

## CHAPTER 12

### SUBSIDIES

#### ARTICLE 12.1

##### Principles

The Parties recognise that subsidies may be granted by a Party when they are necessary to achieve public policy objectives. However, certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of liberalisation of trade and investment. In principle, subsidies should not be granted by a Party when it finds that they have or could have a significant negative effect on trade or investment between the Parties.

#### ARTICLE 12.2

##### Definitions

For the purposes of this Chapter:

- (a) "economic activities" means those activities pertaining to the offering of goods and services in a market;
- (b) "subsidy" means a measure which fulfils *mutatis mutandis* the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the recipients of the subsidy deal in goods or services; and
- (c) "specific subsidy" means a subsidy which is determined *mutatis mutandis* to be specific in accordance with Article 2 of the SCM Agreement.

## ARTICLE 12.3

### Scope

1. This Chapter applies to specific subsidies to the extent they are related to economic activities<sup>1</sup>.
2. This Chapter does not apply to subsidies granted to enterprises entrusted by the government with the provision of services to the general public for public policy objectives. Such exceptions from the rules on subsidies shall be transparent and shall not go beyond their targeted public policy objectives.
3. This Chapter does not apply to subsidies granted to compensate the damage caused by natural disasters or other exceptional occurrences.
4. Articles 12.5 and 12.6 do not apply to subsidies, the cumulative amounts or budgets of which are less than 450,000 special drawing rights (hereinafter referred to as "SDR") per beneficiary for a period of three consecutive years.
5. Articles 12.6 and 12.7 do not apply to subsidies related to trade in goods covered by Annex 1 to the Agreement on Agriculture and subsidies related to trade in fish and fish products.
6. Article 12.7 does not apply to subsidies granted temporarily to respond to a national or global economic emergency<sup>2</sup>. Such subsidies shall be targeted, economical, effective and efficient in order to remedy the identified temporary national or global economic emergency.
7. This Chapter does not apply to audio-visual services.

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<sup>1</sup> For greater certainty, education provided under the domestic educational system of each Party shall be considered as a non-economic activity.

<sup>2</sup> For greater certainty, an economic emergency shall be understood as one that affects the whole economy of a Party.

8. Article 12.7 does not apply to subsidies granted by sub-central levels of government of each Party. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of the provisions of this Chapter by sub-central levels of government of that Party.

#### ARTICLE 12.4

##### Relation to the WTO Agreement

Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, Article XVI of GATT 1994 and Article XV of GATS.

#### ARTICLE 12.5

##### Notification

1. Each Party shall notify in English the other Party of the legal basis, form, amount or budget and, where possible, the name of the recipient of any specific subsidy granted or maintained<sup>1</sup> by the notifying Party, every two years from the date of entry into force of this Agreement. However, the first notification shall be made no later than three years after the date of entry into force of this Agreement.

2. If a Party makes publicly available on an official website the information specified in paragraph 1, the notification pursuant to paragraph 1 shall be deemed to have been made. If a Party notifies subsidies pursuant to Article 25.2 of the SCM Agreement, the Party shall be considered to have met the requirement of paragraph 1 with respect to such subsidies.

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<sup>1</sup> For the purposes of this paragraph, in the case of subsidies which have previously been notified, the information provided in updated notifications may be limited to indicating any modifications, or the absence thereof, from the previous notification.

3. With regard to subsidies related to services, this Article only applies to the following sectors: architectural and engineering services, banking services, computer services, construction services, energy services, environment services, express delivery services, insurance services, telecommunication services and transport services.

## ARTICLE 12.6

### Consultations

1. In the event a Party considers that a subsidy of the other Party has or could have a significant negative effect on its trade or investment interests under this Chapter, the former Party may submit a request for consultation in writing. The Parties shall enter into consultations with a view to resolving the matter, provided that the request includes an explanation of how the subsidy has or could have a significant negative effect on trade or investment between the Parties.

2. During the consultations, the Party receiving the request for consultation shall consider to provide information about the subsidy, if requested by the other Party, such as:

- (a) the legal basis and policy objective or purpose of the subsidy;
- (b) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;
- (c) dates and duration of the subsidy and any other time limits attached to it;
- (d) eligibility requirements of the subsidy;
- (e) the total amount or the annual amount budgeted for the subsidy and the possibility of limiting the subsidy;
- (f) where possible, the recipient of the subsidy; and

(g) any other information, including statistical data, permitting an assessment of the effects of the subsidy on trade or investment.

3. To facilitate the consultations, the requested Party shall provide relevant information on the subsidy in question in writing no later than 90 days after the date of receipt of the request referred to in paragraph 1.

4. In the event that any information referred to in paragraph 2 is not provided by the requested Party, that Party shall explain the absence of such information in its written response.

5. If the requesting Party, after the consultations, still considers that the subsidy has or could have a significant negative effect on its trade or investment interests under this Chapter, the requested Party shall accord sympathetic consideration to the concerns of the requesting Party. Any solution shall be considered feasible and acceptable by the requested Party.

## ARTICLE 12.7

### Prohibited subsidies

The following subsidies of a Party that have or could have a significant negative effect on trade or investment between the Parties shall be prohibited:

(a) legal or other arrangements whereby a government or a public body is responsible for guaranteeing debts or liabilities of an enterprise, without any limitation as to the amount and duration of such guarantee; and

- (b) subsidies for restructuring an ailing or insolvent enterprise without the enterprise having prepared a credible restructuring plan. Such a restructuring plan shall be prepared within a reasonable time period after such enterprise having received temporary liquidity support.<sup>1</sup> The restructuring plan shall be based on realistic assumptions with a view to ensuring the return to long-term viability of the ailing or insolvent enterprise within a reasonable time period. The enterprise itself or its owners shall contribute significant funds or assets to the costs of restructuring.

## ARTICLE 12.8

### Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the specific purpose for which the subsidies were granted.

## ARTICLE 12.9

### General exceptions

For the purposes of this Chapter, Article XX of GATT 1994 and Article XIV of GATS are hereby incorporated into and made part of this Agreement, *mutatis mutandis*.

## ARTICLE 12.10

### Dispute settlement

Paragraph 5 of Article 12.6 shall not be subject to dispute settlement under Chapter 22.

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<sup>1</sup> For greater certainty, nothing in this Article prevents a Party from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to keep the enterprise in business for the time necessary to prepare a restructuring or liquidation plan.