

**PREPARATORY COMMITTEE
FOR THE
WORLD TRADE ORGANIZATION**

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**SUB-COMMITTEE ON INSTITUTIONAL,
PROCEDURAL AND LEGAL MATTERS**

INFORMAL CONTACT GROUP ON ANTI-DUMPING
SUBSIDIES AND SAFEGUARDS

Report by the Chairman
as approved by the Sub-Committee on 28 November

1. This report of the work of the Informal Contact Group on Anti-Dumping, Subsidies and Safeguards is being submitted to the Sub-Committee on the responsibility of the Chairman of the Contact Group, Mr. Ole Lundby.
2. The Contact Group met on 22 July, 20 September, 30 September, 11 October, 27-28 October, 2 November, 11 November, 17 November and 21 November 1994.
3. The Contact Group reached agreement on recommended standard formats for notifications under Articles 8.3, 27.11, 27.13, 28.1 and 29.3 of the Agreement on Subsidies and Countervailing Measures. These recommended formats are attached in Annexes 1-5. It is understood that these recommended formats are designed to facilitate the effective operation of the Agreement and do not constitute authoritative interpretations of rights and obligations of WTO Members. It is also understood that these formats may have to be revised by the relevant WTO body in light of the experience with their use.
4. With regard to the standard format for notifications under Article 8.3 of the Agreement on Subsidies and Countervailing Measures, it should be noted that this format pertains only to initial notifications of subsidy programmes as provided for in the first sentence of Article 8.3. It was agreed that further work is necessary with respect to the format for annual updates of such notifications provided for in the third sentence of Article 8.3.
5. With regard to notifications under Article 29.3 of the Agreement on Subsidies and Countervailing Measures, it was noted that it might be useful for the WTO Committee on Subsidies and Countervailing Measures to consider the question of when these notifications are to be provided.
6. The Contact Group also reached an understanding on certain aspects of the implementation of the provisions in the Agreement on Anti-Dumping and the Agreement on Subsidies and Countervailing Measures regarding the submission of semi-annual reports on anti-dumping and countervailing duty actions and the notification of relevant laws and regulations. The relevant texts are attached in Annexes 6 and 7.
7. The Group has begun to consider the question of procedural arrangements for arbitration proceedings under Article 8.5 of the Agreement on Subsidies and Countervailing Measures. The Group intends to continue this work and will report the results of this work as appropriate.

ANNEX 1

Notifications under Article 8.3 of the Agreement on Subsidies and Countervailing Measures

Introduction

The purpose of this standard format is to assist WTO Members in making notifications under the first sentence of Article 8.3 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). In view of the statement in Article 8.3 that notifications under this provision must be "sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2", the questions in this standard format seek information relevant to an assessment of notified assistance in light of the relevant legal requirements in Article 8.2 and do not seek information on trade effects of subsidies or on statistics on production, consumption, imports and exports. It should be noted in this regard that the standard format pertains only to notifications under the first sentence of Article 8.3 and not to annual updates of these notifications referred to in the third sentence of that provision.

Each section below includes several questions of a general nature on issues such as the objectives of a programme, the level of government involved and the institutional framework for the implementation of the programme and the financing instruments used in the programme. In addition, there are more specific questions designed to generate information relevant to an evaluation of whether assistance under a particular programme meets the conditions of Article 8.2 of the SCM Agreement.

With regard to the questions in this standard format on arrangements which may exist for monitoring, auditing and evaluation of assistance under a notified programme, it should be stressed that this standard format does not add to or detract from the relevant legal requirements in Article 8.2 of the SCM Agreement.

As provided in footnote 34 to Article 8.3, Members are not required to provide confidential information, including confidential business information.

I. Assistance for research activities

- (a) Describe the policy objectives of the assistance, including, if applicable, any sectoral objectives.
- (b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is provided. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted for research activities, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
- (c) Identify the level(s) of government involved in the provision of assistance for research activities which is notified and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.
- (d) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.
- (e) Identify the assisted research areas and, if possible, the assisted research projects. Provide a technical description of the specific goals of the research activities and explain how these activities fall within the definitions of "industrial research" and "pre-competitive development activity" in footnotes 28 and 29 of the SCM Agreement.
- (f) In the case of industrial research, to the extent practicable in the context of an advance notification of a programme, explain what new knowledge is being sought and what new products, processes or services or improvements in existing products, processes or services are intended to be developed using this knowledge. To the extent possible describe the end result of the industrial research.
- (g) In the case of pre-competitive development activity, to the extent practicable in the context of an advance notification of a programme, describe the end result of the pre-competitive development activity and explain how existing products, production lines, manufacturing processes, services or other on-going operations will be affected as a result of this activity.
- (h) If a prototype is being developed, to the extent practicable in the context of an advance notification of a programme, describe how the prototype will be developed and describe what modifications are foreseen which would be required to make the prototype capable of commercial use.
- (i) Describe the industries and entities, to the extent known, whose research activities will be eligible under the programme.
- (j) If the programme covers research activities conducted on a contract basis, explain, to the extent practicable in the context of an advance notification of a programme, the nature of the contractual arrangements in question. If possible, provide a model contract (in English, French or Spanish).
- (k) Specify the total amount of assistance budgeted under the programme.
- (l) Provide a breakdown of expenditure by project, or, if not possible, by research area.

