

WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

- Subsidy Rules and WTO Jurisprudence

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Subsides...

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- Very sensitive matter in international trade relations
 - ▣ On one hand, subsidies evidently used by governments to pursue legitimate objective of economic and social policy.
 - ▣ On the other hand, subsidies may have adverse effects on the interests of trading partners, whose industries may suffer from unfair competition
- Subsidies: can distort trade flows if they give an artificial competitive advantage to exporters or import competing industries.
- Example of subsidies: aid to the poor, aid for technological development, special aids for education, aid to disadvantaged groups and regions etc.

Approach to subsidies

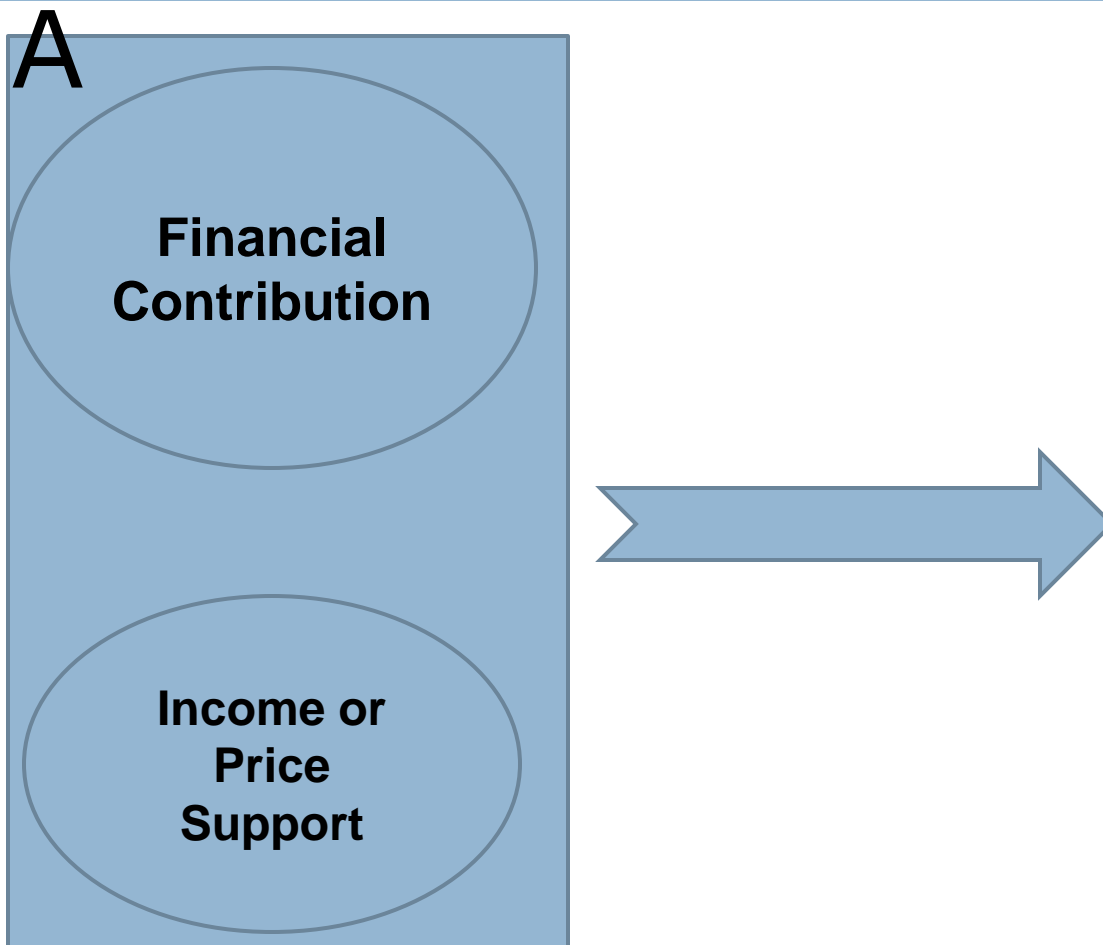
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- Articles VI and XVI of GATT, 1994 and SCM Agreement
- Special compared to ADA and Agreement on Safeguards – ASCM goes beyond investigation procedures
- Multilateral disciplines **on** *what* subsidies Members can grant
- Calibrated approach to disciplines **against** action to counter subsidisation by other countries

