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CHAPTER [XX]

SUBSIDIES

ARTICLE X.1

Principles

1. The Parties acknowledge that subsidies have the potential to distort the proper functioning of markets and can undermine the benefits of trade and investment. In principle, subsidies should not be granted by a Party when they negatively affect, or are likely to negatively affect, competition or trade.
2. The Parties recognise that certain subsidies have potentially harmful trade-distorting effects and share the objective of working to develop enhanced multilateral disciplines and rules on subsidies.

ARTICLE X.2

Definition and scope

1. For the purposes of this Chapter;

- a) a "subsidy" means a measure, which fulfils *mutatis mutandis* the conditions set out in paragraph 1.1 of Article 1 of the SCM Agreement irrespective of whether the recipient of the subsidy supplies goods or services.¹ For greater certainty and for the purposes of this chapter, all references to goods in Article 1.1 of the SCM Agreement are to be understood as covering also services.
- b) "specific subsidy" means a subsidy which is determined to be specific in accordance with Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.6 is deemed to be specific.
- c) "economic activities" means activities pertaining to the offering of goods or services in a market

2. This Chapter applies only to specific subsidies provided to enterprises, public or private, in relation to economic activities.

3. This Chapter shall apply to subsidies to enterprises performing public service tasks² insofar as its application does not impede the performance, in law or in fact, of the public service tasks that are assigned to these enterprises. Public service tasks shall be determined in a transparent manner. Any limitation to or deviation from the application of the rules in this Chapter shall not go beyond what is necessary to perform the assigned public service tasks.

4. This Chapter shall not apply to subsidies granted to benefit any Australian First Nations organisation or peoples.

¹ This Article does not prejudice the outcome of any future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions at the WTO level, the Parties may update this Agreement in this respect.

² The term "public service tasks" includes services provided in the public interest such as primary, secondary, tertiary education, vocational training, aged care, child care, healthcare, public social and community housing.

5. Article X.5 and Article X.6 shall not apply to subsidies provided for a period not exceeding 24 months by a Party to:

(a) compensate for damage caused by natural disasters or other non-economic exceptional occurrences; and

(b) respond to a national or global health or economic emergency, provided that any such subsidies shall be targeted and proportionate, having regard to the harm caused by or arising from the emergency.

6. Article X.5 and Article X.6 does not apply to audio-visual and broadcasting sectors.

ARTICLE X.3

Relationship with the WTO

Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, the Agreement on Agriculture, Article XVI of GATT 1994 and Article XV of GATS.

ARTICLE X.4

Transparency

2. 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) the form of the subsidy;

(c) the amount of the subsidy or the amount budgeted for the subsidy; and

(d) if possible, the name of the recipient of the subsidy.

2. A Party is deemed to have met the requirement set out in paragraph 1 through:

(a) notification under Article 25 of the SCM Agreement, which is provided at least every two years;

(b) notification under Article 18 of the Agreement on Agriculture; or,

(c) publication by the Party or on its behalf on a publicly accessible website³ no later than 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained.

ARTICLE X.5

Consultations

1. If a Party considers that a subsidy granted or maintained by the other Party is negatively affecting or is likely to negatively affect its trade or investment interests, it may express its concern in writing to the other Party and request further information on the matter.

2. The request shall include an explanation of how the subsidy is negatively affecting or is likely to negatively affect the requesting Party's interests. 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;

³ For greater certainty, Article X.11.2 (c) does not require publication on a single website, nor in a particular format.

- (d) the eligibility requirements of the subsidy;
- (e) the total amount or the annual amount budgeted for the subsidy;
- (f) if possible, name of the recipient(s) of the subsidy; and
- (g) other relevant information permitting an assessment of the effects of the subsidy.

3. The requested information shall be provided in writing no later than 90 days after the date of receipt of the request. 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.

4. After having received the requested information, the requesting Party may request consultations on the matter. Such request shall be in writing. Consultations between the Parties to discuss the concerns raised shall be held within 60 days of the request for consultations and may be conducted by electronic means.

5. Such consultations shall be aimed at establishing and clarifying the facts of the matter and attempt to arrive at a mutually satisfactory resolution of the matter.

6. In the case of subsidies granted in relation to goods covered by Annex 1 to the Agreement on Agriculture, taking into account the relevant provisions of that Agreement, the responding Party shall accord sympathetic consideration to addressing the concerns of the requesting Party with due respect to Article X.3 (Relation to the WTO Agreement).

ARTICLE X.6

Treatment of certain subsidies

1. The Parties shall not provide subsidies whereby a government guarantees debts or liabilities of an enterprise without any limitation as to the amount of those debts and liabilities or the duration of such guarantees.

2. Subject to paragraph 3, subsidies to insolvent or ailing enterprises to support restructuring are allowed on the condition that:

(a) a credible restructuring plan has been prepared based on realistic assumptions, and with a view to ensure the return to long-term viability of the insolvent or ailing enterprise within a reasonable time period; and

(b) the enterprise (other than small and medium sized enterprises) contributes to the costs of restructuring.

3. The conditions set out in paragraph 2 do not apply to:

(a) subsidies provided to enterprises as temporary liquidity support during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to keep the enterprise in business; and

(b) subsidies granted to ensure the orderly market exit of a company.

5. This Article does not apply to subsidies, the cumulative amounts or budgets of which are less than 250 000 SDR per enterprise over a period of three consecutive years.

ARTICLE X.7

Use of subsidies

Each Party shall ensure that enterprises use subsidies only for the policy objective for which the subsidies were granted.

ARTICLE X.8

Dispute Settlement

Article X.5 (Consultations) shall not be subject to Chapter X (Dispute Settlement).