

Disclaimer: *In view of the Commission and New Zealand's respective transparency policies, the Commission and New Zealand are publishing the texts of the Agreement following the announcement of conclusion of the negotiations on 30 June 2022 (Brussels time).*

The texts are published in view of the public interest in the negotiations for information purposes only and they may undergo further modifications, including as a result of the process of legal revision. These texts are without prejudice to the final outcome of the Agreement between the EU and New Zealand.

The texts will be final upon signature. The Agreement will become binding on the Parties under international law only after completion by each Party of its internal legal procedures necessary for the entry into force of the Agreement.

CHAPTER XX

SUBSIDIES

ARTICLE X.1

Subsidies principles

The Parties agree that subsidies can be granted by a Party when they are necessary to achieve a public policy objective. The Parties acknowledge, however, that certain subsidies have the potential to distort the proper functioning of markets, undermine the benefits of trade liberalisation and harm the environment. In principle, subsidies should not be granted by a Party when they negatively affect, or are likely to affect, competition or trade or significantly harm the environment.

ARTICLE X.2

Definition and scope

1. The Parties shall apply the rules referred to in this Chapter to all enterprises, public or private. This Chapter shall only apply to subsidies to enterprises in so far as the enterprises perform economic activities. For the purposes of this Chapter, the term "economic activities" pertains to the offering of goods or services on a market.

2. For the purposes of this Chapter, a subsidy means a measure which fulfils the conditions set out in Article 1.1 of the WTO Agreement on Subsidies and Countervailing Measures (hereinafter referred to as “SCM Agreement”) irrespective of whether it is granted to an enterprise, supplying goods or services.¹

3. A subsidy is subject to this Chapter only if it is specific within the meaning of Article 2 of the SCM Agreement. Any subsidy falling under the provisions of Article X.7 (Prohibited Subsidies) is deemed to be specific.

4. Subsidies granted to enterprises entrusted with particular roles or tasks in the public interest, including public service obligations, are subject to the rules of this Chapter, in so far as the application of such rules does not obstruct the performance in law or fact of the particular role or task entrusted to the enterprise concerned. The particular role or task shall be entrusted in advance in a transparent manner and any limitation to or deviation from the application of the rules in this Chapter shall not go beyond what is necessary to achieve the entrusted role or task.

5. Article X.7 (Prohibited Subsidies) and Article X.6 (Consultations) do not apply to subsidies granted by sub-central levels of government of each Party. In fulfilling its obligations under this Chapter, each Party shall take such reasonable measures as may be available to it to ensure the observance of the provisions of this Chapter by sub-central levels of government of that Party.

6. Article X.6 (Consultations) and X.7 (Prohibited Subsidies) shall not apply to the audio-visual sector.

7. Article X.7 (Prohibited Subsidies) shall not apply to subsidies which are:

- (a) provided to compensate for damage caused by natural disasters or other non-economic exceptional occurrences provided that any such subsidies shall be temporary; and

¹ This Article does not prejudice the outcome of any future discussions in the WTO on the definition of subsidies for services. Depending on the progress of those discussions at the WTO level, the Parties may update this Agreement in this respect.

- (b) provided to respond to a national or global health or economic emergency, provided that any such subsidies shall be temporary, targeted and proportionate, having regard to the harm caused by or arising from the emergency.

ARTICLE X.3

Relationship with the WTO

Nothing in this Chapter shall affect the rights and obligations of either Party under the SCM Agreement, the Agreement on Agriculture, Article XVI of GATT 1994 and Article XV GATS.

ARTICLE X.4

Fisheries subsidies

The Parties shall refrain from granting or maintaining harmful fisheries subsidies. For this purpose, the Parties shall cooperate on fulfilling the UN Sustainable Development Goal Target 14.6, on implementing the WTO Agreement on Fisheries Subsidies that, among others, prohibits subsidies that contribute to illegal, unreported and unregulated fishing and on pursuing, in the framework of the WTO, the negotiations for the adoption of comprehensive disciplines regarding prohibiting certain forms of fisheries subsidies which contribute to overcapacity and overfishing.