Elements of Subsidy

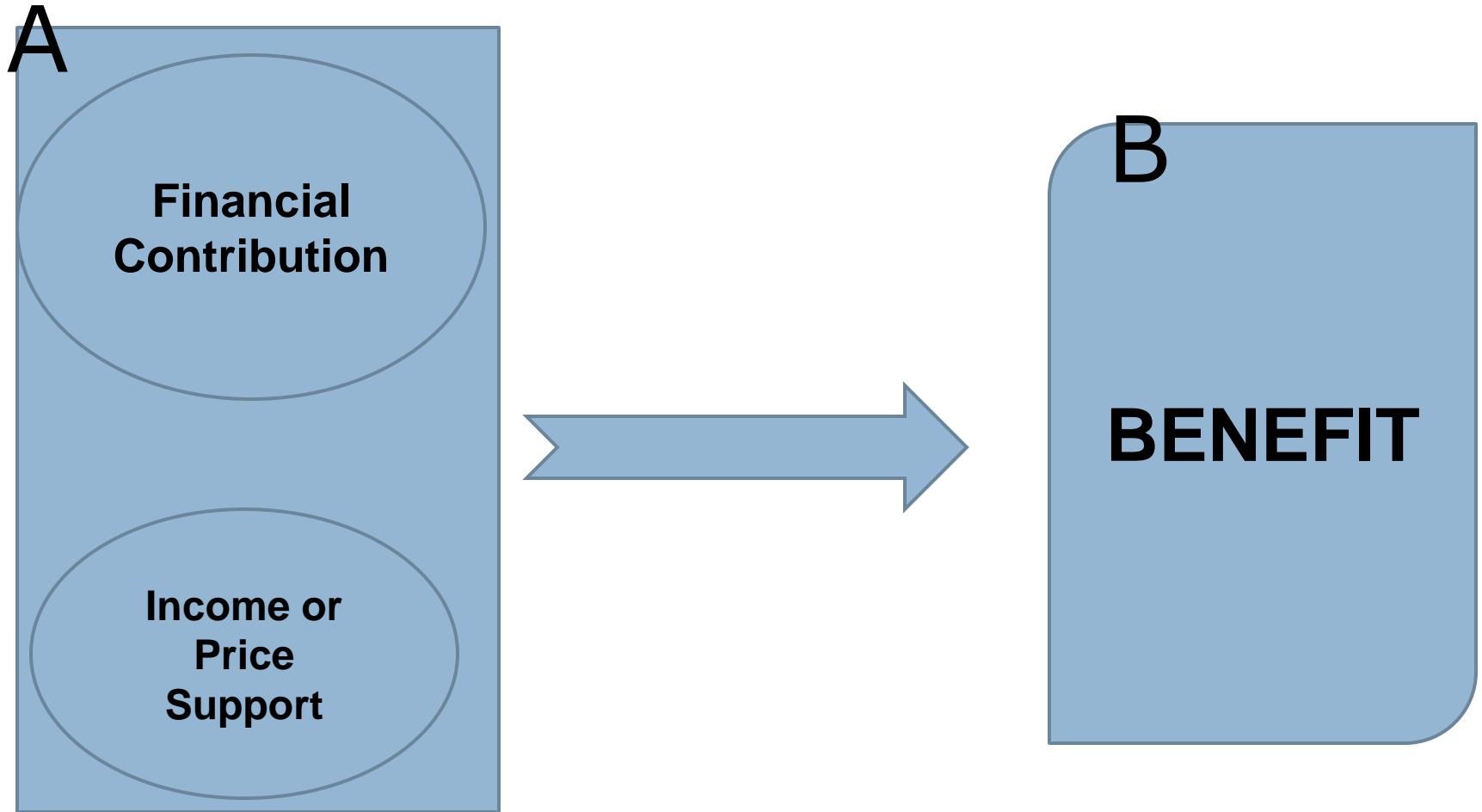
Elements of Subsidy

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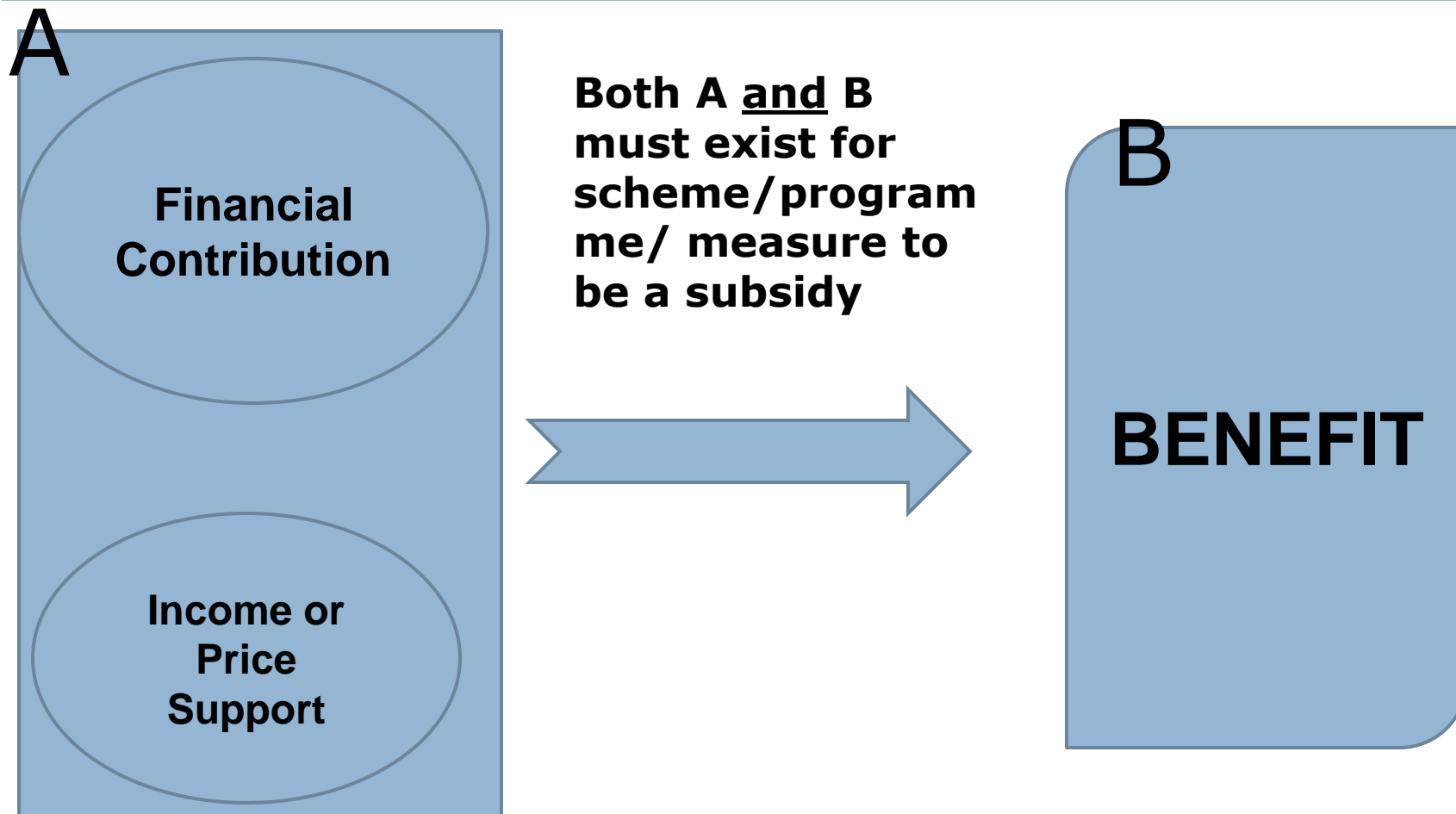
Elements of Subsidy

