ANNEX B – SUBSIDIES AND COUNTERVAILING MEASURES

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Chairman's Text	Delegations' Comments on Chairman's Text
Benefit	
[2] A benefit is conferred when the terms of the financial contribution are more favourable than those otherwise commercially available to the recipient in the market, including, where applicable, as provided for in the guidelines in Article 14.1.	Concerning footnote 2 to the Chairman's text, delegations generally supported inclusion of a footnote clarifying the concept of **"benefit"** and referring to the relevant provisions of Article 14. However, questions were raised whether the reference should be a strict requirement to follow the provisions of that Article, or more in the nature of guidelines or relevant context. Some delegations considered that the drafting of the footnote could be improved, including by replacing the term "commercially available on the market", which in their view constituted a two-part test, with language referring to a "market-determined" price. Questions were raised as to the consistency of terminology in the footnote with terminology elsewhere in the Agreement as to where to look for a benchmark – in the country of provision, in the territory of the Member, on the market, and similar phrases, and whether it would be useful to harmonize these references as much as possible. Questions were also raised as to whether the reference to "terms" of a financial contribution could be applied to all types of subsidies, as a market comparator might not exist for certain financial contributions.
Regulated Prices & Benchmark Estimation	
2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply: (c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: 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 authority in the decision to grant a subsidy.[4] In the case of subsidies conferred through the provision of goods or services at regulated prices, factors that may be considered include the exclusion of firms within the country in question from access to the goods or services at the regulated prices. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation. 14.1 For the purpose of Part V, the ~~any~~ methods used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and ~~its~~their application to each particular case	The sponsor of the original proposal on dual pricing firmly supported the need for a provision on **regulated prices** along the lines of the Chairman's text. This delegation indicated that some of its industries risked going out of business if the problem was not addressed, and that if regulated prices conferred a benefit the countervailing remedy should be available. A number of other delegations also generally favoured provisions along the lines of those found in the Chairman's text. These delegations indicated that regulated prices could give rise to subsidies and that they supported the general thrust of the proposed amendments on this point. Other delegations considered that the proposed amendments gave rise to concerns regarding developing Members' policy space. It was observed that developing Members had a legitimate interest in regulating prices for various objectives, including in the context of public utilities, and that this did not necessarily give rise to subsidies. It was noted that the proposals could force convergence between domestic and export prices and deny developing Members the comparative advantage arising from resource endowments. One delegation observed that it had been subject to repeated countervailing actions relating to regulated prices, as well as below-cost financing and external benchmarks, and that the Chairman's text and non-papers on these issues were specifically targeted at practices addressed in these cases. This delegation considered that it was premature and unacceptable to include provisions on these issues in the SCM Agreement. Delegations also raised a number of more technical points. On Article 2.1(c), some delegations considered that the proposed amendments could treat a subsidy as specific if only one or a few companies were excluded from access to goods or services at a regulated price. On Article 14.1(d), some delegations suggested that unregulated prices

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shall be transparent and adequately explained. Furthermore, ~~any~~ such method<u>s</u> shall be consistent with the following guidelines: (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale). <u>Where the price level of goods or services provided by a government is regulated, the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in the country of provision when sold at unregulated prices, adjusting for quality, availability, marketability, transportation and other conditions of sale; provided that, when there is no unregulated price, or such unregulated price is distorted because of the predominant role of the government in the market as a provider of the same or similar goods or services, the adequacy of remuneration may be determined by reference to the export price for these goods or services, or to a market-determined price outside the country of provision, adjusting for quality, availability, marketability, transportation, and other conditions of sale.</u> [4] In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.	might be distorted for reasons other than those identified in the text, and suggested a less specific formulation that could cover these situations. Other delegations noted that while the reference to external benchmarks reflected an Appellate Body ruling to some extent, the text allowed Members to jump directly to external benchmarks, and neglected the requirement that such benchmarks relate to prevailing market conditions in the country in question. In response to this concern, several delegations submitted alternative non-papers containing language intended to more accurately reflect the jurisprudence. While some delegations considered the proposed new language in one of the new papers to be a step in the right direction, one delegation considered that the new language actually deviated from and weakened existing jurisprudence. Various issues were also raised regarding the other new non-paper. Numerous technical issues were raised regarding the meaning and implications of the Chairman^\'s texts. With respect to **benchmark estimation**, one delegation expressed disappointment that its proposal (TN/RL/GEN/101/Rev.1) was not reflected in the Chairman's text. This delegation submitted a non-paper that identified a number of possible change to its proposal. A number of delegations indicated that they were interested in further work on this proposal as they supported the basic concepts. Regarding proposed footnote y, concerning the identification of benchmarks where a long-term capital market does not exist in a developing country, some delegations suggested that this footnote should be applicable to all Members, not just developing Members. Some questions were raised as to benchmarks based on the "international market", including how to avoid arbitrariness in identifying such benchmarks, and how to ensure that any benchmark reflected the situation of the recipient. Regarding proposed footnote z, some delegations considered that a mandatory list of factors for determining whether loans were comparable was too prescriptive. The view was also expressed that the criterion that the loans to be compared be granted in the territory of the same Member was inappropriate.