ARTICLE X.5

Transparency

1. Each Party shall make transparent, within one year of the date of entry into force of this Agreement for it and every two years thereafter, the following with respect to any subsidy granted or maintained within its territory:

- (a) The legal basis and purpose of the subsidy;
- (b) the form of the subsidy;
- (c) the amount of the subsidy or the amount budgeted for the subsidy; and
- (d) if possible, the name of the recipient of the subsidy.

2. A Party shall meet the transparency requirements of the preceding paragraph through:

- (a) Notification under Article 25 of the SCM Agreement;
- (b) Notification under Article 18 of the Agreement on Agriculture; or
- (c) Publication, by the Party or on its behalf, on a publicly accessible website.

3. Notwithstanding the transparency requirements of X.5.1, a Party may seek additional information on a subsidy provided by the other Party, including the legal basis and policy objective or purpose of the subsidy, the total amount or the annual budgeted amount for the subsidy, where possible the name of the recipient of the subsidy, the dates and duration of the subsidy and any other time limits attached to it, the eligibility requirements of the subsidy, any measures taken to limit the potential distortive effect on competition, trade or the environment, and any other information permitting an assessment of the negative effects of the subsidy.

4. The requested information shall be provided in writing no later than 60 days after the date of receipt of the request. In the event that any requested information is not provided by the requested Party, that Party shall explain the absence of such information in its written response

Article X.6

Consultations

1. If, at any time after making a request for additional information in accordance with Article X.5.3, a Party considers that a subsidy granted by the other Party is negatively affecting or is likely to negatively affect its interests, it may express its concern in writing to the other Party and request consultations on the matter. Consultations between the Parties to discuss the concerns raised shall be held within 60 days of the request for consultation.

2. If, on the basis of the consultations, the requesting Party considers that the subsidy concerned by the consultations negatively affects or may negatively affect in a disproportionate manner, the requesting Party's interests, then:
 - (a) In the case of subsidies granted to an enterprise supplying goods or services the responding Party shall endeavour to eliminate or minimise any negative effects of the subsidy on the requesting Party's interests. The Parties shall make every attempt to arrive at a mutually satisfactory resolution of the matter.

 - (b) In the case of subsidies granted to goods covered by Annex 1 of the WTO Agreement on Agriculture, taking into account the relevant provisions of the WTO Agreement on Agriculture, the responding Party shall accord sympathetic consideration to the concerns of the requesting Party in accordance with Article X.3.

Article X.7

Prohibited subsidies

1. The following subsidies that have or could have a significant negative effect on trade between the Parties shall be prohibited for the purposes of this Agreement:

- (a) subsidies whereby a government guarantees debts or liabilities of certain enterprises without any limitation as to the amount of those debts and liabilities or the duration of such guarantee; and
 - (b) subsidies to insolvent enterprises or enterprises in respect of which insolvency is imminent in the short- to medium-term without the subsidy;
 - (i) if there is no credible restructuring plan based on realistic assumptions with the view to ensure the return to long-term viability of such enterprises within a reasonable time period; or
 - (ii) if the enterprise does not contribute to the costs of restructuring. Small and medium sized enterprises are not obliged to contribute to the restructuring.
2. Subparagraph 1 (b) does not apply to subsidies provided to enterprises as temporary liquidity support in the form of loan guarantees or loans² during the period which is necessary to prepare a restructuring plan. Such temporary liquidity support shall be limited to the amount needed to merely keep the enterprise in business.
3. Subsidies to ensure the orderly market exit of a company are not prohibited.
4. This Article does not apply to subsidies, the cumulative amounts or budgets of which are less than SDR 160.000 per enterprise over a period of three consecutive years.

Article X.8

Use of subsidies

² For greater certainty, for the purposes of this paragraph temporary liquidity support in the form of loan guarantees or loans includes solvency support

*EU-New Zealand Free Trade Agreement
Without prejudice*

Each Party shall ensure that enterprises use subsidies only for the policy objective for which the subsidies were granted.

Article X.9

Dispute settlement

Article X.6 (Consultations) shall not be subject to the dispute settlement provisions of this Agreement.