

CHAPTER 24

SUBSIDIES

Article 24.1 Principles

The Parties agree that subsidies can be granted when they are necessary to achieve public policy objectives. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation and competition. Therefore, in principle, subsidies should not be granted when they negatively affect, or are likely to negatively affect, trade or competition between the Parties.

Article 24.2 Definition and scope

1. For the purposes of this Chapter, a subsidy means a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as “SCM Agreement”) irrespective of whether it is granted to an enterprise supplying goods or services.¹
2. A subsidy is subject to this Chapter only if this subsidy is determined to be specific in accordance with Article 2 of the SCM Agreement.
3. Subsidies to all enterprises, including public and private enterprises, are subject to this Chapter.
4. The Parties shall ensure that subsidies to enterprises entrusted with the operation of services of general economic interest shall be subject to the rules in this Section, in so far as the application of those rules does not obstruct the performance, in law or in fact, of the particular tasks that are assigned to these enterprises. Assigned tasks shall be transparent and any limitation to or deviation from the application of the rules in this Section shall not go beyond what is necessary to achieve the assigned tasks.
5. Article 24.5 (Consultations) does not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.
6. Article 24.5 (Consultations) and 24.6 (Subsidies subject to conditions) do not apply to the audio-visual sector.

¹ This Article does not prejudice the outcome of future discussions in the WTO or related plurilateral fora on the definition of subsidies for services. Depending on the progress of those discussions, the Parties may adopt a decision by [relevant committee] to update this Agreement in this respect.

7. Article 24.5 (Consultations) and 24.6 (Subsidies subject to conditions) do not apply to subsidies granted for the economic development of indigenous people and their communities². These subsidies shall be targeted, proportional and transparent.
8. Article 24.5(Consultations) and 24.6 (Subsidies subject to conditions) does not apply to subsidies granted to remedy the damage caused by natural disasters or other exceptional occurrences.
9. Subsidies that are granted on a temporary basis to respond to an economic emergency³ shall be proportional and targeted in order to remedy that emergency. Article 24.5 (Consultations) do not apply to such subsidies.

Article 24.3 Relationship with the WTO

This Chapter applies without prejudice to the rights and obligations of a Party under Article XV GATS, Article XVI of GATT 1994, the SCM Agreement and the WTO Agreement on Agriculture.

Article 24.4 Transparency

1. Each Party shall make transparent the following with respect to a subsidy granted or maintained within its territory:
 - (a) the legal basis and purpose of the subsidy;
 - (b) form of the subsidy;
 - (c) amount of the subsidy or the amount budgeted for the subsidy and;
 - (d) where possible, the name of the recipient of the subsidy.
2. A Party shall be considered to have met the requirement of paragraph 1 if:
 - (a) the subsidy is notified under Article 25 of the SCM Agreement, provided that the notification contains all the information required under Paragraph 1 and is provided at least every two years;
 - (b) the subsidy is notified under Article 18 of the Agreement on Agriculture; or

² For the purposes of this paragraph, indigenous people and their communities should be understood as those defined in the Parties' Laws. For the EU, this encompasses both EU Law and the Laws of its Member States.

³ Economic emergency should be understood as an economic event that causes a serious disturbance in the economy of a Party. For the EU, "the economy of a Party" should be understood as the economy of the EU or of one (or more than one) of its Member States.

(c) the information required under Paragraph 1 is made available by the Parties or on their behalf on a publicly accessible website, by 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained. The information shall be made available no later than two years after the entry into force of this Agreement.

Article 24.5 Consultations

1. If a Party considers that a subsidy may negatively affect its trade interests or competition, the Party may express its concern in writing to the other Party and request consultations on the matter. The request shall include an explanation of how the subsidy has or could have a negative effect on the requesting Party's interests.
2. The requesting Party may seek the following information about the subsidy:
 - (a) the legal basis and policy objective or purpose of the subsidy;
 - (b) the form of the subsidy;
 - (c) the dates and duration of the subsidy and any other time limits attached to it;
 - (d) the eligibility requirements of the subsidy;
 - (e) the total amount or the annual amount budgeted for the subsidy;
 - (f) where possible, the name of the recipient enterprise of the subsidy; and
 - (g) any other information permitting an assessment of the negative effects of the subsidy.
3. To facilitate the consultation, the requested information shall be provided in writing no later than 60 days after the date of receipt of the request.
4. In the event that any requested information 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 having received the requested information and following consultations, considers that the subsidy concerned has or may have a significant negative effect on its trade interests or competition, the requested Party shall use its best endeavours to eliminate or minimise those effects.

Article 24.6 Subsidies subject to conditions

1. Each Party, when granting the following subsidies, shall apply conditions as stated below:

- (a) subsidies whereby a government, directly or indirectly, is responsible for guaranteeing debts or liabilities of certain enterprises, on condition that the coverage of the debts and liabilities is not unlimited with regards to the amount of those debts and liabilities or the duration of such responsibility; and
 - (b) subsidies to insolvent or ailing enterprises (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) with a duration above one year, on condition that a credible restructuring plan has been prepared which is based on realistic assumptions with the view to ensuring the return of the insolvent or ailing enterprises within a reasonable time to long-term viability and with the enterprise contributing itself to the costs of restructuring. Small- and medium-sized enterprises are not required to contribute themselves to the costs of restructuring.
 - (c) 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 limited to the amount needed to merely to keep an ailing company in business for the time necessary to adopt a restructuring or liquidation plan.
2. This Article applies only to those subsidies that negatively affect trade and competition of the other Party or are likely to do so.
 3. This Article does not apply to subsidies which are granted to ensure the orderly market exit of a company.
 4. This Article does not apply to subsidies, the cumulative amounts or budgets of which are less than 170.000 SDR per enterprise over a period of three consecutive years.

Article 24.7 Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the explicitly defined policy objective for which the subsidies have been granted⁴.

Article 24.8 Exclusion from dispute settlement

Dispute settlement does not apply to paragraph 5 of Article 24.5 (Consultations).

⁴ For greater certainty, when a Party has set up the appropriate legislative frameworks and administrative procedures to this effect, the obligation is considered to be fulfilled.

SECTION C

GENERAL PROVISIONS

Article 24.9 Confidentiality

1. When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and business secrecy and shall ensure the protection of business secrets and other confidential information.
2. When a Party communicates information under this Agreement, the receiving Party shall maintain the confidentiality of the communicated information.