

**1 ARTICLE 27 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES ..1**

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**1 ARTICLE 27 OF THE AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES**

**1.1 Text of Article 27**

**Article 27**

*Special and Differential Treatment of Developing Country Members*

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

- (a) developing country Members referred to in Annex VII.
- (b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement.

27.4 Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies<sup>54</sup>, and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

*(footnote original)* <sup>55</sup> For a developing country Member not granting export subsidies as of the date of entry into force of the WTO Agreement, this paragraph shall apply on the basis of the level of export subsidies granted in 1986.

27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either (a) on the basis of notification by the developing country Member having reached export competitiveness, or (b) on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.

27.7 The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5. The relevant provisions in such a case shall be those of Article 7.

27.8 There shall be no presumption in terms of paragraph 1 of Article 6 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of paragraph 9, shall be demonstrated by positive evidence, in accordance with the provisions of paragraphs 3 through 8 of Article 6.

27.9 Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in paragraph 1 of Article 6, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another Member into the market of the subsidizing developing country Member or unless injury to a domestic industry in the market of an importing Member occurs.

27.10 Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

- (a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or
- (b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.

27.11 For those developing country Members within the scope of paragraph 2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number in paragraph 10(a) shall be 3 per cent rather than 2 per cent. This provision shall apply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifying developing country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.

27.12 The provisions of paragraphs 10 and 11 shall govern any determination of de minimis under paragraph 3 of Article 15.

27.13 The provisions of Part III shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the

subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.

27.14 The Committee shall, upon request by an interested Member, undertake a review of a specific export subsidy practice of a developing country Member to examine whether the practice is in conformity with its development needs.

27.15 The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 10 and 11 as applicable to the developing country Member in question.

## **1.2 Article 27.2: Exception for least-developed country Members**

1. In paragraph 10.5 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, the Ministerial Conference reaffirms that least-developed country Members are exempt from the prohibition on export subsidies in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures (SCM Agreement):

"Subject to the provisions of Articles 27.5 and 27.6, it is reaffirmed that least-developed country Members are exempt from the prohibition on export subsidies set forth in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures, and thus have flexibility to finance their exporters, consistent with their development needs. It is understood that the eight-year period in Article 27.5 within which a least-developed country Member must phase out its export subsidies in respect of a product in which it is export-competitive begins from the date export competitiveness exists within the meaning of Article 27.6."<sup>1</sup>

2. In 2018, the Central African Republic on behalf of the LDC Group introduced a document to the General Council and Council for Trade in Goods. This document contained a request and a draft decision to be adopted by the General Council concerning the possibility for graduated LDC Members to benefit from the exception provided under Article 27.2(a) of the SCM Agreement to developing countries listed in Annex VII(b).<sup>2</sup>

## **1.3 Article 27.3: Termination of transition period for developing country Members and least developed country Members**

3. The five-year and eight-year transition periods exempting developing country Members and least-developed country Members respectively from the Article 3.1(b) prohibition on subsidies contingent on the use of domestic over imported goods terminated on 31 December 1999 and 31 December 2002, respectively.

## **1.4 Article 27.4: Extension of transition period for certain developing country Members**

4. On 26 October 2001, the Chairman of the Committee on Subsidies and Countervailing Measures (SCM Committee) issued a Report to the General Council. In this Report, the Chairman recommended that the SCM Committee continue to work on, among other things, seeking a solution for developing country Members with a small percentage share of exports in import markets and in global trade, within the framework of Article 27.4 of the SCM Agreement for extensions of the transition period for export subsidies.<sup>3</sup>

5. In November 2001, Ministers adopted the Doha Ministerial Decision on Implementation-Related Issues and Concerns, which directs the SCM Committee to extend the transition period under Article 27.4 of the SCM Agreement pursuant to the procedures set forth in document [G/SCM/39](#):

"Having regard to the particular situation of certain developing-country Members, directs the Committee on Subsidies and Countervailing Measures to extend the

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<sup>1</sup> [WT/MIN\(01\)/17](#), para. 10.5.

<sup>2</sup> [WT/GC/W/742](#) - [G/C/W/752](#).

<sup>3</sup> [G/SCM/38](#), pp. 1-4 and 6-18.

transition period, under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, for certain export subsidies provided by such Members, pursuant to the procedures set forth in document [G/SCM/39](#). Furthermore, when considering a request for an extension of the transition period under the rubric of Article 27.4 of the Agreement on Subsidies and Countervailing Measures, and in order to avoid that Members at similar stages of development and having a similar order of magnitude of share in world trade are treated differently in terms of receiving such extensions for the same eligible programmes and the length of such extensions, directs the Committee to extend the transition period for those developing countries, after taking into account the relative competitiveness in relation to other developing-country Members who have requested extension of the transition period following the procedures set forth in document [G/SCM/39](#).<sup>4</sup>

6. On 27 July 2007, the General Council adopted procedures<sup>5</sup> regarding the continuation of previously-granted Article 27.4 extensions for certain subsidy programmes.<sup>6</sup> At its meeting on 23 October 2012, the Committee granted the final extensions, for calendar year 2013, to 19 developing country Members pursuant to these procedures.<sup>7</sup> The final two-year phase-out period referred to in Article 27.4 began on 1 January 2014 for these programmes, such that the export subsidies thereunder had to be eliminated not later than 31 December 2015.<sup>8</sup> The developing country Members with extensions must provide transparency notifications with respect to each of the two years of phase-out, which can be found in document series [G/SCM/N/290/\\*](#) for 2014 and in [G/SCM/N/299/\\*](#) for 2015.