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Elements of Subsidy

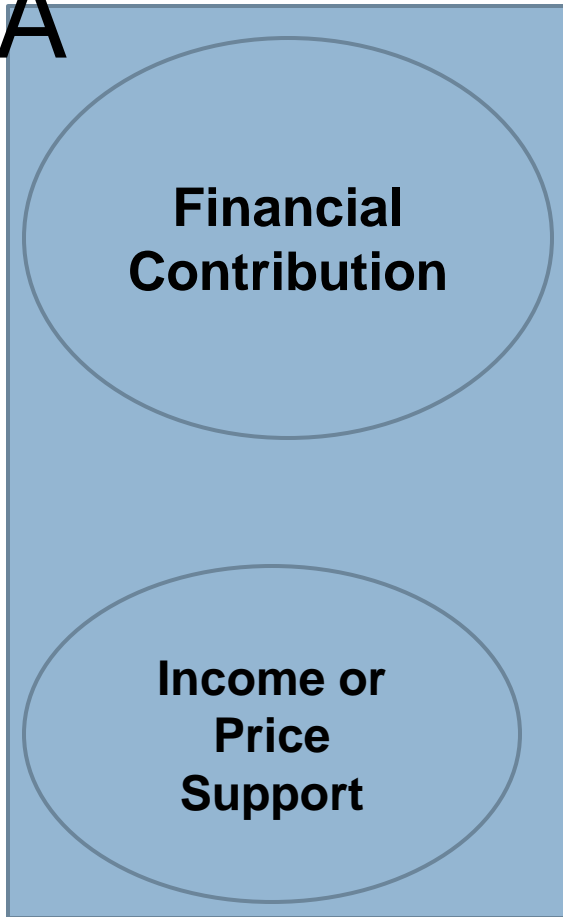
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Elements of Subsidy

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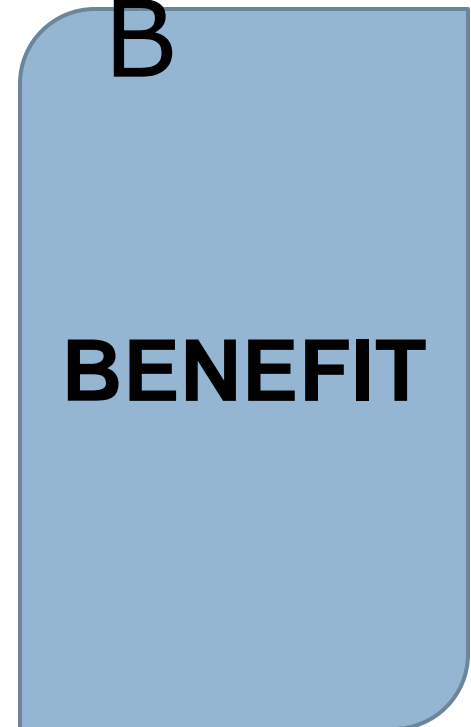


Both elements must exist for scheme/programme/measure to be a subsidy

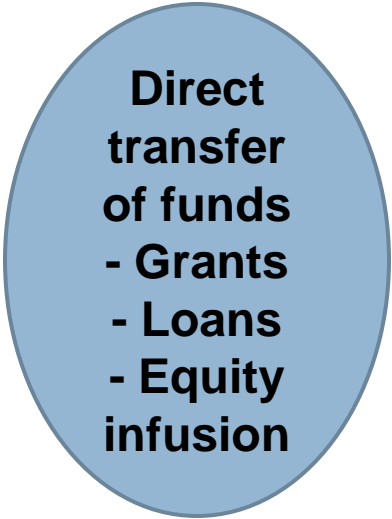


Recipient of financial contribution/income / price support and benefit can be different

B



Financial contribution by government or public body within the territory of the country



**Direct
transfer
of funds**

- Grants
- Loans
- Equity
infusion

“direct transfer of funds”

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- "In our view, the term "funds" encompasses **not only "money" but also financial resources and other financial claims more generally.** ..
- We are unable to agree that direct transfers of funds, as contemplated in Article 1.1(a)(1)(i), are confined to situations where there is an incremental flow of funds to the recipient that enhances the net worth of the recipient...
- in a case such as this, when the *debt-to-equity swap* is intended to address the deteriorating financial condition of the recipient company, the cancellation of the debt amounts to a direct transfer of funds to the company.”
- Thus, the provision is not limited by the examples provided, viz. grants, loans, and equity infusion. Debt forgiveness, extension of loan maturity, and debt to equity swaps also covered by the provision.

Japan – DRAMS CVDs (AB)

Financial contribution by government or public body within the territory of the country

Direct transfer of funds

- Grants
- Loans
- Equity infusion

Potential direct transfer of funds / liabilities

- Loan guarantee

“potential direct transfer of funds and liabilities”

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- In *Brazil-Aircraft*, the Panel observed that ‘potential direct transfer of funds’ exists only where the action in question gives rise to a benefit and thus confers a subsidy *irrespective of whether any payment occurs*.
 - In case of loan guarantees, whether it confers its benefit depends on its effect on the terms of the loan and not on whether there is a default.
 - The word ‘potential’ has been defined as ‘possible as opposed to actual’ or ‘capable of coming into being’

Financial contribution by government or public body within the territory of the country

Direct transfer of funds
- Grants
- Loans
- Equity infusion

Potential direct transfer of funds / liabilities
- Loan guarantee

Government revenue, otherwise due, is foregone
- Tax credits

'revenue...otherwise due is foregone'

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- *US-FSC (AB)*
- The "foregoing" of revenue "otherwise due" implies that less revenue has been raised by the government than would have been raised in a different situation, or, that is, "otherwise". Moreover, the word "foregone" suggests that the government has given up an entitlement to raise revenue that it could "otherwise" have raised. This cannot, however, be an entitlement in the abstract, because governments, in theory, could tax all revenues. **There must, therefore, be some defined, normative benchmark against which a comparison can be made between the revenue actually raised and the revenue that would have been raised "otherwise"** The basis of the comparison must be the tax rules applied by the Member in question.

