

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Subsidies Workshop

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SUBSIDIES

Definition of “Subsidy”

- a financial contribution by a government or public body
and
- a benefit is thereby conferred.



SUBSIDIES

Definition of “Subsidy” cont’d

Financial Contribution

- **practice involving direct transfer of funds or potential direct transfer of funds**
Brazil-Aircraft (practice)
- **govt. revenue otherwise due is foregone**
US-FSC (normative benchmark)



SUBSIDIES

Definition of “Subsidy” cont’d

Benefit

- **advantage to the recipient, not the cost to govt.**
- **benchmark is the marketplace**

Canada-Aircraft

- **was the financial contribution provided on terms more favourable than those available in the market to recipient?**



SUBSIDIES

Specificity

Four types:

- **enterprise-specificity**
- **industry-specificity**
- **regional specificity**
- **prohibited subsidies**

(except for developing countries which qualify under Article 27 for exemption from Article 3 *Indonesia-Autos*)



SUBSIDIES

Prohibited Subsidies

1. contingent upon export performance

- **contingency in law or in fact**
- ***de jure*** – explicit or implied in instrument
Canada-Autos, Canada-Aircraft
- **whether solely or as one of several other conditions**
- **grant tied to actual or anticipated export**
Canada-Aircraft
- **export-orientation alone not enough**



SUBSIDIES

Prohibited Subsidies

2. contingent upon the use of domestic over imported goods

- ***contingent*** means conditional or dependent for its existence on something else

Canada-Autos

- ***both de jure and de facto***

Canada-Autos (AB reversed panel)



SUBSIDIES

Remedies for Prohibited Subsidies

1. withdraw the subsidy without delay

- **remove or take away**
Brazil-Aircraft
- **repayment of subsidy**
Australia-Leather
- **within 90 days**
Brazil-Aircraft (Art. 22.6)

2. appropriate countermeasures

- **effectively induces compliance, i.e. withdrawal**
- **not equivalent to level of nullification or impairment**
Brazil-Aircraft (Art. 22.6)



SUBSIDIES

Actionable Subsidies

- **multilateral dispute settlement**
- **subsidies which cause adverse effects**
- **serious prejudice: displacement or impedance of imports or exports; significant price undercutting or significant price suppression, depression or lost sales; increase in world market share (primary)**
- **requires positive evidence to prove**

Indonesia-Autos



SUBSIDIES

Non-Actionable Subsidies

- **“Green” category of subsidies, exempt from dispute settlement challenge**
- **Articles 8 and 9 are no longer in effect**



SUBSIDIES

Countervailing Measures

- **Unilateral measures imposed on imports**
- **Main criteria:**
 - **subsidized imports**
 - **causing or threatening to cause material injury**
 - **to a domestic industry producing like products**
- **“like products”**
 - Indonesia-Autos*
- **Procedures similar to Antidumping**



SUBSIDIES

Developing Countries

- **Article 27 – conditional exemption from prohibition on export subsidies**
- **Actionable subsidies obligations do not apply to direct forgiveness of debt, subsidies to cover social costs, when subsidies directly linked to privatization**
- **Countervail: de minimis subsidy level 2%; negligibility - 4% of total imports, if total developing country imports < 9%**

