

## **CHAPTER 18**

### **SUBSIDIES**

#### **Article 18.1**

##### **Definitions**

For the purposes of this Chapter:

“**specific subsidy**” means a subsidy which is determined *mutatis mutandis* to be specific in accordance with Article 2 of the SCM Agreement; and

“**subsidy**” means a measure which fulfils *mutatis mutandis* the conditions set out in Article 1.1 of the SCM Agreement.

#### **Article 18.2**

##### **Principles**

1. The Parties recognise that subsidies may be granted to achieve public policy objectives such as correcting certain market failures, addressing social difficulties, and administering development programmes. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation under this Agreement. Therefore, to help promote a level playing field and foster a favourable trade environment, the Parties recognise the importance of considering whether subsidies granted have an adverse effect on trade.
2. Nothing in this Chapter shall prevent a Party from granting a subsidy temporarily to respond to a national or global economic emergency.<sup>1</sup> Such subsidies shall be transparent and shall not go beyond their objective.

#### **Article 18.3**

##### **Scope**

1. This Chapter shall only apply to a subsidy if it is a specific subsidy related to trade in goods.
2. Nothing in this Chapter shall apply to a subsidy for which the total amount granted or budgeted for over a period of two consecutive years is below 18 million Special Drawing Rights.

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<sup>1</sup> For greater certainty, an economic emergency shall be understood as one that affects the whole economy of a Party.

3. This Chapter shall not apply to subsidies related to the agricultural, fisheries, or aquaculture sectors.<sup>2</sup>

#### **Article 18.4** **Relationship to the WTO Agreement**

1. The Parties reaffirm their commitment to abide by the SCM Agreement and Article XVI of GATT 1994.
2. The Parties shall consult each other following the development of additional subsidies disciplines at the WTO, consistent with Article 18.3 (Scope), with a view to their incorporation into this Chapter.

#### **Article 18.5** **Use of Subsidies**

Each Party shall endeavour to ensure that subsidies are used only for the specific purpose for which the subsidies were granted.

#### **Article 18.6** **Transparency**

1. Each Party shall ensure transparency in the area of subsidies. To that end, each Party shall notify the other Party of the following with respect to any subsidy granted or maintained within its territory:
  - (a) background and authority for the subsidy including, where possible, the identification of the legal instrument under which it is granted;
  - (b) the form of the subsidy; and
  - (c) the amount of the subsidy or the amount budgeted for the subsidy.
2. The requirement imposed by paragraph 1 must be satisfied every two years.
3. 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.

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<sup>2</sup> For clarity, subsidies related to the agricultural, fisheries and aquaculture sectors shall include:

- (a) agricultural goods, including those covered by Annex 1 to the WTO Agreement on Agriculture;
- (b) fisheries goods, including those produced by fishing activities covered by the WTO Agreement on Fisheries Subsidies; and
- (c) aquaculture products.

4. If a Party notifies a subsidy 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 that subsidy.
5. Notification of a subsidy under this Article shall be without prejudice to its legal status.

#### **Article 18.7 Consultations**

1. In the event a Party considers that a subsidy granted by the other Party has an adverse effect<sup>3</sup> on its trade interests under this Agreement, it may submit a written request for consultation. 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 an adverse effect on trade between the Parties.
2. During the consultations, a Party may seek additional information on a subsidy provided by the responding Party, such as:
  - (a) the policy objective or purpose of the subsidy;
  - (b) the background and authority for the subsidy (including, where possible, identification of the legal instrument under which the subsidy is granted);
  - (c) the form of the subsidy such as a grant, loan, guarantee, repayable advance, equity injection or tax concession;
  - (d) the dates and duration of the subsidy and any other time limits attached to it;
  - (e) the eligibility requirements of the subsidy;
  - (f) the total amount or the annual amount budgeted for the subsidy;
  - (g) the statistical data permitting an assessment of the effects of the subsidy on trade; and
  - (h) where possible, the name of the recipient of the subsidy.
3. The responding Party shall endeavour to provide the requested information in writing as quickly as possible and in a comprehensive manner, after the receipt of the request. If any requested information cannot be provided, the responding Party shall explain the absence of that information in its written response.
4. If the requesting Party, after the consultations, still considers that the subsidy has an adverse effect on its trade interests under this Agreement, the responding

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<sup>3</sup> For the purpose of this Article, 'adverse effect' shall have the same meaning as in Articles 5 and 6 of the SCM Agreement.

Party shall accord sympathetic consideration to the concerns of the requesting Party.

#### **Article 18.8 Cooperation**

1. The Parties recognise the importance of cooperating in the area of subsidies. The Parties share the objective of working jointly, where appropriate and subject to available resources, in order to:
  - (a) explore ways to improve transparency regarding subsidies;
  - (b) explore opportunities to collaborate in addressing market-distorting subsidies; and
  - (c) bilaterally exchange information on the functioning of their respective subsidy systems.

#### **Article 18.9 Confidentiality**

Any information provided under this chapter shall be subject to Article 28.6 (Confidentiality – General Provisions and Exceptions).

#### **Article 18.10 Non-Application of Dispute Settlement**

Neither Party shall have recourse to dispute settlement under Chapter 29 (Dispute Settlement) for any matter arising under this Chapter.