Financial contribution by government or public body within the territory of the country

Direct transfer of funds
- Grants
- Loans
- Equity infusion

Potential direct transfer of funds / liabilities
- Loan guarantee

Government revenue, otherwise due, is foregone
- Tax credits

Government provides goods or services *excluding general infrastructure*

Financial contribution by government or public body within the territory of the country

Direct transfer of funds

- Grants
- Loans
- Equity infusion

Potential direct transfer of funds / liabilities

- Loan guarantee

Government revenue, otherwise due, is foregone

- Tax credits

Government provides goods or services

Government purchases goods

Characteristics of “public body”

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- A public body within the meaning of Article 1.1.(a)(1) of the SCM Agreement must be an entity that possesses, exercises or is vested with governmental authority.
- *The performance of governmental functions, or the fact of being vested with, and exercising, the authority to perform such functions are core commonalities between government and public body.*
- For a public body to be able to exercise its authority over a private body (direction), a public body must itself possess such authority, or ability to compel or command. Similarly, in order to be able to give responsibility to a private body (entrustment), it must itself be vested with such responsibility.
- Control of an entity by a government, in itself, is not sufficient to establish that an entity is a public body.

US-CVD China (AB)

Financial contribution by government or public body within the territory of the country

Direct transfer of funds
- Grants
- Loans
- Equity infusion

Potential direct transfer of funds / liabilities
- Loan guarantee

Government revenue, otherwise due, is foregone
- Tax credits

Government provides goods or services

Government purchases goods

Government entrusts, or directs a private body to undertake above functions or pays to a funding mechanism

Importance of “entrustment”

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- Anti-circumvention provision
- No requirement of the private body to be within the territory of the subsidising Member

When does entrustment occur?

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- "...we are of the view that, pursuant to paragraph (iv), "entrustment" occurs where a government gives responsibility to a private body, and "direction" refers to situations where the government exercises its authority over a private body. In both instances, the government uses a private body as proxy to effectuate one of the types of financial contributions listed in paragraphs (i) through (iii).

Japan – DRAMS CVDs (AB)

Financial Contribution

- Relation between the different sub-paragraphs listed in the SCM Agreement, eg:
 - In *US- Large Civil Aircrafts (2nd complaint)*, the AB overruled the Panel to find that Article 1.1(a)(1) of the SCM Agreement does not explicitly spell out the intended relationship between the constituent subparagraphs, and hence **it cannot be concluded that these sub-paragraphs are mutually exclusive**. Different aspects of the same transaction may fall under different types of financial contribution. The AB however did not address the question of whether, in the situation described above, a panel is under an obligation to make findings that a transaction falls under more than one sub-para.
 - Reiterated by AB in *Canada-Renewable Energy*, which declared moot and of no legal effect the Panel's finding that government 'purchases of goods' could not also be characterized as 'direct transfer of funds', without infringing the principle of effective treaty interpretation., in as much as it negates the possibility that a transaction may fall under more than one type of financial contribution.

“income or price support”

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- Not looked in detail by Panels/AB.
- *China-GOES (Panel)*: throws some clarity on what ‘price support’ is. The Panel adopts a narrow interpretation: Price support does not include all government intervention that may have adverse effect on prices such as tariffs and quantitative restrictions – *but includes direct government intervention in market with the design to fix the price of a good at a particular level*, eg: through purchase of surplus production when price sent above equilibrium.

Concept of Benefit

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- Cost to government v. benefit to recipient

Benefit = advantage (to recipient), not cost to government

Issue: “whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution.”

Basis for comparison = marketplace

Issue: Is the financial contribution “provided on terms which are more advantageous than those that would have been available to the recipient on the market.”

Concept of Benefit (Contd.)

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- **Govt. equity infusions** do not confer a benefit unless: “the investment decision can be regarded as inconsistent with the usual investment practice (including ...risk capital) of private investors in the territory of that Member”
- **Govt. loans** do not confer a benefit unless: “there is a difference between the amount that the firm receiving the loan pays on the Govt. loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market.”

Concept of Benefit (Contd.)

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- **Govt. loan guarantees** do not confer a benefit unless: “there is a difference between the amount the firm receiving the guarantee pays on a loan guaranteed by the Govt. and the amount the firm would pay on comparable commercial loan absent the Govt. guarantee.
- **Govt. provision of goods or services** does not confer a benefit unless for less than adequate remuneration based on prevailing market conditions

