

Disclaimer: In view of the Commission's transparency policy, the Commission is publishing the texts of the Trade Part of the Agreement following the agreement in principle announced on 21 April 2018.

The texts are published for information purposes only and may undergo further modifications including as a result of the process of legal revision. The texts are still under negotiations and not finalised. However, in view of the growing public interest in the negotiations, the texts are published at this stage of the negotiations for information purposes. These texts are without prejudice to the final outcome of the agreement between the EU and Mexico.

The texts will be final upon signature. The agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement (or its provisional application).

CHAPTER [XX]

COMPETITION

[...]

SECTION B

SUBSIDIES

Article X.6

Principles

The Parties agree that subsidies can be granted when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade liberalisation. In principle, subsidies granted to enterprises providing goods or services should not be granted when a Party finds they negatively affect, or are likely to affect, trade and investment.

Article X.7

Definition and Scope

1. For the purposes of this Chapter:
 - (a) a subsidy provided for goods is a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as “SCM Agreement”). Such 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 of the SCM Agreement.

- (b) a subsidy provided for services is a measure which involves a financial contribution by a government or a public body and confers a benefit, and which is specific to an enterprise or industry or a group of enterprises or industries.¹ A subsidy for services is subject to this Chapter only if it is specific within the meaning of Article 2 of the SCM Agreement.
3. Subsidies to all enterprises pursuing an economic activity shall be subject to this Chapter. Where an enterprise combines economic and non-economic activities, only the economic activities of that enterprise are covered by this Chapter.
 4. This Chapter shall not apply to subsidies to enterprises entrusted with the provision of particular services of public interest, including entrustment through special rights or privileges, to the extent that such subsidies are limited to the amount necessary to cover the costs of the service in question.
 5. The rules in this Chapter shall not apply to subsidies related to trade in goods covered by the Agreement on Agriculture, contained in Annex 1A to the WTO Agreement and subsidies related to trade in fish and fisheries products.
 6. Subsidies provided in the audio-visual sector shall only be subject to transparency according to Article X.9.)
 7. Article X.11 (Subsidies subject to conditions) shall not apply to subsidies for services.

Article X.8

Relationship with the WTO

The Parties reaffirm their rights and obligations under Article XV GATS, Article XVI of GATT 1994, and the SCM Agreement.

Article X.9

Transparency

1. Each Party shall make transparent the following with respect to any subsidy granted or maintained within its territory:
 - (a) the legal basis of the subsidy;
 - (b) the form of the subsidy; and
 - (c) the amount of the subsidy or the amount budgeted for the subsidy

¹ This Article 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.

- (d) where possible the name of the recipient²
2. A Party is deemed to meet the requirement set out in paragraph 1:
- (a) if a Notification is provided to the WTO under Article 25.1 of the SCM Agreement, and, where possible, the name of the recipient is also made transparent; or
- (b) if the information required in paragraph 1 is made available by the Parties or on their behalf on a publicly accessible website. The information shall be made available by 31 December of the calendar year subsequent to the one in which a subsidy was maintained or granted³.
4. As for subsidies to services, this Article shall apply only
- (a) to subsidies to services of which the amount per beneficiary over a period of 3 consecutive years is above 400.000 Special Drawing Rights; and
- (b) to the following sectors: telecommunication, financial services, transport (including maritime), energy (including electricity distribution), environment, computer, architecture and engineering, construction, postal and courier services.

Article X.10

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, this Party may express its concern to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to such a request.
2. During the consultation referred to in paragraph 1, the requesting Party may seek additional information about the subsidy, such as:
- (a) the legal basis and policy objective or purpose of the subsidy;
- (b) form of the subsidy;
- (c) dates and duration of the subsidy and any other time limits attached to it;
- (d) eligibility requirements of the subsidy;
- (e) the total amount or the annual amount budgeted for the subsidy;
- (f) where possible, the name of the recipient of the subsidy; and

² The name of the recipient of the subsidy applies to subsidies of 500.000 Special Drawing Rights and above.

³ For greater certainty, the publication of the programs on the website does not prejudice its legal status or the nature of the program itself.

- (g) any other data permitting an assessment of the negative effects of the subsidy on trade and investment.
3. The requested Party shall provide information on the subsidy in question within no more than 60 days from the date of reception of the request. If any relevant points in paragraph 2 have not been addressed in the written response, an explanation shall be provided in the written response itself.
 4. If the requesting Party, after receiving the requested information, considers that the subsidy concerned has or may have a significant adverse effect on its trade or investment interests, the requested Party will use its best endeavours to eliminate or minimise those adverse effects within one year.

Article X.11

Subsidies Subject to Conditions

The Parties shall apply conditions to the following subsidies, in so far as they adversely affect trade or investment of the other Party or are likely to do so:

- (a) A subsidy or a legal arrangement whereby a government is responsible to cover debts or liabilities of certain enterprises is allowed on condition that the coverage of the debts and liabilities is limited as regards the amount of those debts and liabilities or the duration of such responsibility;
- (b) Subsidies to insolvent, brink of insolvency or ailing enterprises are allowed if the following conditions are met:
 - (i) A credible restructuring plan has been prepared. Such restructuring plan shall be based on realistic assumptions with the view to ensure the return to long-term viability of the insolvent, brink of insolvency or ailing enterprise within a reasonable time period; and.
 - (ii) Enterprises other than small and medium sized enterprises should contribute to the costs of restructuring.

For the time reasonable necessary to prepare a restructuring plan, enterprises can receive temporary liquidity support in the form of loan guarantees or loans. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business.

Article X.12

Use of Subsidies

Each Party shall ensure that enterprises use the subsidies provided by a Party only for the policy objective or purpose for which the subsidies have been granted⁴.

Article X.13

Dispute Settlement

Article X.10.4 (Consultations) and Article X.3 (Transparency) in so far as it concerns subsidies to services shall not be subject to the dispute settlement provisions of this Agreement.

⁴ For greater certainty, when a Party has set up the appropriate legislative frameworks and administrative procedures to this effect, the obligation is considered to be fulfilled.