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CHAPTER XX SUBSIDIES

Article 1 Principles

The Parties recognise that subsidies can be granted by a Party when they are necessary to achieve a public policy objective, 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 significantly negative effect on trade and investment interests.

Article 2 Definitions

For the purposes of this Chapter,

“subsidy” means a measure which fulfils *mutatis mutandis* the conditions set out in paragraph 1 of Article 1 of the SCM Agreement, irrespective of whether the recipients deal in goods or services.

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

"economic activities" pertains to the offering of goods and services in a market.

Article 3 Scope

1. This Chapter shall only apply to specific subsidies.
2. This Chapter shall only apply to economic activities.¹
3. This Chapter shall not apply to subsidies to enterprises entrusted by the government with the provision of services to the general public for public policy objectives. Such

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

exceptions from the rules on subsidies shall be transparent and shall not go further than their targeted objectives.

4. This Chapter shall not apply to subsidies to compensate the damage caused by natural disasters or other exceptional occurrences.

5. Articles 5 (Notification) and 6 (Consultations) shall not apply to subsidies, cumulative amounts or budgets of which are less than 450,000 SDR per beneficiary over a period of three consecutive years.

6. Articles 6 (Consultations) and 7 (Prohibited Subsidies) shall not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture and subsidies related to trade in fish and fish products.

7. Article 7 (Prohibited subsidies) shall not apply to subsidies granted temporarily to respond to a national or global economic emergency². Such subsidies shall be targeted, economical, effective and efficient to remedy the identified temporary national or global economic emergency.

[8. This Chapter shall not apply to the audio-visual sector.]

9. Article 7 (Prohibited Subsidies) shall not apply to subsidies granted by sub-central levels of government. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure observance by sub-central levels of government within its [Area].

10. For the purposes of this Chapter, Article XX of the GATT 1994 and Article XIV of the GATS are hereby incorporated into and made part of this Chapter, *mutatis mutandis*.

Article 4 General Provisions

The provisions in this Chapter shall be applied without prejudice to the rights and obligations of a Party under Article XIV of the GATT 1994, the SCM Agreement and Article XV of the GATS.

Article 5 Notification

1. Each Party shall notify in English, every two years from the date of entry into force of this Agreement, the other Party the legal basis, form, amount or budget and, where possible, the name of the recipient of any specific subsidy granted or maintained³ by that Party.

² For greater certainty, an emergency shall be understood to affect the whole economy of a Party. In the case of the EU, this applies to the whole economy of the EU or at least a Member State.

³ For the purposes of this paragraph, in the case of subsidies which have previously been notified, the information provided in update notifications may be limited to indicating any modifications (or the absence thereof) from the previous notification.

2. If a Party makes publicly available on an official website the information specified in the preceding paragraph, the notification in the paragraph shall be deemed to have been made. If a Party notifies subsidies pursuant to paragraph 2 of Article 25 of the SCM Agreement, the Party shall be considered to have met the requirement of paragraph 1 with respect to such subsidies.

3. The first notification shall be made available no later than 3 years after the date of the entry into force of this Agreement.

4. As for subsidies to services, this Article only applies to the following sectors: architecture and engineering; banking; construction; telecommunication; energy; environment; computer; insurance; express delivery services; and transport.

Article 6 Consultations

1. In the event that either Party considers that a subsidy of a Party has or could have a significantly negative effect on its trade or investment interests under this Chapter, the Parties shall, on a written request of the former Party, and provided that the request includes an explanation of how the subsidy has or could have a significantly negative effect on its trade or investment between the Parties, enter into consultations with a view to resolving the matter.

2. During the consultations referred to in paragraph 1, the Party granting a subsidy shall consider a request of the Party to provide information about the subsidy, such as:

- (a) the legal basis and policy objective or purpose of the subsidy;
- (b) form of the subsidy (e.g. grant, loan, guarantee, repayable advance, equity injection, 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 subsidies; and
- (g) any other data permitting an assessment of the effects of the subsidy on trade and investment.

3. To facilitate the consultations, the requested Party shall provide relevant information on the subsidy in question in writing within no more than 90 days from the date of reception of the request.

4. If any relevant points in paragraph 2 have not been addressed in the written response, an explanation shall be provided in the written response itself.

5. If the requesting Party, after the consultations, still considers that the subsidy in question has or could have a significantly negative effect on the requesting Party's trade or investment interests under this Chapter, the requested Party shall accord sympathetic consideration to the concerns of the requesting Party. Any solution must be considered feasible and acceptable by the requested Party.

Article 7
Prohibited Subsidies

The following subsidies that have or could have a significantly negative effect on trade or investment between the Parties shall be prohibited:

- (a) any legal or other arrangement whereby a government or any public body is responsible to guarantee debts or liabilities of any enterprise, without any limitation, as to the amount and duration of such responsibility; and
- (b) subsidies for restructuring ailing or insolvent enterprises without having prepared a credible restructuring plan. Such a restructuring plan shall be prepared within a reasonable time period after such enterprises having received temporary liquidity support.⁴ 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 8
Use of Subsidies

Each Party shall ensure that enterprises use the subsidies provided only for the specific purpose for which the subsidies were granted.

Article 9
Dispute Settlement

Except for Article 6(5) (Consultations), this Chapter shall be subject to the dispute settlement provisions of this Agreement.

⁴ For greater certainty, nothing prevents 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 keep the enterprise in business for the time necessary to prepare a restructuring or liquidation plan.