

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Subsidies" in TTIP. It was tabled for discussion with the US in the negotiating round of 10-14 March 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

TEXTUAL PROPOSAL

POSSIBLE PROVISIONS ON SUBSIDIES

In line with the proposed content developed in the Initial Position Paper proposed by the EU on "Anti-Trust, Government Influence and Subsidies", this paper provides further details on some of the elements that the EU proposes to be included in the Subsidy Chapter.

In addition to these core elements, the EU would like to prompt reflection on possible additional elements. The parties could reflect on the feasibility to prohibit certain types of subsidies. In particular, subsidies given to support insolvent or ailing companies without a credible restructuring plan belong to some of the most harmful types of subsidies and have the potential to have an adverse effect on trade and investment relations.

The proposed language is without prejudice to any other elements that the EU may propose for inclusion in the TTIP competition text at a later stage. The choice of wording could be further elaborated upon during the next round of discussions.

X.1

Definition and scope

- (1) For the purposes of this Agreement, a subsidy is a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (ASCM), irrespective whether it is granted to an enterprise manufacturing goods or supplying services¹.
- (2) Enterprises entrusted with the operation of services of general economic interest or having the character of a revenue-producing monopoly shall be subject to X.4 in so far as the application of such rules does not obstruct the performance, in law or in fact, of the particular tasks assigned to the enterprises in question. Trade and investment must not be affected to such an extent as would be contrary to the objectives of this Agreement.
- (3) A subsidy shall be subject to this chapter only if this subsidy is determined to be specific in accordance with the provisions of and within the meaning of Article 2, paragraphs 1 and 2 of the ASCM.
- (4) X.3 and X.4 shall not apply to fisheries subsidies and subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.

¹ This does not prejudice the outcome of 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 adopt a decision by [relevant committee] to update this Agreement in this respect.

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Subsidies" in TTIP. It was tabled for discussion with the US in the negotiating round of 10-14 March 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

- (5) This Chapter shall not apply to sectors in which the Parties have not undertaken specific commitments under the Chapter on Cross-border Supply of Services or the Chapter on Investment of this Agreement.

X.2 Relationship with the WTO

The provisions in this Section shall be applied without prejudice to the rights and obligations of a Party under the WTO Agreement.

X.3 Transparency

- (1) Each Party shall ensure transparency in the area of subsidies. To this end, each Party shall report every two years to the other Party on the legal basis, form, amount or budget and, where possible, the recipient of the subsidy provided by its government or any public body within the reporting period.
- (2) Such report is deemed to have been provided if the relevant information is made available by the Parties or on their behalf on a publicly accessible website, as from 31 December of the subsequent calendar year.
- (3) Notifications provided to the WTO under Article 25.1 of the ASCM shall be deemed to have met this requirement with respect to trade in goods.

X.4 Consultations

- (1) If a Party considers that a subsidy granted by the other Party is adversely affecting, or may adversely affect the first Party's interests, the first Party may express its concern to the other Party and request consultations on the matter. The other Party shall accord sympathetic consideration to such a request. The consultation should in particular aim at specifying for which objective the subsidy was granted, the incentive effect and proportionality of the subsidy in relation to this objective and what the distortive effect on trade of the other Party is.
- (2) In order to facilitate the consultation, the other Party shall provide information on the subsidy in question within no more than 60 days from the date of reception of the request. On the basis of the consultation, the requested Party will use its best endeavours to eliminate or minimise the adverse effects on the first Party's trade interests caused by the subsidy in question.

X.5 Confidentiality

- (1) When exchanging information under this Chapter the Parties shall take into account the limitations imposed by their respective legislations concerning professional and

*This **TEXTUAL PROPOSAL** is the European Union's initial proposal for legal text on "Subsidies" in TTIP. It was tabled for discussion with the US in the negotiating round of 10-14 March 2014 and made public on 7 January 2015. The actual text in the final agreement will be a result of negotiations between the EU and US.*

business secrecy and shall ensure the protection of business secrets and other confidential information.

- (2) When a Party communicates information in confidence under this Agreement, the receiving Party shall, consistent with its laws and regulations, maintain the confidentiality of the communicated information.

X.6 Review clause

The Parties shall keep under constant review the matters to which reference is made in this Chapter. Each Party may refer such matters to the [*appropriate body established by the Agreement*]. The Parties agree to review progress in implementing this Chapter every five years after the entry into force of this Agreement, unless both Parties agree otherwise.

X.7 Dispute Settlement

X.4 of this Section shall not be subject to Dispute Settlement under this Agreement