

*This document contains the EU revised proposal as it stands at the end of the XXXIInd round of negotiations (21 February – 2 March 2018) on Subsidies in the Trade Part of the EU-Mercosur Association Agreement. This is without prejudice to the final outcome of negotiations. Both sides reserve the right to make subsequent modifications to their proposals.*

## **CHAPTER [XX]**

### **SUBSIDIES**

#### *Article X.1*

#### **Principles**

The Parties recognise that subsidies may be granted when they are necessary to achieve specified policy objectives. The Parties acknowledge, however that subsidies have the potential to distort the proper functioning of markets and undermine the benefits of trade and investment liberalisation. Therefore, in principle, subsidies should not be granted when they are likely to have a significant negative effect on trade or investment.

#### *Article X.2*

#### **Definition and Scope**

1. For the purposes of this Chapter, a subsidy 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”) irrespective of whether it is granted to an enterprise supplying goods or services.<sup>1</sup>
2. A subsidy is subject to this Chapter only if this subsidy is determined to be specific in accordance with Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.6 (Subsidies Subject to Conditions) is deemed to be specific.
3. Subsidies to all enterprises, including public and private enterprises, shall be subject to this Chapter. The application of the rules in this Chapter must not obstruct the performance, in law or in fact, of particular services of public interest that may be assigned to the enterprises in question. Exemptions should be limited to tasks of public

---

<sup>1</sup> 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.

interest, not go beyond what is strictly necessary to achieve the public interest task, and transparent.

4. As for subsidies to services, this chapter shall apply only
  - (a) to subsidies to services of which the amount per beneficiary over a period of 3 consecutive years is above 300.000 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.
5. Article X.6 (Subsidies subject to conditions) shall not apply to subsidies for services.
6. Articles X.5 (Consultations) and X.6 (Subsidies Subject to Conditions) shall not apply to subsidies related to trade in goods covered by Annex 1 of the WTO Agreement on Agriculture.

*Article X.3*

**Relationship with the WTO**

The provisions in this Chapter shall be applied without prejudice to the rights and obligations of each Party under Article XV GATS, Article VI of GATT 1994, the SCM Agreement and the WTO Agreement on Agriculture.

*Article X.4*

**Transparency**

1. Each Party shall make transparent the following with respect to any subsidy granted or maintained within its territory: the legal basis, form, amount or budget and, where possible, the name of the recipient of the subsidy.
2. A Party shall be considered to have met the requirement of paragraph 1
  - (a) if the subsidy is notified under Article 25 of the SCM Agreement or under Article 18 of the Agreement on Agriculture, provided that the notification contains all the information required under Paragraph 1 and is provided at least every two years; or
  - (b) if the information required under paragraph 1 is made available by the Parties or on their behalf on a publicly accessible website by 31 December of the calendar year subsequent to the year in which the subsidy was granted or maintained.
3. This article will come into effect no later than two years after the entry into force of this Agreement.

*Article X.5*

**Consultations**

1. If a Party considers that a subsidy may negatively affect its trade or investment interests, the Party may express its concern in writing to the other Party and request consultations on the matter. The requested Party shall accord full and sympathetic consideration to that request.
2. The request shall include an explanation of how the subsidy has or could have a negative effect on the requesting Party's trade or investment interests. The requesting Party may seek the following information about the subsidy:
  - (a) the legal basis and policy objective or purpose;
  - (b) the form;
  - (c) the dates and duration and any other time limits attached to it;
  - (d) the eligibility requirements;
  - (e) the total amount or the annual amount budgeted;
  - (f) where possible, the name of the recipient; and
  - (g) any other information permitting an assessment of the negative effects of the subsidy.
3. To facilitate the consultations, the requested Party shall provide the requested information in writing no later than 60 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. On the basis of the information provided, the Parties shall have consultations. Such consultations shall take place within 6 months following the date of receipt of the information.
5. If the requesting Party, following these consultations, considers that the subsidy has or may have a significant negative effect on its trade or investment interests, the requested Party shall use its best endeavours to eliminate or minimise those negative effects.

*Article X.6*

**Subsidies Subject to Conditions**

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

- (a) Subsidies whereby a government, directly or indirectly, is responsible to cover debts or liabilities of certain enterprises is allowed provided 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 or ailing enterprises in various forms (such as loans and guarantees, cash grants, capital injections, provision of assets below market prices, tax exemptions) with a duration above one year are allowed provided that a credible restructuring plan has been prepared which is based on realistic assumptions with the view to ensuring the return of the insolvent or ailing enterprises within a reasonable time to long-term viability and with the enterprise contributing itself to the costs of restructuring.<sup>2,3</sup>

*Article 7*

**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 granted.

*Article X.10*

**Dispute Settlement**

Article X.5.5 (Consultations) shall not be subject to the dispute settlement provisions of this Agreement.

---

<sup>2</sup> This does not prevent the Parties from providing temporary liquidity support in the form of loan guarantees or loans limited to the amount needed to merely to keep an ailing firm in business for the time necessary to adopt a restructuring or liquidation plan.

<sup>3</sup> Small- and medium-sized enterprises are not required to contribute themselves to the costs of restructuring.