Role of Illustrative List & De facto Export Subsidies	
3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited: (a) subsidies contingent, in law or in fact[5], whether solely or as one of several other conditions, upon export performance~~, including those illustrated in Annex I~~[6]; [5]This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy	With respect to note 6 on the **role of the Illustrative List**, some delegations supported the Chairman's text as a useful codification of certain adopted panel decisions that an *a contrario* reading of the Illustrative List was not permitted, while other delegations questioned the value of the proposed clarification and pointed out that the issue had not yet been pronounced on by the Appellate Body. Concern was expressed by one Member that this footnote would increase the scope of the prohibited subsidy category. Issues were also raised about specific aspects of the drafting of the footnote. One delegation expressed disappointment that its proposal on **de facto export subsidies** (TN/RL/GEN/Rev.1) was not reflected in the Chairman's text. This delegation explained that the elements of its proposal were that export propensity is relevant to, but should not be the sole reason for, a determination of de facto export

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within the meaning of this provision. [6]The ~~M~~measures referred to in Annex I as export subsidies shall be deemed to fall within paragraph (a). The legal status of any measure not referred to in Annex I as an export subsidy shall be determined on the basis of paragraph (a), and Annex I shall not be used to establish by negative implication that a measure does not constitute an export subsidy within the meaning of that paragraph; provided, however, that measures explicitly referred to in Annex I as not constituting prohibited export subsidies shall not be prohibited under this or any other provision of this Agreement. This footnote is without prejudice to the operation of footnote 1.	contingency, and that panels should take a case-by-case approach to this issue, taking into account the totality of the evidence. A number of delegations expressed concern over the proposed language "regardless of the level of export", either as being unnecessary or as implying that the level of exports was irrelevant. One delegation supported that language. Questions were raised as to how the totality of the evidence would be defined, how different factors in that evidence would be weighted, and whether an illustrative list of factors would be necessary if the proposed reference to "all relevant factors" were maintained. The question also was raised as to what was added by the requirement to base determinations on an examination of all of the evidence, as the DSU already requires that determinations be made on a case-by-case basis, taking into account the relevant evidence.
Withdrawal of a Prohibited Subsidy	
4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.	One delegation expressed disappointment that its proposal on **withdrawal of a subsidy** (TN/RL/GEN/115/Rev.1) was not reflected in the Chairman's text. This delegation stated that its goal was to ensure that dispute settlement panels should give guidance on what constitutes "withdrawal", taking into account the nature of the subsidy involved, and that it was not proposing retrospective, punitive remedies. A number of delegations indicated that it would be useful to introduce clarification of the concept of withdrawal, and that they were willing to work further on the issue, but remained concerned over any provision that would require repayment of subsidies. Some questioned the link with subsidy allocation in this context.
