

# FINANCIAL CONTRIBUTION – SCM ARTICLE 1.1(a)(1)

Overview of key issues and  
challenges in CVD investigations

Clarisse Morgan  
WTO Rules Division

Delhi Regional Workshop  
For Asian Investigating Authorities  
5-7 March 2018

# Is there a “financial contribution” and thus is potentially a countervailable subsidy

## WHO, WHAT, and HOW?

- **WHO** “Government” – Agreement concerned only with government actions/measures (Government as such or public body)
- **WHAT** Transfer of something of value: can take numerous forms – monetary vs goods/services
  - Form determines how to measure the amount of the benefit (Art. 14...)
- **HOW** Transferred directly by the “government” as such (or “public body”) or  
By a “private body” that is “entrusted” or “directed” to make the transfer

# WHO – Government (all levels)

- **“Government”** as such presents fewest challenges:
  - **Ministry, department, agency**, etc. readily identifiable, attribution is clear
- **“Public body”** inherently less straightforward, frequently contested (DS)
  - “Possess, exercise or be vested with” **government authority**; “able to exercise” **government functions**
    - Requires close examination of the **core features** of the entity and its **relationship to “government”** as such
    - **“Meaningful Control”** by Government may be evidence that an entity is a public body

(DS 379, DS )

# PUBLIC BODY – CORE FEATURES?

- **“Meaningful control” standard** – one acceptable basis for identifying a public body – **Are there others?**
- Implies analysis of **static and dynamic elements**
  - **Static:** “Formal **indicia** of government control” (e.g., ownership share, appointment of officers/directors, authority over operations) - **other kinds of indicia?**

## PLUS

- **Dynamic:** “Meaningful” **exercise** of control - **evidence** that **actions** of the entity bespeak policy rather than private objectives (e.g., evidence of bank lending in pursuance of government policies)

# WHAT – Exhaustive list

- **Monetary** transfers
  - **Grants, loans, equity infusions** – money is paid (“direct” transfers)
  - **Promises to pay** – e.g., guarantees (“potential” direct transfers)
    - Are there particular kinds of monetary transfers whose **existence** is difficult to establish? Or are the issues more related to benefit and specificity?
    - **Ad hoc** monetary transfers (vs programmes) – sources and quality of evidence?
- **Government revenue not collected** that is “otherwise due”
  - Evidence/determination regarding treatment under the measure vs treatment of “**comparable income**” of “**comparably situated taxpayers**”
    - **Structure** of tax system and its organizing principles
      - How to deal with highly **differentiated tax structures**?
      - Intersection of **subsidy definition** with **sovereign** taxation power

# WHAT – Exhaustive list, cont'd

- **Duty and tax exemptions** on exported goods
  - **Remission as such** of duties and taxes on imported inputs consumed in producing exported product not a subsidy; **only excess amount** of remission (FN1, Annexes I(g), (h), (i))
  - **Burden on IA - system** for ensuring non-excessive remission?; **other types of information** to examine (e.g., from exporters) if no system or it is inadequate – to calculate whether excess remission and how much?
    - What if such other **information is inadequate** – How to determine “**excess**”?  
Relationship with resort to facts available

# WHAT – Exhaustive list, cont'd

- **Non-monetary** - goods/services provided by government; services purchased by government
    - Utilities
    - Inputs (goods / services)
    - Relationship to **public body** issue
  - **Infrastructure** – “**General**” infrastructure outside SCMA
    - Line between “**general**” and **non-general**
      - **Access** is key – **available to all/almost all**; or limited to one/a few
      - Where / how to **draw this line** in practice? **Evidence**?
    - **Creation** of infrastructure vs. **provision** of infrastructure
- DS 316: *EC – Aircraft (Panel and AB)*
- **Harvesting/extraction** rights vs right to **explore** (proximate relationship between activity and production of the good)

DS 436: *US – Carbon Steel (India) (AB)*; DS 257: *US – Lumber CVDs Final (AB)*

# HOW financial contribution is made

- By **government** as such (Ministry, agency, etc.) or **public body**
- By **private body** that is **entrusted** (given responsibility) or **directed** (subjected to exercise of authority) by government
  - **Nature** of the action, **not** its market impact
    - **Export restrictions, Voluntary Restraint Agreements**
      - May give rise to “benefits” (e.g. lower costs/higher incomes) by controlling private behaviour
      - But not actions listed in SCMA 1.1(a)(1)
  - **Evidence** indicating entrustment or direction
    - Nature of the evidence (of threat or inducement, not just encouragement) - how **explicit** ?
    - What quantity and quality of evidence is **sufficient** to determine E/D?