



SOME ISSUES STATE SUPPORT OF AGRICULTURAL PRODUCERS

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Summary

The article is devoted to the legal provision of state support for agricultural producers. Based on the analysis of existing regulations and scientific sources, conclusions about Ukrainian legislation, regarding state support to agricultural producers, to WTO requirements are made. As it is important for Ukraine to form legal regulation for the realization of «green programs», the Law of Ukraine «On government support of agriculture» needs amendments in the sphere of innovation in agriculture. Jurisprudence has theoretical developments in the sphere of agriinnovative law, which are to become the basis for future changes in legislation.

Key words: state support of agricultural producers, «green box».

Аннотация

Статья посвящена правовому обеспечению государственной поддержки сельскохозяйственных производителей. На основе анализа действующих нормативно-правовых актов и научных источников сделаны выводы о соответствии украинского законодательства, касающиеся государственной поддержки сельскохозяйственных производителей требованиям ВТО. Поскольку для Украины является приоритетным формирование законодательной базы для реализации «зеленых программ», Закон Украины «О государственной поддержке сельского хозяйства Украины» требует внесения изменений и дополнений относительно инновационной деятельности в сельском хозяйстве. Юридическая наука располагает теоретическими разработками в сфере агроинновационного права, которые должны стать базой для дальнейших изменений в законодательстве.

Ключевые слова: государственная поддержка сельскохозяйственных производителей, «зеленая корзина».

Statement of the problem. The Ministry of Agrarian Policy and Food of Ukraine published the draft law «On Agriculture», the results of a series of discussions reputable organizations expressed negative findings [9], [3]. In particular, representatives of the German-Ukrainian Policy Dialogue commented to § 2 of Article 5. Thus, experts say that the profitability in agriculture through some government intervention, such as price support, will harm ultimately development of the sector [3, p. 11]. Said remarks as a number of other show that by that time the country has not developed a clear approach to the question of the form and terms of government support for subjects of agricultural management.

The purpose of the study. The purpose of this paper is to investigate the question of state support of agriculture producers, to analyze the term «agricultural producer» as a subject of state support and to make conclusions on the future prospects in the field of legal providing support to producers in rural areas.

State support to agriculture as one of the strategic areas, is a synthesis of economic, legal and organizational measures to guarantee food security, increase competitive advantages in both domestic and foreign markets and create conditions for social development of the village. State support of the village is important for economic, agricultural, and legal sciences.

Analysis of recent research and publications. In legal literature, questions of state support of agricultural sector does not lose its relevance [14], [15], [13]. This issue highlights the works of O.O. Pogribnyi, V.I. Semchyk, A.M. Stativky, V.Y. Urkevych and others. Over the past few years, the agro-legal literature enriched thesis research directly or indirectly related to matters of public support [12], [8].

Basic material. State support for agriculture is defined as a legislated organizational, economic and legal mechanisms, through which agricultural producers receive state assistance from the competent authorities in order to stimulate agricultural production, development of agricultural markets and food security of the population [12]. I.P. Safonov defines the functions of government support of agricultural producers. Besides food security, these include the guaranteed stimulation of agricultural producers for agricultural production, creating guarantees for entities engaged in agriculture, taking into account its specifics, related to seasonality and dependence on nature, and even the creation of the necessary infrastructure and maintenance of soil fertility compared with the cost of the final product [12].

S.I. Marchenko in his monograph the «Organizational and legal issues of commercial agricultural production in Ukraine» notes that government support takes its place if a particular state action puts agricultural entities

in a more advantageous position compared to other subjects [8, p. 133]. The analysis of the monograph defines state support to commercial agriculture as a set of organizational, economic, legal and other means (incentives and benefits) regulated by the law, provided by the state (represented by competent authorities through state resources or by dropping the state from receiving certain income), to the entities, whose activities are related to agricultural production, to ensure food security and solving social and economic problems, promoting social development of rural areas, restoring and maintaining the ecological balance of the areas [8, p. 137-138]. Moreover, the author of the monograph classified state support measures of agricultural commodity production for various reasons, selected elements of state support for agriculture etc.

