

<b>1 ARTICLE 25 .....</b>	<b>1</b>
A. Text of Article 25.....	1
1.1 General.....	2
1.1.1 Notification Obligations.....	2
1.2 Article 25.7.....	2
1.2.1 Relationship with other provisions.....	3
1.2.1.1 Article 27.4 .....	3

## **1 ARTICLE 25**

### **A. Text of Article 25**

#### **Article 25**

##### *Notifications*

25.1 Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6.

25.2 Members shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories.

25.3 The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection, and without prejudice to the contents and form of the questionnaire on subsidies<sup>54</sup>, Members shall ensure that their notifications contain the following information:

(footnote original)<sup>54</sup> The Committee shall establish a Working Party to review the contents and form of the questionnaire as contained in BISD 9S/193-194.

- (i) form of a subsidy (i.e. grant, loan, tax concession, etc.);
- (ii) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);
- (iii) policy objective and/or purpose of a subsidy;
- (iv) duration of a subsidy and/or any other time-limits attached to it;
- (v) statistical data permitting an assessment of the trade effects of a subsidy.

25.4 Where specific points in paragraph 3 have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sector.

25.6 Members which consider that there are no measures in their territories requiring notification under paragraph 1 of Article XVI of GATT 1994 and this Agreement shall so inform the Secretariat in writing.

25.7 Members recognize that notification of a measure does not prejudice either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.

25.9 Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Member. In particular, they shall provide sufficient details to enable the other Member to assess their compliance with the terms of this Agreement. Any Member which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10 Any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Members shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

25.12 Each Member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and (b) its domestic procedures governing the initiation and conduct of such investigations.

## **1.1 General**

### **1.1.1 Notification Obligations**

1. In *India – Sugar and Sugarcane*, the Panel found that India had acted inconsistently with Articles 25.1 and 25.2 of the SCM Agreement by failing to notify the product-specific export subsidies which it had granted to producers of sugar. The subsidies were contingent on export performance within the meaning of Article 3.1(a) of the SCM Agreement, and were deemed to be specific and therefore subject to the notification obligations contained in Articles 25.1 and 25.2:

"[W]e have found that, under the Production Assistance, the Buffer Stock, the Marketing and Transportation, and the DFIA Schemes, India grants subsidies contingent upon export performance within the meaning of Article 3.1(a) of the SCM Agreement. Moreover, we recall that, under the said Schemes, India grants subsidies only to one part of its agricultural sector – the producers of sugar. In this regard, we also note that, according to Article 2.3 of the SCM Agreement, subsidies falling under Article 3 are deemed to be specific. It follows that, by not notifying these export subsidies to the SCM Committee, India has acted inconsistently with its obligations under Articles 25.1 and 25.2 of the SCM Agreement."<sup>1</sup>

## **1.2 Article 25.7**

2. The Panel in *Canada – Aircraft* rejected the argument made by Brazil that assistance under the Canada-Quebec Subsidiary Agreements on Industrial Development (agreements pledging support by the Government of Canada to industrial projects in Quebec) could conceivably be provided in the form of non-repayable contributions.<sup>2</sup> In making this assertion, Brazil was relying on the notification by Canada of these subsidiary agreements to the SCM Committee, made pursuant to Article 25.2 of the SCM Agreement; the Panel held that the mere notification by Canada of the programme under these subsidiary agreements was an insufficient basis for a

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<sup>1</sup> Panel Report, *India – Sugar and Sugarcane*, para. 7.353.

<sup>2</sup> Panel Report, *Canada – Aircraft*, para. 9.256.

finding of a *prima facie* case that subsidiary agreement assistance was provided in the form of non-repayable contributions.<sup>3</sup>

3. In *Brazil – Aircraft*, the Appellate Body referred to Article 25.7 and noted that "Article 25 aims to promote transparency by requiring Members to notify their subsidies, without prejudging the legal status of those subsidies".<sup>4</sup>

### **1.2.1 Relationship with other provisions**

#### **1.2.1.1 Article 27.4**

4. In *Brazil – Aircraft*, Brazil argued that when determining whether a developing country Member has increased the level of its export subsidies within the meaning of Article 27.4 of the SCM Agreement, the Panel or the Appellate Body should consider the Member's budgetary appropriations rather than actual expenditures. In making this argument, Brazil was relying on Article 25 of the SCM Agreement, which provides that notifications shall contain the "subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy ... ." The Appellate Body in *Brazil – Aircraft* considered Article 25 to be "considerably less useful as context in interpreting the phrase 'the level of its export subsidies' in Article 27.4."<sup>5</sup> It noted that "Article 25 has a fundamentally different purpose from Article 27 of the *SCM Agreement*. Whereas Article 25 aims to promote transparency by requiring Members to notify their subsidies, without prejudging the legal status of those subsidies, Article 27 imposes positive obligations on developing country Members with respect to export subsidies."<sup>6</sup>

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<sup>3</sup> Panel Report, *Canada – Aircraft*, para. 9.256.

<sup>4</sup> Appellate Body Report, *Brazil – Aircraft*, para. 149.

<sup>5</sup> Appellate Body Report, *Brazil – Aircraft*, para. 149.

<sup>6</sup> Appellate Body Report, *Brazil – Aircraft*, para. 149.