## **1.5 Articles 27.5 and 27.6**

### **1.5.1 Export competitiveness**

7. There have been no notifications by developing country Members of having reached export competitiveness under Article 27.6(a) of the SCM Agreement. The Secretariat has carried out computations with respect to export competitiveness under Article 27.6(b) in response to two requests by Members in 2002<sup>9</sup>, one request in 2003<sup>10</sup>, and one request in 2010.<sup>11</sup>

### **1.5.2 Review of the operation of Article 27.6**

8. The SCM Committee addressed the mandated review of the operation of Article 27.6 at its November 1999 meeting and took note of statements made.<sup>12</sup>

### **1.5.3 Period for establishment of export competitiveness under Article 27.5**

9. In its Decision on Implementation-Related Issues and Concerns of 15 December 2000, the General Council decided:

"6.2 The Committee on Subsidies and Countervailing Measures (SCM Committee) shall examine as an important part of its work all issues relating to Articles 27.5 and 27.6 of

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<sup>4</sup> [WT/MIN\(01\)/17](#), para. 10.6.

<sup>5</sup> [WT/L/691](#).

<sup>6</sup> The procedures on which the extensions were originally granted are contained in document [G/SCM/39](#).  
<sup>7</sup> [G/SCM/M/83](#), paras. 23-28. These 19 Members consist of: Antigua & Barbuda; Barbados; Belize; Costa Rica; Dominica; Dominican Republic; El Salvador; Fiji; Grenada; Guatemala; Jamaica; Jordan; Mauritius; Panama; Papua New Guinea; Saint Lucia; Saint Kitts and Nevis; St. Vincent and the Grenadines; and Uruguay. For a list of all the programmes covered by the final extension, see [G/SCM/W/546/Rev.12](#), Annex I.

<sup>8</sup> [WT/L/691](#), para. 1(b).

<sup>9</sup> [G/SCM/46](#) (Secretariat Note in response to a request by Ecuador with respect to Colombia); and [G/SCM/47](#) and [G/SCM/48](#) (request by Ecuador and Peru with respect to Thailand and Secretariat Note in response).

<sup>10</sup> [G/SCM/103](#) and [Add.1-2](#) (request by the United States with respect to India, request by India for clarification, and Secretariat Notes in response).

<sup>11</sup> [G/SCM/132](#) and [Add.1](#) and [Add.1/Rev.1](#) (request by the United States with respect to India and Secretariat Notes in response).

<sup>12</sup> [G/SCM/M/24](#), item j.

the SCM Agreement, including the possibility to establish export competitiveness on the basis of a period longer than two years."<sup>13</sup>

10. The Chairman of the SCM Committee has submitted three reports to the General Council in his own responsibility, reflecting the work undertaken by the SCM Committee with respect to implementation-related issues.<sup>14</sup>

11. In paragraph 10.5 of the Doha Decision on Implementation-Related Issues and Concerns, the Ministers confirmed that the eight-year period in Article 27.5 for the phasing out of export subsidies by least developed country Members begins from the date of their export competitiveness:

"Subject to the provisions of Articles 27.5 and 27.6, it is reaffirmed that least-developed country Members are exempt from the prohibition on export subsidies set forth in Article 3.1(a) of the Agreement on Subsidies and Countervailing Measures, and thus have flexibility to finance their exporters, consistent with their development needs. It is understood that the eight-year period in Article 27.5 within which a least-developed country Member must phase out its export subsidies in respect of a product in which it is export-competitive begins from the date export competitiveness exists within the meaning of Article 27.6."

### **1.6 Article 27.11: Notification of elimination of export subsidies**

12. At its meeting of 22 February 1995, the SCM Committee adopted a Format for Notifications under Article 27.11 of the SCM Agreement, which sets out the information to be provided in the notification.<sup>15</sup>

### **1.7 Article 27.13: Notification of privatization subsidy programmes**

13. At its meeting of 22 February 1995, the SCM Committee adopted a Format for Notifications under Article 27.13 of the SCM Agreement, which sets out the information and documents to be provided in the notification.<sup>16</sup> One Member has notified the Committee of a privatization subsidy programme under Article 27.13.<sup>17</sup>

### **1.8 Timeliness and completeness of notifications**

14. As part of the Committee's efforts, pursuant to a 2009 request from the Chairperson of the Trade Policy Review Body on "ways to improve the timeliness and completeness of notifications and other information flows on trade measures", at the request of the Committee Chairperson the Secretariat regularly updates and circulates document [G/SCM/W/546](#). This document provides information on the state of compliance with various notification obligations under the SCM Agreement, including those under Article 27.<sup>18</sup>

15. The Committee continues discussions on this matter, most recently at its regular meeting on 26 October 2021.<sup>19</sup>

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<sup>13</sup> [WT/L/384](#), para. 6.2.

<sup>14</sup> [G/SCM/34](#), [G/SCM/36](#), and [G/SCM/38](#), reflecting the work undertaken pursuant to this mandate, in which context Members expressed differing views as to the interpretation of Articles 27.5 and 27.6 with respect to, *inter alia*, the meaning of the term "product" in the English text of Article 27.6 (i.e., whether "product", which is defined as a "section heading" of the HS, refers to a "section" or a "heading" of the HS). At its meeting of 26 April 2002, the Committee addressed these reports and took note of statements made. ([G/SCM/M/34](#), item i).

<sup>15</sup> [G/SCM/16](#).

<sup>16</sup> [G/SCM/15](#).

<sup>17</sup> [G/SCM/N/13/BRA](#) and [Corr.1](#) (Brazil).

<sup>18</sup> See, most recently, [G/SCM/W/546/Rev.12](#), dated 31 March 2021.

<sup>19</sup> [G/SCM/M/117](#), paras. 77-89.