trợ cấp xanh, Tổ chức Thương mại Thế giới (WTO), Chính sách môi trường, Phát triển bền vững, Chiến lược bảo vệ môi trường của Việt Nam.

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