Since there is such modern, pithy and detailed work in the legal literature, we aim to shift the emphasis from agricultural commodity production and to consider certain issues in state support for agricultural producers in conditions of Ukraine's membership in the WTO.

Taking into consideration the urgency and multidimensional mentioned problems, there are several issues that need consideration and refinement to improve the efficiency of the legal regulation of state support for agricultural producers.

In our view, it is necessary to ascertain whether it is formed a legal framework for



implementation at the appropriate level of government support for farmers and generate proposals for the use of a legal nature means, aimed for improving the efficiency of state support for agriculture under the WTO. But above all it is necessary to determine who is entitled to state support in the field of agriculture.

S.I. Marchenko, as a sign of government support for agriculture, determines that its agents act as agricultural producers on the one hand, and competent authorities – on the other. [8, p. 132]. Meanwhile in Ukrainian law subjects, that receive state support, are noted as manufacturers and producers of agricultural products. Article 13 of The Law of Ukraine «On State Support of Agriculture of Ukraine» is entitled as «Credit support agricultural producers...», and Art. 2.17 «Other government support for agricultural producers». Obviously, the legislator sees no difference between the subjects of agricultural law.

Law of Ukraine dated 18 January 2001 «On Agricultural Development in 2001-2004» gives the following definition of an agricultural commodity producer — the natural or fictitious person who is engaged in agricultural production, processing our own agricultural products and its implementation (Article 1).

Law of Ukraine dated 17 July 1997 «On Agricultural Cooperation» provides that gross farm incomes obtained from operations of agricultural products, manufactured and processed products for the preceding taxable year shall not exceed 75 percent of total gross income. In the agrarian, law farmer – a natural or fictitious person, who carries out production and refining their own independent production of crops and livestock [1, p. 87]. Marketability of agricultural production associated with production of products as a commodity; the ultimate goal of this activity is the alienation of agricultural products of own production [1, p. 88]. Thus, the concept of farmer in meaning is broader and includes not only agricultural producers, but also entities that produce agricultural products for their own needs, such as households (defined by Art. 1 of the Law of Ukraine dated 23 September 2008 «On Agricultural Census»).

We believe that the subjects of state support for agriculture protruding are from one side the farmers, and to other

competent authorities. As state support for various subjects of agricultural production may differ, then (to the principle of targeting government support) in the regulations should clearly state the subject to which it applies.

In literature, it is proposed to accelerate the adoption of other laws, such as: «On State Regulation of Production and Marketing of Agricultural Products», «On the Basis of The State and Budget Support of Agriculture of Ukraine» [4]. «On protection of domestic producers from imports» [12]. Such proposals, in our opinion, is not justified, because Ukraine formed a fairly broad legal framework to support the state agricultural sector, however, the number of existing regulations is not always indicative because of the lack of legal support of one or another sphere of public life.

For example, the Law of Ukraine on June 24, 2004 «On State Support of Agriculture of Ukraine» provides quite a wide range of government support, but most of them belong to the «amber box» and does not meet the requirements of the World Trade Organization.

According to the Law of Ukraine «On State Support of Agriculture of Ukraine» stipulates that the state provides state price regulation, that regulation of wholesale prices for certain agricultural products. Thus Agricultural Fund budget provides a loan to the producer of grain, which is a subject of government price controls. To provide insurance subsidies to agricultural producers, it is created a fund of agricultural insurance subsidies. Credit support agricultural producers effected by credit subsidies. The Law provides subsidies to producers of livestock products (fiscal subsidies). In addition, support for agricultural producers, regardless of the type and volume of products they produce, may be through:

- allocation of budget subsidies per unit of arable land;
- partial refund the cost of reproducing highly seeded seed crops;
- implementation of targeted government programs aimed for improving soil fertility, fight against pests and diseases of crops and animals for agriculture in contaminated areas and others.

