

CHAPTER 16

SUBSIDIES

ARTICLE 16.1

Principles

Subsidies may be granted by a Party when subsidies are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets, undermine the benefits of trade liberalisation and harm the environment. In principle, subsidies should not be granted by a Party when they negatively affect, or are likely to negatively affect, competition or trade or when they significantly harm the environment.

ARTICLE 16.2

Definitions and scope

1. For the purposes of this Chapter, the term “subsidy” means:
 - (a) a measure that fulfils the conditions set out in Article 1.1 of the SCM Agreement, irrespective of whether the subsidy is granted to an enterprise, supplying goods or services;¹ and

¹ This Article does not prejudice the outcome of any future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those future discussions at the WTO, the Parties may amend this Agreement in this respect.

(b) a subsidy as defined in point (a) of this paragraph that is specific within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under Article 16.7 (Prohibited subsidies) shall be deemed to be specific within the meaning of Article 2 of that Agreement.

2. This Chapter applies to subsidies granted to enterprises to the extent that those enterprises perform an economic activity. This Chapter applies to all enterprises, public or private. For the purposes of this Chapter, the term “economic activity” pertains to the offering of goods or services on a market.

3. This Chapter applies to subsidies granted to enterprises entrusted with particular roles or tasks in the public interest, to the extent that the application of this Chapter does not, in law or in fact, obstruct the performance of the particular roles or tasks in the public interest entrusted to those enterprises. Such particular roles or tasks in the public interest shall be entrusted in advance in a transparent manner, and any limitation to, or deviation from, the application of this Chapter shall not go beyond what is necessary to achieve the entrusted roles or tasks in the public interest. For the purposes of this paragraph, the formulation “particular roles or tasks in the public interest” includes public service obligations.

4. Articles 16.6 (Consultations) and 16.7 (Prohibited subsidies) do 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 this Chapter by sub-central levels of government of that Party.

5. Articles 16.6 (Consultations) and 16.7 (Prohibited subsidies) do not apply to the audio-visual sector.
6. Article 16.7 (Prohibited subsidies) does not apply to subsidies that are granted to:
 - (a) compensate for the damage caused by natural disasters or other non-economic exceptional occurrences, provided that such subsidies are temporary; and
 - (b) respond to a national or global health or economic emergency, provided that such subsidies are temporary, targeted and proportionate, having regard to the harm caused by or arising from the emergency.

ARTICLE 16.3

Relation to the WTO Agreement

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

ARTICLE 16.4

Fisheries subsidies

Each Party shall refrain from granting or maintaining harmful fisheries subsidies. For this purpose, the Parties shall cooperate on:

- (a) fulfilling the United Nations Sustainable Development Goals Target 14.6;
- (b) implementing the WTO Agreement on Fisheries Subsidies, done at Geneva on 17 June 2022, that, among other things, prohibits subsidies that contribute to illegal, unreported and unregulated fishing (hereinafter referred to as “IUU fishing”); and
- (c) pursuing, in the framework of the WTO, negotiations for the adoption of comprehensive disciplines regarding the prohibition of certain forms of fisheries subsidies that contribute to overcapacity and overfishing.

ARTICLE 16.5

Transparency

1. With respect to any subsidy granted or maintained within its territory, each Party shall make transparent, within one year after the date of entry into force of this Agreement and every two years thereafter, the following information:

- (a) the legal basis and purpose of the subsidy;

- (b) the form of the subsidy;
- (c) the amount of the subsidy or the amount budgeted for the subsidy; and
- (d) if possible, the name of the recipient of the subsidy.

2. Each Party shall meet the transparency requirements set out in paragraph 1 through:

- (a) notification pursuant to Article 25 of the SCM Agreement;
- (b) notification pursuant to Article 18 of the Agreement on Agriculture; or
- (c) publication by the Party, or on its behalf, on a publicly accessible website.

3. Notwithstanding the transparency requirements set out in paragraph 1, a Party (hereinafter referred to as “requesting Party”) may request additional information from the other Party (hereinafter referred to as “responding Party”) about a subsidy granted by the responding Party, including:

- (a) the legal basis and policy objective or purpose of the subsidy;
- (b) the total amount or the annual budgeted amount for the subsidy;
- (c) if possible, the name of the recipient of the subsidy;
- (d) the dates and the duration of the subsidy and any other time limits attached to it;

- (e) the eligibility requirements for the subsidy;
- (f) any measures taken to limit the potential distortive effect on competition, trade or the environment; and
- (g) any other information permitting an assessment of the negative effects of the subsidy.

4. The responding Party shall provide the information requested pursuant to paragraph 3 to the requesting Party in writing no later than 60 days after the date of delivery of the request. If the responding party does not provide, wholly or partially, the information requested by the requesting Party, the responding Party shall explain the reasons for not providing such information in its written response as required by this paragraph.

ARTICLE 16.6

Consultations

1. If, at any time after making a request for additional information pursuant to Article 16.5(3) (Transparency), the requesting Party considers that a subsidy granted by the responding Party is negatively affecting, or is likely to negatively affect, its interests, it may express its concern in writing to the responding Party and request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held within 60 days after the date of delivery of the request.

2. If, after the consultations referred to in paragraph 1, the requesting Party considers that the subsidy in question is negatively affecting, or is likely to negatively affect, its interests, in a disproportionate manner:
 - (a) in the case of subsidies granted to an enterprise supplying goods or services, the responding Party shall endeavour to eliminate or minimise any negative effects of the subsidy on the interests of the requesting Party; or
 - (b) in the case of subsidies granted in relation to goods covered by Annex 1 to the Agreement on Agriculture, taking into account the relevant provisions of that Agreement, the responding Party shall accord sympathetic consideration to the concerns of the requesting Party with due respect to Article 16.3 (Relation to the WTO Agreement).
3. For the purposes of point (a) of paragraph 2, the Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

ARTICLE 16.7

Prohibited subsidies

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

- (a) subsidies whereby a government guarantees debts or liabilities of certain enterprises without any limitation as to the amount of those debts and liabilities or the duration of such guarantee; and
- (b) subsidies to an insolvent enterprise, or enterprise in respect of which insolvency is imminent in the short to medium term without the subsidy, if:
 - (i) there is no credible restructuring plan, based on realistic assumptions, aimed at ensuring the return to long-term viability of the enterprise within a reasonable time period; or
 - (ii) the enterprise, other than an SME, does not contribute to the costs of restructuring.

2. Point (b) of paragraph 1 does not apply to subsidies provided to enterprises as temporary liquidity support in the form of loan guarantees or loans during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business. For the purposes of this paragraph, the formulation “temporary liquidity support in the form of loan guarantees or loans” includes solvency support.

3. Subsidies granted to ensure the orderly market exit of an enterprise are not prohibited.
4. This Article does not apply to subsidies the cumulative amounts or budgets of which are less than SDR 160 000 per enterprise over a period of three consecutive years.

ARTICLE 16.8

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the policy objective for which those subsidies were granted.

ARTICLE 16.9

Non-application of dispute settlement

Chapter 26 (Dispute settlement) does not apply to Article 16.6 (Consultations).