- (m) Specify the amounts of assistance permitted under the programme for (a) industrial research and (b) pre-competitive development activity.
- (n) Explain how it is ensured that the assistance does not cover more than 75 per cent of the costs of industrial research, 50 per cent of the costs of pre-competitive development activity or, in situations referred to in footnote 30, 62.5 per cent of both of these costs. Describe the methodology used in calculating these costs.
- (o) Describe the specific types of costs covered by the assistance. Explain how it is ensured that the assistance is limited exclusively to the costs mentioned in items (i)-(v) of Article 8.2(a) of the SCM Agreement. Describe the methodology used in calculating these costs.
- (p) Describe any arrangements which may exist for monitoring, auditing and evaluation.

II. Assistance to disadvantaged regions within the territory of a Member

- (a) Describe the general framework of regional development, as provided for in footnote 31, pursuant to which the assistance is granted. In this connection, explain how the regional development policy of which the programme forms part is internally consistent and generally applicable and describe how the programme is intended to contribute to regional development.
- (b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is provided. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted to disadvantaged regions, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
- (c) Identify the level(s) of government involved in the implementation of the regional assistance programme and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.
- (d) Identify the regions eligible for assistance under the programme. Explain how these regions are contiguous geographical areas with a definable economic and administrative identity.
- (e) Identify the criteria on the basis of which the regions have been designated as disadvantaged. Provide a copy of the relevant law, regulation or other official document in which such criteria are spelled out.
- (f) Describe the measurements of economic development which have been included in these criteria. Explain how any composite measurement of economic development was determined and calculated. Provide for a period of three years the relevant statistical data for the region and for the territory as a whole of the Member used in determining that a region is disadvantaged.
- (g) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.
- (h) Describe the criteria for determining the eligibility of the beneficiaries of the assistance and the procedures regarding applications for assistance under the programme. Provide (in English, French or Spanish) a copy of a standard application form or instructions, if any.

- (i) Specify the total amount of assistance budgeted under the programme. Describe the specific types of costs covered by the assistance.
- (j) Specify the ceilings, expressed in terms of investment costs or costs of job creation, on the amount of assistance to individual projects. Explain the methodology used for calculating the investment costs and the costs of job creation. Explain how such ceilings have been differentiated according to the different levels of development of the assisted regions.
- (k) Describe any provisions which may exist under the programme to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.
- (l) Explain how it is ensured that the amount of the assistance does not exceed the ceilings.
- (m) Describe any arrangements which may exist for monitoring, auditing and evaluation.

III. Assistance to promote adaptation of existing facilities to new environmental requirements

- (a) Describe the policy objectives of the programme, including, if applicable, any sectoral objectives.
- (b) Provide a copy of the law, regulation and/or other legal instrument under which the assistance is granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies granted to promote adaptation of existing facilities to new environmental requirements, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
- (c) Identify the level(s) of government involved in the implementation of the environmental assistance programme and provide a detailed description of the institutional framework for the implementation of the programme, including, if applicable, a description of the role of non-governmental entities.
- (d) Explain how the environmental requirements in question are "new" requirements. Provide a copy of the law or regulation which imposes the new environmental requirements. Explain which nuisances and pollutants are intended to be reduced by these requirements. Identify the level of government at which these requirements are imposed.
- (e) Describe the time frame for the application of the new environmental requirements to existing facilities.
- (f) To the extent practicable in the context of an advance notification of a programme, provide a technical description of the adaptation of existing facilities necessary to meet the new environmental requirements and identify those facilities. Explain how these requirements would result in a reduction of the specific nuisances or pollutants and explain how these requirements result in greater constraints and financial burdens on firms.
- (g) Identify the specific financing instrument(s) used in the programme and provide a detailed description of the incidence and duration of assistance under each instrument.
- (h) Explain whether the assistance is provided on the total cost of the reduction of the nuisances or pollutants or on an individual phase of implementation of the new environmental requirements.

Identify any legal provision and/or provide other relevant information which explains how the one time, non-recurring condition is met.