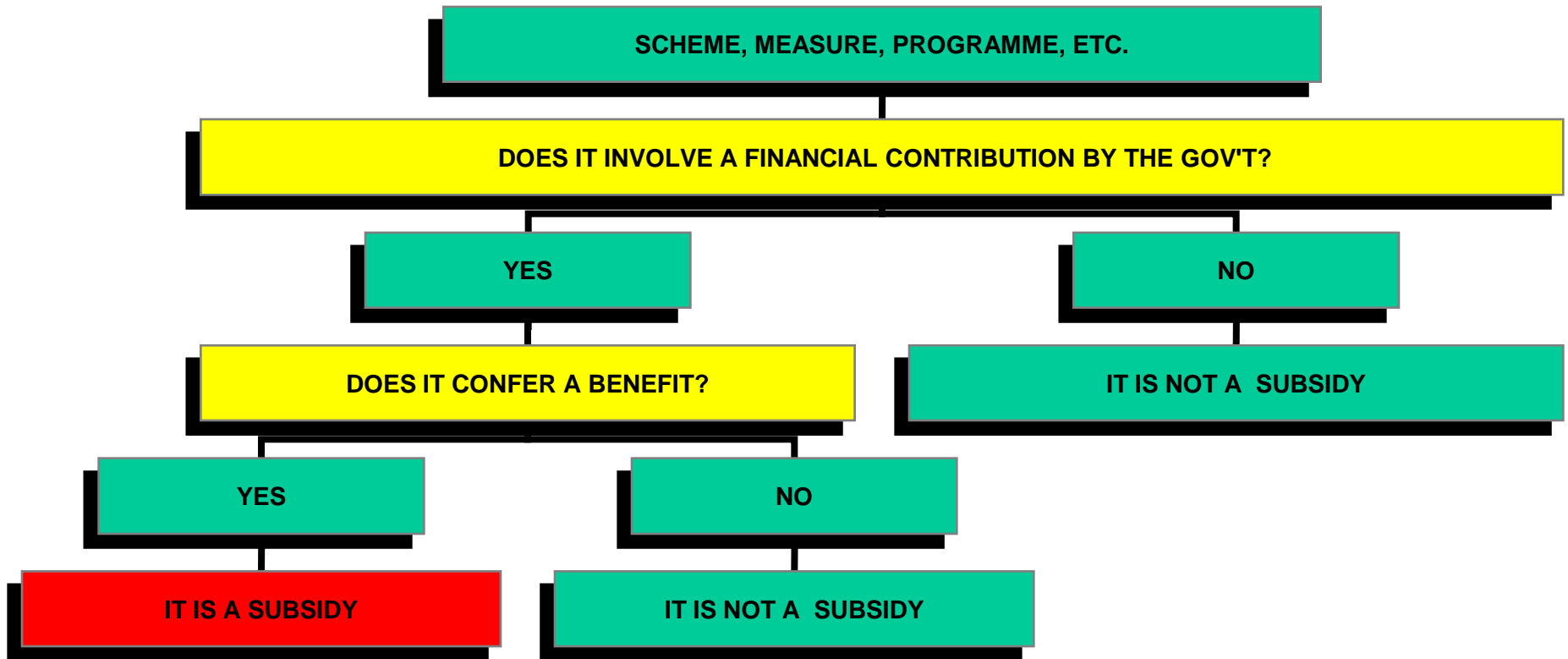
Concept of Benefit (Contd.)

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- **Govt. purchase of goods** does not confer a benefit unless: for more than adequate remuneration based on prevailing market conditions.

Elements of a Subsidy: Recap

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Concept of Specificity

Specific Subsidies – de-jure

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- A subsidy is de-jure specific if
- ❖ Access to the subsidy explicitly limited to “certain enterprises” (covers enterprise, industry and regional specificity)
- Criteria for specificity
 - ❖ Prohibited subsidies deemed to be specific
 - ❖ Enterprise specificity
 - ❖ Industry specificity
 - ❖ Regional specificity – determined with reference to the jurisdiction of the granting authority
- If access is limited based on objective criteria then it may not be a specific subsidy – **conditions apply**

De-facto Specificity -2.1(c)

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- Notwithstanding any appearance of non-specificity, the subsidy may in fact be specific.

- Following factors may be considered
 - ❖ Use by a limited number of enterprises
 - ❖ Predominant use by certain enterprises
 - ❖ Granting of disproportionately large amounts to certain enterprises
 - ❖ Manner in which discretion has been exercised.

Certain enterprises – Article 2.2

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- A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. (Article 2.2)
- China argued that the phrase means that only if a subsidy is limited to some subset of enterprises within the region is that subsidy regionally specific.
- Panel -“certain enterprises” in Article 2.2 “refers to those enterprises located within, as opposed to outside, the designated geographical region in question, with no further limitation within the region being required.”

(US – CVD China)

- “It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.” (Article 2.2)

Specificity: Implications

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For Members as providers of subsidies:

- Specific subsidies are subject to the rules/disciplines under Articles 4 and 7 SCM Agreement, in case of **prohibited and actionable** subsidies, respectively (under the MULTILATERAL TRACK); and can be countervailed (Part V) (under the NATIONAL TRACK)
- Must notify specific subsidies to the SCM Committee

For Members affected by others' subsidies:

- Can challenge (MULTILATERAL TRACK) or countervail (NATIONAL TRACK) other Members' specific subsidies. Both may be invoked in parallel, but only one form of relief applied.

Non-specific subsidies not
subject to challenge

Categories of Subsidies

Categorisation

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- **Non-actionable subsidies:** Non specific subsidies
- **Prohibited Subsidy:** – Art. 3: Local content and exports subsidies.
- **Actionable subsidies:** specific subsidies that cause adverse effects

Non- actionable Subsidies

Non-actionable subsidy

- No action can be taken against subsidies that are non-specific - determined on the basis of
 - ❖ Eligibility based on objective criteria or conditions
 - ❖ Eligibility automatic, criteria strictly adhered to
 - ❖ Criteria are neutral, economic in nature and horizontal in application
 - ❖ No predominant use by certain enterprises
- Up to 1999 specific given for R &D, assistance to disadvantaged regions and for environmental purposes were non-actionable. Now lapsed

Prohibited Subsidies

Prohibited Subsidies

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- **Local content** subsidies: subsidies contingent upon use of domestic goods over imported goods
- **Export subsidies** prohibited "except as provided in the Agreement on Agriculture" (Article 3 SCM Agreement)
- ❖ *Subsidies contingent upon export performance, including those illustrated in Annex I*
- ❖ *Subsidy is tied to actual or anticipated exportation or export earnings*
- ❖ S& D for Annex VII countries – export subsidies not prohibited: applicable to LDCs, and developing countries which has a GNP per capita below \$1000 per annum. Includes India, Sri Lanka, Kenya, Indonesia, Philippines etc.