Below Cost Financing	
[46]Notwithstanding the above, a loan or loan guarantee by a government shall be deemed to confer a benefit where the provider institution incurs long-term operating losses on its provision of such financing as a whole. The existence of such a benefit shall be rebuttable by a demonstration that the particular financing at issue does not confer a benefit pursuant to paragraph (b) or (c), as applicable.	With respect to the issue of "**below-cost financing**" as addressed in footnote 46 of the Chairman's text, while certain delegations welcomed in principle the inclusion in the text of language addressing this issue, various delegations observed that the proposed footnote inappropriately focused on the cost to financial providers rather than on the benefit to the recipient. Several delegations considered that the fact that a lender was incurring long-term losses did not necessarily mean that the recipient of loans was receiving a benefit. Other delegations noted that the focus of work should be on practices that increase long-term losses due to policy decisions by governments. The proponent noted that discussion in the Group had evolved toward a focus on the borrower rather than the lender. Two delegations submitted a non-paper containing concrete suggestions on alternatives to the footnote, focusing on the existence of benefit in situations where there is long term government support of government financial institutions not independently operating on a commercial basis, and the institutions provide loans or loan guarantees or swap debt for equity in unequityworthy or uncreditworthy state enterprises. These delegations emphasized the high thresholds and focused nature of the suggested disciplines. A number of delegations welcomed the new ideas, with several delegations preferring them to the current provision in the Chairman's text. Other delegations had concerns or questions. One delegation recalled its earlier position that these proposals were specifically directed against it (*see* comments under "regulated prices", above),

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	discriminated against state-owned enterprises, and had no merit. Several delegations sought clarity about the meaning and significance of financial institutions operating "independently", whether support included regulatory or only financial support, and the implications of the absence of long-term financing in a developing country as a result of market failure. More generally, certain delegations questioned whether the proposed new language would be better placed in Article 3 or Article 6, with one of the sponsors of the non-paper preferring that the practices be subject to the Article 3 prohibition, but willing to accept an Article 6 "dark amber" approach. Other delegations preferred that any such provision be placed in Article 6 or 14.
Pass-Through	
14.2 For the purpose of Part V, where a subsidy is granted in respect of an input used to produce the product under consideration, and the producer of the product under consideration is unrelated to the producer of the input, no benefit from the subsidy in respect of the input shall be attributed to the product under consideration unless a determination has been made that the producer of the product under consideration obtained the input on terms more favourable than otherwise would have been commercially available to that producer in the market.[47] [47]Where, however, it has been established that the effect of the subsidy is so substantial that other relevant prices available to the producer of the product under consideration are distorted and do not reasonably reflect commercial prices that would prevail in the absence of the subsidization, other sources, such as world market prices, can be used as the basis for the determination in question.	On Article 14.2 of the Chairman's text, there was a broadly-held view that the inclusion in the ASCM of provisions on **pass-through** could be useful. There were however disagreements about whether such provisions should be placed in Article 14 (and hence relate to Part V only) or in Article 1. One delegation considered that the limitation in the Chairman's text to the context of input subsidies was too narrow, as the concept of pass-through applied wherever the direct recipient is not the exporter. Similar to the discussion of Article 14.1(c), some delegations raised concerns that proposed footnote 47 provided inadequate guidance regarding resort to alternative benchmarks and should be clarified, with one delegation indicating that the footnote should be deleted altogether. Another delegation considered that footnote 47 should be retained. Concerns were also raised regarding the meaning and desirable scope of the concept of "unrelated" parties, as well as whether the concept of "arms-length" should also be reflected.
