

- (a) subsidies granted under any legal arrangement whereby a government or any public body is responsible for covering debts or liabilities of certain enterprises within the meaning of Article 2.1 of the SCM Agreement without any limitation, in law or in fact, as to the amount of those debts and liabilities or the duration of such responsibility; and
- (b) subsidies (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices or tax exemptions) to insolvent or ailing enterprises, without a credible restructuring plan based on realistic assumptions with a view to ensuring the return of the insolvent or ailing enterprise within a reasonable period of time to long-term viability and without the enterprise significantly contributing itself to the costs of restructuring. This does not prevent the Parties from providing subsidies by way of temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely keep an ailing enterprise in business for the time necessary to work out a restructuring or liquidation plan.

This subparagraph does not apply to subsidies granted as compensation for carrying out public service obligations and to the coal industry.

Article 11.12

Transparency

1. Each Party shall ensure transparency in the area of subsidies. To this end, each Party shall report annually to the other Party on the total amount, types and the sectoral distribution of subsidies which are specific and may affect international trade. Reporting should contain information concerning the objective, form, the amount or budget and where possible the recipient of the subsidy granted by a government or any public body.
2. Such report is deemed to have been provided if it is sent to the other Party, or if the relevant information is made available on a publicly accessible Internet website, by 31 December of the subsequent calendar year.
3. Upon request by a Party, the other Party shall provide further information on any subsidy schemes and particular individual cases of subsidy which is specific. The Parties shall exchange this information, taking into account the limitations imposed by the requirements of professional and business secrecy.

Article 11.13

Relation with the WTO Agreement

The provisions in this Section are without prejudice to the rights of a Party in accordance with the relevant provisions of the WTO Agreement to apply trade remedies or to take dispute settlement or other appropriate action against a subsidy granted by the other Party.

Article 11.14

Monitoring and review

The Parties shall keep under constant review the matters to which reference is made in this Section. Each Party may refer such matters to the Trade Committee. The Parties agree to review progress in implementing this Section every two years after the entry into force of this Agreement, unless both Parties agree otherwise.

Article 11.15

Scope

1. The provisions of Articles 11.9 through 11.14 shall apply to subsidies for goods with the exception of fisheries subsidies, subsidies related to products covered by Annex 1 of the Agreement on Agriculture and other subsidies covered by the Agreement on Agriculture.

2. The Parties shall use their best endeavours to develop rules applicable to subsidies to services, taking into account developments at the multilateral level, and to exchange information upon the request of either Party. The Parties agree to hold the first exchange of views on subsidies to services within three years after the entry into force of this Agreement.

CHAPTER TWELVE

TRANSPARENCY

Article 12.1

Definitions

For the purposes of this Chapter:

measure of general application means any general or abstract act, procedure, interpretation or other requirement, including non-binding measures. It does not include a ruling that applies to a particular person; and

interested person means any natural or legal person that may be subject to any rights or obligations under measures of general application, within the meaning of Article 12.2.

Article 12.2

Objective and scope

Recognising the impact which their respective regulatory environment may have on trade between them, the Parties shall pursue an efficient and predictable regulatory environment for economic operators, especially small ones doing business in their territories. The Parties, reaffirming their respective commitments under the WTO Agreement, hereby lay down clarifications and improved arrangements for transparency, consultation and better administration of measures of general application, in so far as these may have an impact on any matter covered by this Agreement.

*Article 12.3***Publication**

1. Each Party shall ensure that measures of general application that may have an impact on any matter covered by this Agreement:

- (a) are readily available to interested persons, in a non-discriminatory manner, via an officially designated medium, and where feasible and possible, electronic means, in such a manner as to enable interested persons and the other Party to become acquainted with them;
- (b) provide an explanation of the objective of, and rationale for, such measures; and
- (c) allow for sufficient time between publication and entry into force of such measures, taking due account of the requirements of legal certainty, legitimate expectations and proportionality.

2. Each Party shall:

- (a) endeavour to publish in advance any measure of general application that it proposes to adopt or to amend, including an explanation of the objective of, and rationale for the proposal;
- (b) provide reasonable opportunities for interested persons to comment on such proposed measure, allowing, in particular, for sufficient time for such opportunities; and
- (c) endeavour to take into account the comments received from interested persons with respect to such proposed measure.

*Article 12.4***Enquiries and contact points**

1. Each Party shall establish or maintain appropriate mechanisms for responding to enquiries from any interested person regarding any measures of general application which may have an impact on matters covered by this Agreement which are proposed or in force, and how they would be applied. Enquiries may be addressed through enquiry or contact points established under this Agreement or any other mechanism as appropriate.

2. The Parties recognise that such response provided for in paragraph 1 may not be definitive or legally binding but for information purposes only, unless otherwise provided for in their laws and regulations.

3. Upon request of a Party, the other Party shall promptly provide information and respond to questions pertaining to any actual or proposed measure of general application that the requesting Party considers might affect the operation of this

Agreement, regardless of whether the requesting Party has been previously notified of that measure.