Prohibited Subsidies: Remedy

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- Remedy through DSU
- Complaining country needs to establish that prohibited subsidy is being granted
- PGE may assist the panel – existence and nature of the subsidy
- Defaulting member required to ***withdraw the subsidy without delay*** or face counter-measures

Export Subsidies: Importance of Annex I

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- “A measure that falls within the scope of the Illustrative List is *deemed* to be a prohibited export subsidy. In other words, a Member may establish that a measure is a prohibited export subsidy by going directly to the Illustrative List, without first demonstrating that a measure falls within the scope of Article 3.1(a). This is confirmed from the words “subsidies contingent . . . upon export performance, *including* those illustrated in Annex I” (emphasis added), which in their ordinary meaning tell us that measures identified in the Annex are *ipso facto* “subsidies contingent upon export performance”.
- *Brazil Aircraft 21.5 Panel*

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(a) DIRECT GOVERNMENT SUBSIDIES contingent upon export performance

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(b) CURRENCY RETENTION SCHEMES or any similar practices involving a bonus on exports

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(c) Internal TRANSPORT CHARGES for export shipments on terms more favourable than for domestic shipments

- ▣ **Provided or mandated** by governments

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(d) PROVISION OF GOODS OR SERVICES

- ▣ By governments or agencies either directly or through government mandated schemes
- ▣ For use in production of exported goods
- ▣ On terms more favourable than those for production of goods for domestic consumption
- ▣ If those terms more favourable than those **commercially available on world markets to their exporters**

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(e) Export-related EXEMPTION, REMISSION, OR DEFERRAL OF DIRECT TAXES OR SOCIAL WELFARE CHARGES

Direct taxes = Taxes on wages, profits, interests, rents, royalties, all other forms of income, and on the ownership of real property

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(f) Allowance of export-related DEDUCTIONS IN
CALCULATION OF BASE OF DIRECT TAXES

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(g) EXEMPTION OR REMISSION OF INDIRECT TAXES in respect of **production and distribution** of exported goods in excess of those levied in respect of production and distribution of like goods for domestic consumption

- ▣ Indirect taxes = Sales, excise, turnover, VAT,* franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges

* *Item (g) is the sole provision in the Illustrative List covering excessive remission of VAT*

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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- (h) EXEMPTION, REMISSION, OR DEFERRAL OF PRIOR-STAGE CUMULATIVE INDIRECT TAXES (“Cascade taxes”)
- ▣ On goods and services **used** in production of exported products
 - ▣ In excess of exemptions of such taxes on goods and services **used** in production of products for domestic consumption
 - ▣ But, **nevertheless**, exemption of such taxes on inputs **consumed** in the production of exported product permissible
 - ▣ "Consumed in production process" = Inputs physically incorporated, fuels and oil, catalysts

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(i) Remission or DRAWBACK OF IMPORT CHARGES

- ▣ In excess of those on imported inputs "consumed in production" of exported product
- ▣ Substitution by home market inputs permitted if import and export operations occur within a 2-year period

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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(j) EXPORT CREDIT GUARANTEE OR INSURANCE PROGRAMMES at premium rates inadequate to cover long-term operating costs and losses of programme

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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Item (k)

- EXPORT CREDITS at rates below government's cost of funds, i.e.,
 - ▣ Below rates which government actually has to pay for the funds so employed; or
 - ▣ Below those which government would have to pay if it borrowed on international capital markets in order to obtain funds of the same maturity, credit terms and currency as export credit; or
 - ▣ Payment by government of costs incurred by exporters or financial institutions in obtaining credits
 - ▣ Insofar as used to secure a material advantage in the field of export credit terms
- Exception for export credits in conformity with “interest rate provisions” of OECD Arrangement on Guidelines for Officially Supported Export Credits

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES (ANNEX I)

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Item (k)

“Used to secure a material advantage in the field of export credit terms”

Brazil - Export Financing Programme for Aircraft (DS46):

OECD Arrangement establishes minimum interest rates for export credits – CIRR (Commercial Interest Reference Rates)

- Net interest rate below CIRR indicates that export credits "used to secure material advantage" – But defending Member could prove a lower market rate exists
- "Affirmative defence" i.e., Member must show that its export subsidies do not result in net interest rates below CIRR (or lower market rate)

Actionable Subsidies

Actionable subsidy – link with specificity

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- ASCM provides that a subsidy shall be actionable only if such a subsidy is **specific and causes adverse effects**

Adverse effects of the subsidy – 3 examples

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- Serious prejudice
- Injury to domestic industry
- Nullification and impairment

Adverse effects – SERIOUS PREJUDICE

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- Serious prejudice – effect of subsidy is:
 - ❖ Imports of like product displaced or impeded in the market of subsidising member
 - ❖ Exports displaced or impeded in third country market
 - ❖ Significant price undercutting, price suppression, price depression or lost sales of another member
 - ❖ Increase in world market share for the subsidised primary product of the subsidising country

Adverse Effects: NULLIFICATION OR IMPAIRMENT OF BENEFITS

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- “**Benefits**” are those from multilateral market access concessions (esp. tariff concessions)
- **Nullification or impairment:** a subsidy is given to offset the value of a concession, thereby eliminating or reducing the market access the exporter expected
- Therefore, **locus** of adverse effects will necessarily be *market of the subsidizer*

Adverse Effects: INJURY

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- Locus of competition - market of importing country
- Injury in this context has identical meaning to that in countervail context
- Three kinds of injury
 - ▣ Current material injury
 - ▣ Threat of material injury
 - ▣ Material retardation of the establishment of a domestic industry

Actionable subsidy - Remedies

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- DSU panel process in all cases of adverse effects (**multilateral track**) and through countervailing duty (**national track**) for injury to domestic industry

- Remedy -
 - ❖ removal of adverse effects of the subsidy or withdrawal of subsidy within 6 months (**multilateral track**) .
 - ❖ imposition of countervailing duty on imports (**national track**).