- (i) Specify the total amount of assistance budgeted under the programme.
- (j) Describe the criteria for determining the eligibility of beneficiaries of the environmental assistance and the procedures regarding applications for environmental assistance. Provide (in English, French or Spanish)a copy of a standard application form or instructions, if any.
- (k) Explain how it is ensured that the assistance is limited to the adaptation of existing facilities. Describe the methodology used for calculating the costs of adaptation of existing facilities to the new environmental requirements. Describe the specific types of costs covered by the assistance. Explain how it is ensured that the assistance does not cover more than 20 per cent of the costs of this adaptation.
- (l) Explain how it is ensured that the assistance is directly linked and proportionate to a firm's planned reduction of nuisances and pollution and that the assistance does not cover any manufacturing cost savings which may be achieved.
- (m) Describe any arrangements which may exist for monitoring, auditing and evaluation.

ANNEX 2

Notifications under Article 27.11 of the Agreement
on Subsidies and Countervailing Measures

1. Indicate the date on which export subsidies covered by Article 3 were eliminated.
2. List the export subsidies covered by Article 3 which have been eliminated after the entry into force of the WTO Agreement¹ and identify the means by which the export subsidies were eliminated.

¹It is understood that in notifying the elimination of certain export subsidies under Article 27.11, Members may make reference to the relevant information provided in notifications submitted pursuant to Article 25.

ANNEX 3

Notifications under Article 27.13 of the Agreement
on Subsidies and Countervailing Measures

1. Provide a copy of the law, regulation and/or other legal instrument establishing the privatization programme under which subsidies referred to in Article 27.13 are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of the table of contents or chapter headings of the legal instrument in question and of any provision which directly relates to the subsidies notified under paragraph 3 below.
2. Provide information on the objectives and implementation of the privatization programme referred to in paragraph 1 above and the enterprises concerned. Submit a copy of this programme and provide such additional explanation as may be necessary. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which show that subsidies are granted within and directly linked to this programme, and (ii) the table of contents or chapter headings of this programme.
3. Provide a copy of the law, regulation and/or other legal instrument under which the subsidies are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies in question, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
4. Describe the specific form of the subsidies. Where applicable, explain how the subsidies cover social costs.
5. Specify the limited period of time of the privatization programme and of the subsidies granted in connection therewith.
6. Explain how the subsidies are granted within and directly linked to the privatization programme.

ANNEX 4

Notifications under Article 28.1 of the Agreement
on Subsidies and Countervailing Measures

1. List all existing subsidy programmes referred to in Article 28.1 of the Agreement.
2. Describe the policy objectives of each programme, including, if applicable, any sectoral objectives.
3. Specify the date of establishment of the programmes and any expiry date provided for therein.
4. Provide a copy of the law, regulations and/or other legal instruments under which the subsidies are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies in question, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
5. Identify the level(s) of government involved in the implementation of the programmes.
6. Describe the financing instruments(s) used in each programme.
7. To the extent possible at the time of the notification, explain for each programme how it is intended to bring the programme into conformity with the Agreement within the period of three years referred to in Article 28.1 (b) of the Agreement.
8. Explain for each programme how it is ensured that the scope of the programme will not be extended and that the programme will not be renewed upon its expiry.

ANNEX 5

Notifications under Article 29.3 of the Agreement
on Subsidies and Countervailing Measures

1. List all subsidy programmes falling within the scope of Article 3.
2. Describe the policy objectives of each programme, including, if applicable, any sectoral objectives.
3. Specify the date of establishment of the programmes.
4. Provide a copy of the laws, regulations and/or other legal instruments under which the subsidies are granted. If these documents are not in a WTO language, provide a translation in English, French or Spanish of (i) the specific legal provisions which are related to the subsidies in question, including the conditions under which those subsidies are granted, and (ii) the table of contents or chapter headings of the law, regulation and/or other legal instrument.
5. Identify the level(s) of government involved in the implementation of the programmes.
6. Describe the financing instrument(s) used in each programme.
7. To the extent possible at the time of the notification, indicate for each programme when the programme will be phased out or how it will be brought into conformity with Article 3 within a period of seven years from the date of entry into force of the WTO Agreement.

ANNEX 6

Notification of legislation

With regard to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, it is understood that the first notification by a WTO Member of anti-dumping and countervailing duty legislation will cover the full text of relevant laws and regulations.

ANNEX 7

Semi-Annual Reports of Anti-Dumping
and Countervailing Duty Actions

With regard to semi-annual reports required under Article 16.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and under Article 25.11 of the Agreement on Subsidies and Countervailing Measures, it is understood that the first report submitted by each WTO Member will cover the period July-December or January-June, whichever is more recent, prior to the date of entry into force of the WTO Agreement for the Member.