WTO also classifies the state support of agriculture in three categories

according to their agricultural production and trade. Using a metaphor image of a «traffic light», these categories were called «Red Box» (steps forbidden), «yellow» (measures that can be used, but with time should be reduced) and «Green Box» (measures subject of no reduction). The fourth category – «blue box» – created as a compromise between the EU and the USA [2, 16-17]. «Blue box» includes activities related to the «amber box» and are currently not subject to reduction. They are used in developed countries, where the actual problem is over-production.

Limit state aid to agriculture was most acute issue in long discussions about Ukraine's membership in the WTO. At present, the negative impact of WTO accession for agriculture is minimal. In fact, the possibility of state support for agriculture through the «amber box» remained at the level of those provided to agriculture of Ukraine in recent years. Gradually, Ukraine will be forced to accept WTO rules in full and should be ready for such changes. Therefore, it is necessary to continue the harmonization of national legislation with the requirements and rules of the WTO in accordance with the Law of Ukraine «On Ratification of the Protocol on Ukraine's accession to the WTO».

The only possible direction of development of legislation to support agricultural producers is shaping the legal framework for the implementation of «green programs». All countries – WTO members do not have limits on the so-called «green» programs, but rather government funding of «green box» can be increased.

«Green Box» – is a measure of government support that does not affect or minimally affect the production and trade. The State may fund activities of «green box» in any desired amount, depending on the capabilities of the budget.

Public spending within the «green box» may be made in the following areas:

- research, training and skills development, information and advisory services;
- veterinary and phytosanitary measures, control of food safety;
- promoting sales of agricultural products, including the collection, processing and dissemination of market information;



- improvement of infrastructure (construction of roads, electricity, irrigation facilities) excluding operating expenses for its maintenance;

- maintenance of strategic food stocks, domestic food aid;

- providing guaranteed income for farmers, improving land use, etc.;

- support of farmers' incomes, which is not associated with type and volume of production;

- promoting the structural transformation of agricultural production;

- safety of environment;

- regional development programs.

Some authors believe that the growth of village support with the aid of «green box» means a gradual shift of budgetary support for agriculture – from farm support towards supporting rural development [6], [11]. These changes should get proper legal support. The Law of Ukraine «On State Support of Agriculture of Ukraine» requires amendments in the first place, because of its content, it is protectionist regarding agricultural producers and ignores state support households, private farms. There are no rules to support applications classified as «green». Therefore, the Law of Ukraine «On State Support of Agriculture of Ukraine» should be consistent with other regulations to eliminate loopholes and legal conflicts.

Law of Ukraine «On State Support of Agriculture of Ukraine» contains no provisions to support innovation in agriculture. Thus, in modern jurisprudence it is released a subsector Agricultural Law – the innovative agro right [7, 55]. V.I. Semchyk notes that there are sufficient grounds for the introduction of a system of agrarian law agro innovative law as its sub that has a subject of legal regulation, which is derived from the subject of the agrarian law. [7, p. 41]. Given the above, it is logical to predict the law of Ukraine «On State Support of Agriculture of Ukraine» provision of state support to innovation in agriculture.

Scientists point out that it is promising to increase funding of «green» direct payments to agricultural producers. Agreement on agriculture of WTO contains a list of «green» direct payments to producers, which can be applied in Ukraine [10]. In other WTO member countries, direct payments to farmers who meet the criteria for «green» programs, are constituted from the total of «green box»: in China – 15%

USA – 17%, Canada – 56%, the European Union – 73% [16, p. 30].

Conclusions. Summarizing the above, it should be noted that, after Ukraine's accession to WTO, the competent authorities should pay attention to the issue of effectiveness of budget support programs and identifying indicators for an objective assessment of each budget program. In Ukraine, there is a substantial increase in funding «green» support programs since 2003[5]. Measures «green box» for years 2000-2002 (average per year) accounted for 677.3 million USD, in 2004-2006 – 2,424,100,000 USD, then the budget for 2010 – 4.4 billion. – 6 times more. Thus, the main trend in the future development of legislation on state support for farmers – is consistently clear legislative consolidation of state support, consistent with the principles of «green box».

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