4. Each Party shall endeavour to identify or create enquiry or contact points for interested persons of the other Party with the task of seeking to effectively resolve problems for them that may arise from the application of measures of general application. Such processes should be easily accessible, time-bound, result-oriented and transparent. They shall be without prejudice to any appeal or review procedures which the Parties establish or maintain. They shall also be without prejudice to the Parties' rights and obligations under Chapter Fourteen (Dispute Settlement) and Annex 14-A (Mediation Mechanism for Non-Tariff Measures).

*Article 12.5***Administrative proceedings**

With a view to administering in a consistent, impartial and reasonable manner all measures of general application which may have an impact on matters covered by this Agreement, each Party in applying such measures to particular persons, goods or services of the other Party in specific cases, shall:

- (a) endeavour to provide interested persons of the other Party, who are directly affected by a proceeding, with reasonable notice, in accordance with its procedures, when a proceeding is initiated, including a description of the nature of the proceeding, a statement of the legal authority under which the proceeding is initiated and a general description of any issues in controversy;
- (b) afford such interested persons a reasonable opportunity to present facts and arguments in support of their positions prior to any final administrative action, in so far as time, the nature of the proceeding and the public interest permit; and

- (c) ensure that its procedures are based on, and in accordance with its law.

*Article 12.6***Review and appeal**

1. Each Party shall establish or maintain judicial, quasi-judicial or administrative tribunals or procedures for the purposes of the prompt review and, where warranted, correction of administrative action relating to matters covered by this Agreement. Such tribunals shall be impartial and independent of the office or authority entrusted with administrative enforcement and shall not have any substantial interest in the outcome of the matter.

2. Each Party shall ensure that, in any such tribunals or procedures, the parties to the proceeding are provided with the right to:

(a) a reasonable opportunity to support or defend their respective positions; and

(b) a decision based on the evidence and submissions of record or, where required by its law, the record compiled by the administrative authority.

3. Each Party shall ensure, subject to appeal or further review as provided for in its law, that such decision shall be implemented by, and shall govern the practice of, the office or authority with respect to the administrative action at issue.

Article 12.7

Regulatory quality and performance and good administrative behaviour

1. The Parties agree to cooperate in promoting regulatory quality and performance, including through exchange of information and best practices on their respective regulatory reform processes and regulatory impact assessments.

2. The Parties subscribe to the principles of good administrative behaviour, and agree to cooperate in promoting it, including through exchange of information and best practices.

Article 12.8

Non-discrimination

Each Party shall apply to interested persons of the other Party transparency standards no less favourable than those accorded to its own interested persons, to the interested persons of any third country, or to any third country, whichever are the best.

CHAPTER THIRTEEN

TRADE AND SUSTAINABLE DEVELOPMENT

Article 13.1

Context and objectives

1. Recalling Agenda 21 on Environment and Development of 1992, the Johannesburg Plan of Implementation on Sustainable Development of 2002 and the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work, the Parties reaffirm their commitments to promoting the development of international trade in such a way as to contribute to the objective of sustainable development and will strive to ensure that this objective is integrated and reflected at every level of their trade relationship.

2. The Parties recognise that economic development, social development and environmental protection are interdependent and mutually reinforcing components of sustainable development. They underline the benefit of cooperation on trade-related social and environmental issues as part of a global approach to trade and sustainable development.

3. The Parties recognise that it is not their intention in this Chapter to harmonise the labour or environment standards of the Parties, but to strengthen their trade relations and cooperation in ways that promote sustainable development in the context of paragraphs 1 and 2.

Article 13.2

Scope

1. Except as otherwise provided in this Chapter, this Chapter applies to measures adopted or maintained by the Parties affecting trade-related aspects of labour⁽⁸⁴⁾ and environmental issues in the context of Articles 13.1.1 and 13.1.2.

2. The Parties stress that environmental and labour standards should not be used for protectionist trade purposes. The Parties note that their comparative advantage should in no way be called into question.

Article 13.3

Right to regulate and levels of protection

Recognising the right of each Party to establish its own levels of environmental and labour protection, and to adopt or modify accordingly its relevant laws and policies, each Party shall seek to ensure that those laws and policies provide for and encourage high levels of environmental and labour protection, consistent with the internationally recognised standards or agreements referred to in Articles 13.4 and 13.5, and shall strive to continue to improve those laws and policies.

Article 13.4

Multilateral labour standards and agreements

1. The Parties recognise the value of international cooperation and agreements on employment and labour affairs as a response of the international community to economic, employment and social challenges and opportunities resulting from globalisation. They commit to consulting and cooperating as appropriate on trade-related labour and employment issues of mutual interest.

⁽⁸⁴⁾ When labour is referred to in this Chapter, it includes the issues relevant to the Decent Work Agenda as agreed on in the International Labour Organisation (hereinafter referred to as the 'ILO') and in the 2006 Ministerial Declaration of the UN Economic and Social Council on Full Employment and Decent Work.