Treatment of fiscal incentives: Some examples

Footnote 1- Important exemption

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- Exemption of an exported product
- From duties or taxes borne by a like product destined for domestic consumption
- Or remission of such duties and taxes within amounts which have accrued
- Not deemed a subsidy
- Provisions of Annexes I-III to be complied

Tax rebate on inputs

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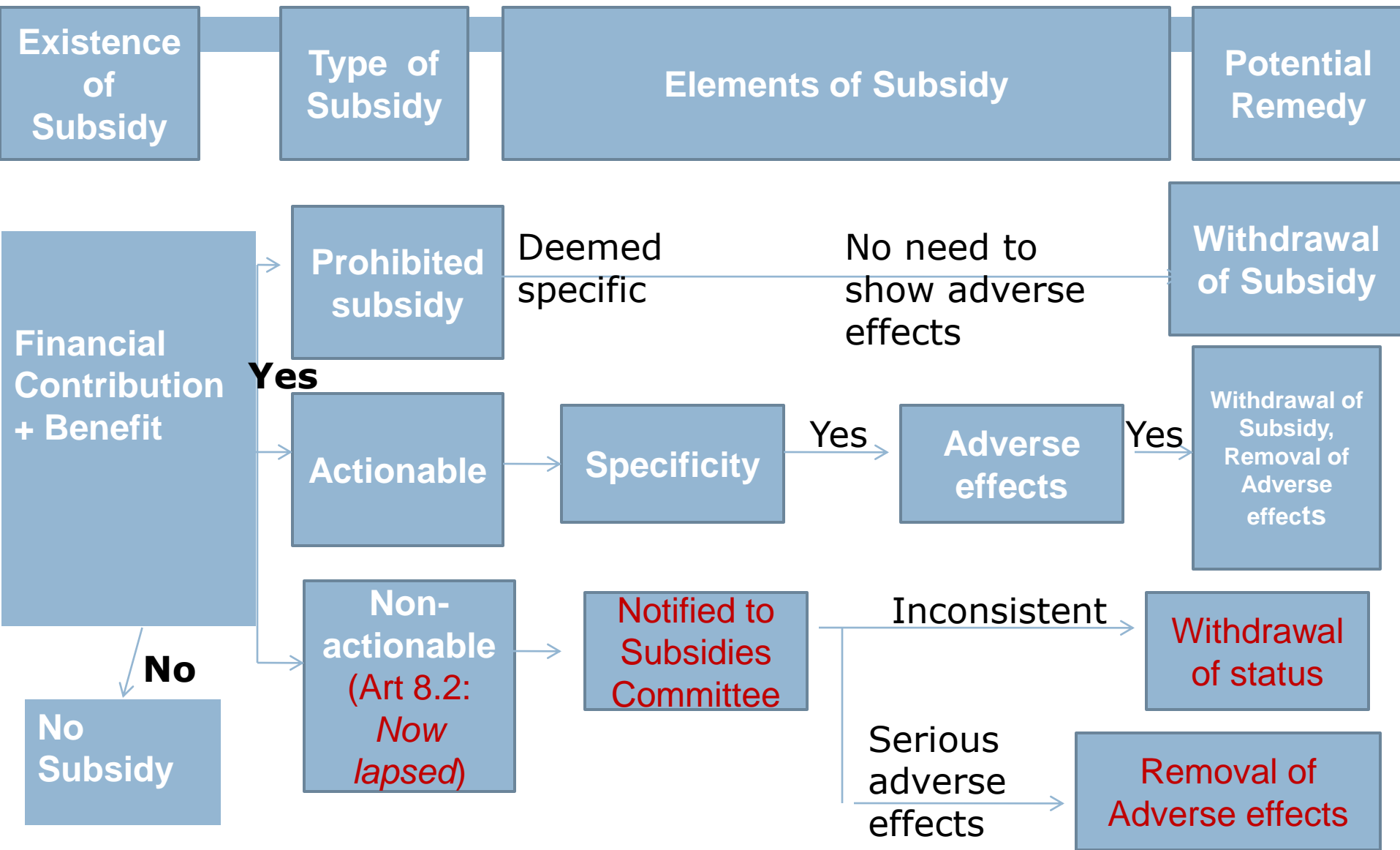
- Rebate of prior-stage cumulative indirect taxes and import charges treated as an export subsidy only if it is in excess of amount levied on inputs **consumed** in the production of the exported product.
- Remission also permissible in substitution drawback schemes in which home inputs consumed and imported inputs have the same quality and characteristics. The total period between export and import should not be more than 2 years.

Conditions for rebate of Cumulative Indirect Taxes/ import charges

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- Inputs must have been **consumed** in the production process
 - ❖ Physically incorporated inputs
 - ❖ Energy, fuel, oil and catalysts
- There must be a reasonable and effective verification system in place to confirm which inputs are consumed and in what amounts.

Recap: Multilateral Remedies



SPECIAL AND DIFFERENTIAL TREATMENT



SPECIAL AND DIFFERENTIAL TREATMENT

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- Categories of Members:
 - Least-developed (“LDC”)
 - Annex VII (LDC or listed Member with GNP per capita below US\$1,000)
 - Other developing (Article 27)
 - In transformation into a market economy (Article 29)
 - Others
- Differing levels of obligations and/or transition periods (incl. special *de minimis* rules in CVD)

Local Content Subsidies: Transition Period and S&D

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- Developed countries (“general” case) (Article 28) 3 years (End-1997)

Special and differential treatment

- Least developed countries (Article 27.3) 8 years (End-2002)
- Other developing countries (than LDCs) (Article 27.3) 5 years (End-1999)
- Countries in transformation (Article 29.2) 7 years (End-2001)

Currently NO special and differential treatment

EXPORT SUBSIDIES: TRANSITION RULES

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Developed Members (Article 28.1)

- ▣ Notify existing programmes within 90 days of entry into force of WTO Agreement for a Member, and
- ▣ Bring into conformity within 3 years of entry into force of WTO Agreement for that Member
- ▣ So, for original developed country Members, notification by 31 March 1995, and conformity as of 1 January 1998

