International Trade Centre

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WTO – Agreement on Subsidies and countervailing measures (SCM)

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Agreement on Subsidies and Countervailing Measures ("SCM Agreement")

- Two types of subsidies are prohibited.
- Regulates the actions Members can take unilaterally to counter the effects of subsidies.
- Note: Agricultural subsidies are governed by the Agreement on Agriculture (AG) *(lex specialis)*

Definition of subsidy

The SCM Agreement only applies to measures that qualify as “subsidies” according to its definition.

A “subsidy” comprises 3 basic elements:

- a financial contribution
- by a government or any public body
- which confers a benefit

Financial contribution

Article 1.1(a) provides an exhaustive list of the types of measures that constitute a financial contribution:

- direct transfers of funds, e.g. grants, loans, and equity infusions or potential direct transfers of funds or liabilities, e.g. loan guarantees
- revenue otherwise due that is foregone, e.g. tax credits (note exemption for indirect taxes, SCM fn 1 and GATT Article XVI)
- the provision of goods or services other than general infrastructure or the purchase of goods

A financial contribution by a Government

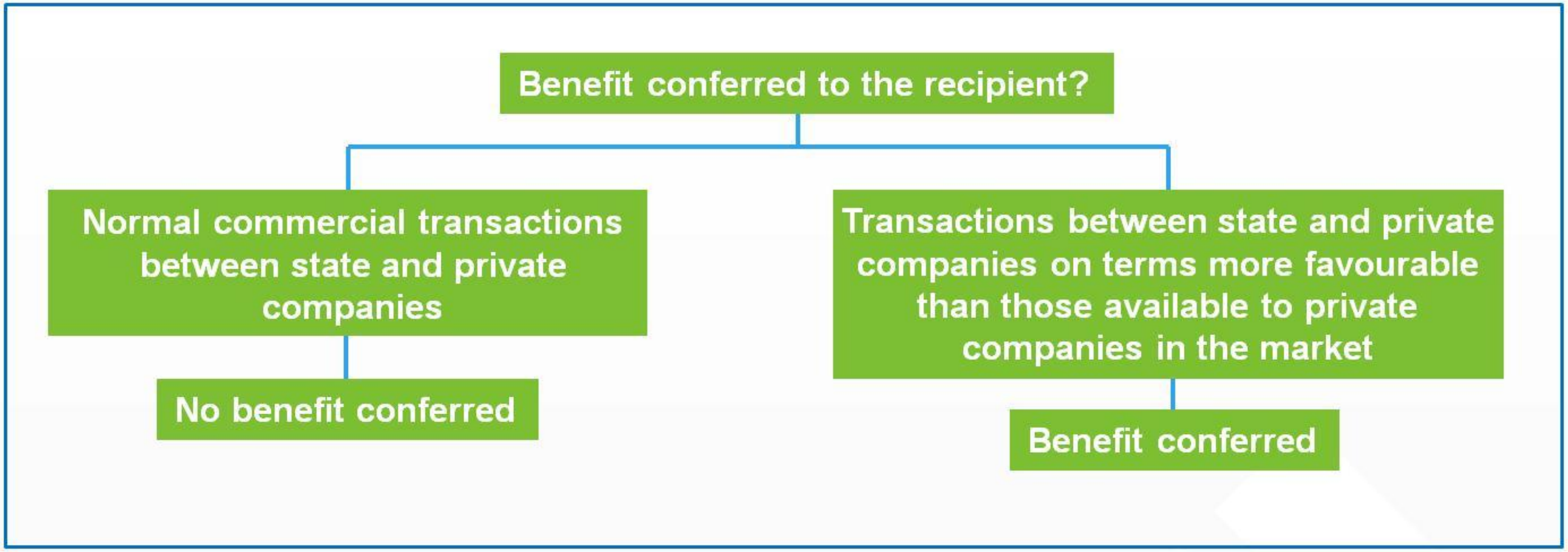
The financial contribution must be made "by a **government** or any **public body**" within a Member.

- An entity is a "public body" if it is "controlled" by the Government: Korea – Commercial Vessels

Note anti-circumvention device in Article 1.1(a)(1)(iv): where a government "entrusts or directs" a private body to make any of the financial contributions listed above.

- US – CVDs on DRAMS from Korea, EC – CVDs on DRAMS from Korea:
- "entrustment" = give responsibility to; "direction" = exercise authority over
- "threat or inducement" = evidence of entrustment or direction

A financial contribution that confers a benefit



- Test is in the marketplace
- A benefit arises if the recipient obtains an advantage which it could not obtain in the market place.
- Does not have to be a "cost to Government", but rather a "benefit to the recipient“.

Question: what about a government loan with the same terms as those offered by a private bank?

Specificity

Only subsidies that are "**specific**" to certain enterprises or industries are subject to disciplines of the SCM Agreement.

That is, when a subsidy is explicitly limited to:

- <u>One enterprise</u> (for instance the subsidy is limited to Company A), or;
- <u>To certain enterprises</u> (for instance it is limited to companies A, B and C), or;
- <u>To one industry</u> (for instance it is limited to the steel industry), or;
- <u>To certain domestic industries</u> (for instance it is limited to the steel and to the textile industries only), or;
- <u>To certain enterprises located within a designated region(s)</u> in the jurisdiction of a guaranteeing authority (for instance companies located in region Z).

Specificity (continued)

Importantly, if a subsidy is not limited in law but there are reasons to believe that the subsidy is <u>in fact</u> limited to one or certain enterprises, or to one or certain domestic industries, then additional factors may be analyzed including:

- [The] use of a subsidy programme by a limited number of certain enterprises;
- Predominant use by certain enterprises;
- The granting of disproportionately large amounts of subsidy to certain enterprises; and
- The manner in which discretion has been exercised by the granting