

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.

章节 12

补贴

文章 12.1

原则

各方承认，当补贴对于实现公共政策目标必要时，一方可以发放补贴。然而，某些补贴有可能扭曲市场正常运行，并损害贸易和投资自由化的好处。原则上，当一方发现补贴已经或可能对各方之间的贸易或投资产生重大负面影响时，不应发放补贴。

文章 12.2

定义

在本章节中：

(a) "经济活动"是指与在市场上提供商品和服务相关联的活动；(b) "补贴"是指符合*mutatis mutandis* 《补贴与反补贴措施协定》第1.1条所规定条件的措施，无论补贴接受者是否从事商品或服务贸易；以及(c) "特定补贴"是指根据《补贴与反补贴措施协定》第2条*mutatis mutandis*被确定为特定的补贴。

Scope

- 1. This Chapter applies to specific subsidies to the extent they are related to economic activities¹.
- 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 emergency². 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.

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

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

范围

- 1. 本章适用于与经济活动相关的特定补贴。
- 2. 本章不适用于政府委托企业为向公众提供公共服务以实现公共政策目标而获得的补贴。此类补贴规则的例外应具有透明度，且不得超出其目标公共政策目标。
- 3. 本章不适用于用于弥补自然灾害或其他特殊事件造成的损失 的补贴。
- 4. 第12.5条和第12.6条不适用于受益人连续三年每年累积金额或预算不足450,000特别提款权（以下简称“SDR”）的补贴。
- 5. 第12.6条和第12.7条不适用于与农业协定附件1所涵盖的商品贸易相关的补贴以及与鱼类和鱼类产品贸易相关的补贴。
- 6. 第12.7条不适用于为应对国家或全球经济紧急情况而临时发放的补贴²。此类补贴应为目标明确、经济合理、高效且有效的，以纠正已识别的临时国家或全球经济紧急情况。
- 7. 本章不适用于视听服务。

¹ 为明确起见，各缔约方国内教育体系提供的教育应被视为非经济活动。 ² 为明确起见，经济紧急情况应被理解为影响缔约方整个经济的情况。

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 maintained¹ 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.

¹ 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.

8. 第12.7条不适用于各党次中央政府层面的拨款。在履行其在本章项下的义务时，每一方应采取其所能采取的合理措施，以确保该方次中央政府层面遵守本章的规定。

第12.4条

与WTO协定关系

本章任何内容均不影响任何一方根据补贴与反补贴措施协定、1994年关税及贸易总协定第十六条和 服务贸易总协定第十五条所享有的权利和义务。

第12.5条

通知

1. 每一方应当以英语通知另一方关于法律依据、形式、金额或预算，并在可能的情况下通知由通知方提供的或维持的任何特定补贴的受益人名称，自本协定生效之日起每两年一次。但是，首次通知应在本协定生效之日起三年内作出。
2. 如果一方在其官方网站上公布第1段中规定的信息，则应根据第1段的规定被视为已经作出通知。如果一方根据补贴与反补贴措施协定第25.2条通知补贴，则该方应被视为已满足第1段关于此类补贴的要求。

¹ 根据本段目的，对于先前已通知的补贴，更新通知中提供的信息可能仅限于说明与先前通知的任何修改，或无修改。

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

3. 关于与服务相关的补贴，本协定仅适用于以下部门：建筑和工程服务、银行服务、计算机服务、建筑服务、能源服务、环境服务、快递服务、保险服务、电信服务和运输服务。

ARTICLE 12.6

磋商

1. 当一方认为另一方的补贴或可能对其在本章项下的贸易或投资利益产生重大负面影响时，该方可以书面提交磋商请求。双方应进行磋商以解决该事项，但该请求应包括对补贴如何或可能如何对双方之间的贸易或投资产生重大负面影响的说明。

2. 在磋商期间，收到磋商请求的一方应根据另一方的要求，考虑提供有关补贴的信息，例如：

- (a) 补贴的法律依据和政策目标或目的；
- (b) 补贴的形式，如拨款、贷款、担保、可偿还预付款、股权注入或税收优惠；
- (c) 补贴的日期和期限以及与其相关的任何其他时间限制；
- (d) 补贴的资格要求；
- (e) 补贴的总额或年度预算金额以及限制补贴的可能性；
- (f) 在可能的情况下，补贴接受者；以及

(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

(g) 任何其他信息，包括统计数据，允许评估补贴对贸易或投资的影响。

3. 为促进磋商，被请求方应在收到第1段所述请求之日起90天内，以书面形式提供有关所涉补贴的相关信息。

4. 如被请求方未提供第2段所述的任何信息，该方应在书面答复中说明未提供该信息的原因。

5. 如果请求方在磋商后仍认为本章节所述补贴对其贸易或投资利益具有或可能具有重大负面影响，被请求方应予以同情的考虑。任何解决方案均应被视为被请求方可行和可接受的。

第12.7条

禁止性补贴

一方具有或可能对另一方之间的贸易或投资产生重大负面影响的下列补贴应予禁止：

(a) 法律或其他安排，即政府或公共机构负责担保企业的债务或责任，且此类担保金额和期限不受限制；以及

(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.¹ 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.

¹ 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.

(b) 为困境中的或无偿付能力的企业提供重组补贴，且该企业未制定可信的重组计划。此类重组计划应在该企业获得临时流动性支持后合理期限内制定。¹ 重组计划应基于现实假设，旨在确保困境中的或无偿付能力的企业在合理期限内恢复长期经营能力。企业本身或其所有者应向重组成本提供重大资金或资产。

第12.8条

补贴的使用

每一方应确保企业仅将补贴用于所拨款的特定目的。

第12.9条

一般例外

就本章而言，1994年关税及贸易总协定第XX条和《服务贸易总协定》第XIV条应予纳入并构成本协定的一部分，*mutatis mutandis*。

ARTICLE 12.10

争端解决

第12.6条的第五段不得根据第22章进行争端解决。

¹ 为进一步明确，本条中的任何内容均不禁止一方以贷款担保或贷款的形式提供临时流动性支持补贴，该贷款金额仅限于维持企业运营至准备重组或清算计划所需的时间。