EXPORT SUBSIDIES: SPECIAL AND DIFFERENTIAL TREATMENT

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- Annex VII countries (Article 27) – LDCs VII(a), plus countries listed in Annex VII(b) (that have not graduated) plus Honduras
 - ▣ Prohibition not applicable so long as included in Annex VII
 - ▣ Graduation at US \$1,000 GNP per capita
 - ▣ or upon loss of LDC status

EXPORT SUBSIDIES: SPECIAL AND DIFFERENTIAL TREATMENT

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Export competitiveness (Article 27.5):

- ▣ 3.25% of world export trade in product for two consecutive years
- ▣ Issue: Definition of “product” (legal ambiguity)
- ▣ 2- or 8-year phase-out (2 years for Art. 27.4 extensions)
- ▣ Establishment of export competitiveness: (1)
Notification by subsidizing Member; or
- ▣ (2) Request for Secretariat calculation. To date, three such calculations: Colombia, Thailand and India.

EXPORT SUBSIDIES: SPECIAL AND DIFFERENTIAL TREATMENT

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- Doha Decisions on Annex VII(b)
 - **Constant 1990 dollars**
 - Member does not leave Annex VII(b) until GNP per capita reaches \$1,000 in constant 1990 dollars for three consecutive years
 - Calculation methodology (G/SCM/38, App.3) – document series G/SCM/110/Add.x
 - **Re-entry into Annex VII(b)**
 - A Member which graduates from Annex VII(b) is re-included if its GNP per capita falls back below \$1000 (1990 constant dollar decision applies)

EXPORT SUBSIDIES: S & D - Article 27.4

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- Article 27.4 provides an extension mechanism
 - Committee could extend eight-year transition period for developing country Members subject to it (for developing countries other than those listed in Annex VII)
 - One-time-only (requests were due 31-12-2001)
 - Committee to examine “all relevant economic, financial and development needs”
 - Extensions subject to annual consultations to determine necessity of maintaining the export subsidies
 - NEW DECISION in July 2007 – until 2013, plus two years phase-out until end 2015

EXPORT SUBSIDIES: ARTICLE 27.4 EXTENSIONS

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- Three types of Art. 27.4 extensions granted by the SCM Committee in 2002:
 - G/SCM/39 requests (Decisions in documents G/SCM/50-92)
 - Other requests based on para. 10.6 of Ministerial Declaration (Decisions in documents G/SCM/93-94)
 - “Normal” Article 27.4 requests (Decisions in documents G/SCM/95-102)

- All extensions are programme-specific and time-limited

EXPORT SUBSIDIES: S & D –

Article 27.4

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- Doha decision: “fast-track” procedures for Art. 27.4 extensions (G/SCM/39) - quasi-automatic through 2007, plus final two-year phase-out, for “eligible programmes” of qualifying developing Members
- Eligibility under the G/SCM/39 procedures:
 - Developing country Members
 - not more than 0.10% of world trade; 2000 GNI at or below US\$20 billion; otherwise eligible to request an extension (protocol of accession issue)
 - Eligible programmes
 - **Export subsidy programmes**; full or partial tax and duty exemptions; in existence not later than 01/09/2001

EXPORT SUBSIDIES: S&D - Article 27.4

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Implications of extensions:

- ▣ Do not affect rights and obligations under other WTO Agreements (Agreement on Agriculture)
- ▣ Do not affect prohibition under Article 3.1(b): Local content subsidies
- ▣ **Do not affect rules on actionability of covered subsidies**
- ▣ Products that achieve export competitiveness graduate from extension (Arts. 27.5 and 27.6)

SERIOUS PREJUDICE: SPECIAL AND DIFFERENTIAL TREATMENT

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Developing countries

- ▣ No presumption of serious prejudice (Article 27.8)
- ▣ Article 6.1 subsidies - Positive evidence to establish serious prejudice. *Provision lapsed in 1999.*
- ▣ Other actionable subsidies - Injury or nullification and impairment (Article 27.9) - applies to all actionable subsidies
- ▣ Privatisation subsidies non-actionable multilaterally (Article 27.13)

SERIOUS PREJUDICE: SPECIAL AND DIFFERENTIAL TREATMENT

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Countries in transformation (Article 29.2) (through end-2001)

- ▣ Debt forgiveness not actionable multilaterally
- ▣ Other actionable subsidies - Injury or nullification and impairment in the market of the subsidising Member

S&D for countries in transformation now expired.

NOTIFICATION OF SUBSIDIES

WHICH MEMBERS MUST MAKE A NOTIFICATION?

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- All WTO members, without exception, must submit any notification required

PURPOSE OF NOTIFICATION REQUIREMENT

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- Transparency
- No legal implications
- Article 25.7: “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”
- When in doubt, err in favour of notification

NOTIFICATION OF SUBSIDIES: WHICH MEASURES MUST BE NOTIFIED?

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- Determination of subsidies required to be notified
 - The measure is covered by the definition in Article 1:1 and the subsidy is specific within the meaning of Article 2
- or
- The subsidy has the effects on imports and exports described in Article XVI of the GATT 1994

NOTIFICATION OF SUBSIDIES: WHEN ARE THEY TO BE NOTIFIED?

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- Art. 25 - New and full notification each three years, annual updating notification (of any changes) each intervening year.
- Understanding in the Committee - new and full each two years; and de-emphasize updates. (Understanding reconfirmed Spring 2003)
- Notification no later than 30 June in year due, covering the previous completed calendar or fiscal year(s)
- Must use agreed questionnaire format (G/SCM/6/Rev.1), and be sufficiently precise to permit an assessment of the trade effects and an understanding of the functioning of the programmes notified

SUBSIDY NOTIFICATION QUESTIONNAIRE

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- Document G/SCM/6/Rev.1 (agreed subsidy notification format adopted by the SCM Committee - revision approved October 2003)
- This format is also to be used for notifications made for the purpose of the review of standstill and transparency commitments in the Article 27.4 export subsidy transition period extension exercise

THANK YOU