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Subsidies

1. Members recognize 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.⁷ 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.

*(footnote original)*⁷ A future work programme shall determine how, and in what time-frame, negotiations on such multilateral disciplines will be conducted.

2. Any Member which considers that it is adversely affected by a subsidy of another Member may request consultations with that Member on such matters. Such requests shall be accorded sympathetic consideration.

1.2 General

1. The Panel in *US – Large Civil Aircraft (2nd Complaint)* referred to Articles XIII:2 and XV of the GATS in the context of interpreting the definition of a subsidy found in Article 1 of the SCM Agreement. The Panel concluded that transactions properly characterized as purchases of services are excluded from the scope of Article 1 of the SCM Agreement, which expressly refers to purchases of goods but omits any reference to purchases of services. In the course of its analysis, the Panel observed that "[w]hile the SCM Agreement was being negotiated, parallel negotiations on trade in services were also taking place. Article XIII:2 and XV of the GATS reflect the fact that the negotiators of the GATS were unable to reach agreement on disciplines regarding governmental purchases of services, or on disciplines governing the provision of subsidies to service suppliers."¹ The Panel concluded that when the omission of "purchases" of "services" from the text of Article 1 of the SCM Agreement is read against this historical background, it offers further confirmation that the drafters of that provision could not have removed the express reference to "purchases" of "services" from Article 1 of the SCM Agreement on the understanding that the reference was superfluous.²

Current as of: June 2022

¹ Panel Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 7.968.

² Panel Report, *US – Large Civil Aircraft (2nd Complaint)*, para. 7.969.