

GENERAL AGREEMENT ON TARIFFS AND TRADE

Committee on Subsidies and
Countervailing Measures

DRAFT GUIDELINES FOR THE APPLICATION OF THE
CONCEPT OF SPECIFICITY IN THE CALCULATION
OF THE AMOUNT OF A SUBSIDY OTHER THAN
AN EXPORT SUBSIDY

I

It is recognized that the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade intended that only certain government financial assistance measures - those measures which are granted "with the aim of giving an advantage to certain enterprises" and which "are normally granted either regionally or by sector" (Article 11:3) - were to be considered as subsidies.

II

In seeking to determine whether government financial assistance measures (hereinafter referred to as a measure) are specific to an enterprise or industry or group of enterprises or industries (hereinafter referred to as certain enterprises), and as such grant an advantage to those enterprises or industries over those available to other enterprises or industries the following considerations shall be taken into account:

- (a) A measure may be specific to certain enterprises to the extent that restrictions on access are placed by the granting authority;
- (b) In determining whether any restrictions on access to a measure exist, only those restrictions which affect access within the jurisdiction of the granting authority are to be taken into account;
- (c) Where the granting authority explicitly limits access to a measure to certain enterprises, such a measure would be specific;
- (d) Where the granting authority acts to exclude certain enterprises from access to a measure, specificity may or may not exist;

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- (e) Where the granting authority establishes certain criteria or conditions for eligibility, no specificity would normally exist to the extent that the criteria or conditions for eligibility were based on neutral factors¹ and eligibility was automatic once the criteria or conditions were met;
- (f) Evidence based on the above may not in certain cases give sufficient guidance for a finding of non-specificity. It may be necessary in those cases for the investigating authority to look beyond any nominal non-specificity of a measure to determine whether the measure is, nonetheless,² de facto deliberately granting an advantage to certain enterprises. Any determination of specificity in such cases must be clearly substantiated;
- (g) Where neutral criteria are used by governments to determine access to a measure, they must be clearly spelled out in law or regulation and be capable of verification. In this regard, the granting authority should ensure that assistance is granted on the basis of the criteria established.

III

In calculating the amount of the subsidy determined to exist in cases where the different potential subsidy programmes under consideration involve different levels of granting authority (e.g. national, regional, local), only measures found to be specific within the jurisdiction of the granting authority for that measure shall be considered.

¹Neutral factors would normally be economic in nature, and horizontal in application, (i.e. not restricted to certain enterprises or industries); examples would be levels of unemployment, average per capita income, number of employees, amount of equity or revenues, but could also include such factors as incidence of pollution or health and safety standards.

²It remains for signatories to address the issue of regional specificity.