

Subsidies in the GATS

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WTO
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Article XV Subsidies



"1. Members recognise that, in certain circumstances, subsidies may have distortive effects on trade in services. Members shall enter into negotiations with a view to developing the necessary multilateral disciplines to avoid such trade-distortive effects. The negotiations shall also address the appropriateness of countervailing procedures.

Such negotiations shall recognize the role of subsidies in relation to the development programmes of developing countries and take into account the needs of Members, particularly developing country Members, for flexibility in this area.

For the purpose of such negotiations, Members shall exchange information concerning all subsidies related to trade in services that they provide to their domestic service suppliers."

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Rules in the HK Declaration



- "Members must intensify their efforts to conclude the negotiations on rule-making under GATS Articles X, XIII, and XV in accordance with their respective mandates and timelines"
- "On subsidies, Members should intensify their efforts to expedite and fulfil the information exchange required for the purpose of such negotiations, and should engage in more focused discussions on proposals by Members, including the development of a possible working definition of subsidies in services."

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Current situation in the WTO



- Agreement on Subsidies and Countervailing Measures
 - Definition of subsidy, specificity
 - Prohibited: export subsidies
 - Actionable: challengeable if causing adverse effects
 - AE through injury to domestic industry (sole basis for countervail action)
 - AE through serious prejudice
 - AE through nullification and impairment

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Current situation in the WTO



- Agreement on Subsidies and Countervailing Measures
 - Countervailing measures:
 - Need to determine that there are subsidized imports, injury to domestic industry, and a causal link.
 - Calculation of benefit, effect of subsidized imports on prices.
 - No countervailing duty can be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit.
- Agreement on Agriculture
- Relevance of the ASCM for subsidies to services
- Agreements notified under GATS Article V

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Current situation in the WTO



- GATS obligations relevant for subsidies
 - MFN (Article II)
 - National treatment (Article XVII)
 - Domestic regulation (Article VI)
 - Monopolies and exclusive service suppliers (Article VII)
 - Nullification and impairment (Article XXIII)
 - Article XV:2
- Subsidies in negotiating proposals
 - Ex: audiovisual services, construction services
- Subsidy-related entries in schedules
 - 35 Members; 32 horizontal entries (sector-specific: AV, education, recreational)
 - Most involve M3; a minority involve M1; many limited to R&D

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Subsidies in Services Sectors (W/25)

- Sectors:
 - widespread, but in particular tourism, transport, banking
- Form of Subsidy:
 - tax incentives, direct grants, duty-free inputs and free zones, preferential credit and guarantees
- Objectives pursued
 - Attract investment; increase exports; promotion of culture; universal access (TC); equal footing with other countries; rescuing troubled firms (FS, air), develop infrastructure, raise tourism earnings.

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Possible distorting effects of subsidies

- Import-substituting effect
 - Ex: production subsidy
- Export-enhancing effect
 - Production subsidies, export credits, export free zones
- Consumer subsidies
 - Ex: education grants
- Investment incentives
 - Locational subsidies; bidding wars

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Relevant Characteristics of Services



- Role of public policy objectives
- Modes of supply; specificity
- Determining the effect of subsidies: “customized” services, regulations and other barriers influencing price differentials, trade statistics.
- “Services provided in the exercise of governmental authority”
- N-D subsidies and the structure of the GATS:
 - Sequencing issues
- Feasibility of countervailing measures; definition of domestic industry.

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Definition of Subsidy



- Relevance of the ASCM definition
 - “Government or any public body”
 - “Services supplied under governmental authority”
 - Income or price support
 - Government provision and purchase of services
 - Conferring of a benefit
 - Specificity

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Additional Subsidy Issues



- Export subsidies:
 - Scope of the GATS
 - Relevance in services
 - Definition and modes of supply
 - “Local content” subsidy and NT in the GATS
 - “Contingent in fact” and the tourism sector

- Exchange of information
 - 5 answers to the questionnaire (HKC, NZ, Norway, Poland, Switzerland)
 - Transparency issues

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