Allocation of Benefit	
14.3 For the purpose of Part V, the methods used by the investigating authority to attribute subsidy benefits to particular time periods shall be consistent with the following guidelines:[48] (a) With the exception of benefits from loan subsidies and similar subsidized debt instruments, subsidy benefits shall either be expensed in full in the year of receipt ("expensed") or allocated over a period of years ("allocated"). Expensed subsidies shall be deemed to benefit the recipient by the full amount of the benefit in the year in which they are expensed, whereas allocated subsidies shall be deemed to benefit the recipient throughout the allocation period. Loan subsidies, and similar subsidized debt instruments, shall be deemed to benefit the recipient throughout the period in which the loan or debt instrument remains outstanding. (b) Benefits from subsidies arising from the following types of	A number of delegations considered that it was useful to have specific guidance in the SCM Agreement concerning the **allocation of benefit** in the context of countervailing measures, and supported the approach in the Chairman's text, which in their view broadly reflected the current practice of most Members using countervailing measures. Some delegations considered that these provisions should be applicable not only in respect of countervailing measures but also in respect of prohibited and actionable subsidy rules. Other delegations disagreed, indicating that the provisions should be limited to countervailing measures. A number of delegations raised questions concerning the concepts of recurring and non-recurring subsidies, including whether it was clear that all subsidies would fall into one of these categories. Some also questioned whether the provisions contain sufficient flexibility to permit authorities to determine on a case-by-case basis whether to expense subsidy benefits in the year of receipt or to allocate them over time. Regarding the allocation period, some sought clarification as to whether the average useful life of assets referred to would be for the firm or industry in the exporting

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measures normally shall be expensed: direct tax exemptions and deductions; exemptions from and excessive rebates of indirect taxes or import duties; provision of goods and services for less than adequate remuneration; price support payments; discounts on electricity, water, and other utilities; freight subsidies; export promotion assistance; early retirement payments; worker assistance; worker training; and wage subsidies. (c) Benefits from subsidies arising from the following types of measures shall be allocated: equity infusions; grants; plant closure assistance; debt forgiveness; coverage for an operating loss; debt-to-equity conversions; provision of non-general infrastructure; and provision of plant and equipment. (d) In determining whether a subsidy listed in paragraph 2(b) is more appropriately allocated, or whether a subsidy listed in paragraph 2(c) is more appropriately expensed, and in determining whether a subsidy of a type not listed in either paragraph 2(b) or 2(c) should be allocated or expensed, the following non-exhaustive list of factors shall be considered: (i) whether the subsidy is non-recurring (e.g., one-time, exceptional, requiring express government approval) or recurring[49] (ii) the purpose of the subsidy[50]; and (iii) the size of the subsidy.[51] (e) The allocation period for allocated subsidies normally should correspond to the average useful life of the depreciable, physical assets of the relevant industry or firm. (f) Any method for measuring the amount of allocated subsidy benefits at a particular point in the allocation period may reflect a reasonable measure of the time value of money. (g) Any public notice issued pursuant to paragraph 3 of Article 22 shall include a full description and adequate explanation of the allocation and expensing methodologies used. [48] The reference in this paragraph to particular measures does not mean that those measures will necessarily constitute specific subsidies; rather, a determination regarding the	country or the importing country. Concerning the introduction of the time value of money in the calculation of subsidy benefits allocated over time, a number of delegations indicated that this was appropriate, as it reflects economic reality. Some other delegations considered that this aspect needs further discussion.

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existence of a specific subsidy shall be made pursuant to Part I of the Agreement in the light of the facts of a particular case. [49] The fact that a subsidy is non-recurring normally will be indicative of allocation. The fact that a subsidy is recurring normally will be indicative of expensing. [50] For example, the fact that a subsidy is tied to the capital assets or structure of the recipient normally will be indicative of allocation. The fact that a subsidy is tied to a firm's regular, ongoing production and sales activities (e.g., wages) normally will be indicative of expensing. [51] The fact that a subsidy is large normally will be indicative of allocation. The fact that a subsidy is small normally will be indicative of expensing.	
Export Competitiveness	
27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years. 27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either *(a)* on the basis of notification by the developing country Member having reached export competitiveness, or *(b)* on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.	One delegation recalled an earlier proposal submitted by four delegations concerning the determination of **export competitiveness** (TN/RL/GEN/136), which included basing calculations on a five-year moving average for two consecutive years, "stopping the clock" for export subsidy phase-out if a developing Member lost export competitiveness during the phase-out period, and allowing a developing Member to reintroduce export subsidies if export competitiveness is lost after the end of the phase-out period. While some delegations supported the thrust of the proposal, others had doubts, with one delegation qualifying the proposal as maximalist while another observing that the current provisions were logical, and that it was reluctant to change these rules relating to distortive export subsidies. A number of delegations suggested that a more serious issue for the operationalisation of this provision was to clarify the definition of "product", as it was unclear whether it referred to HTS Sections or headings. With regard to specific elements. on the moving averages proposal, some delegations agreed that there was a problem of volatility that could be addressed by this approach. Other delegations doubted that there was a volatility problem or considered that the moving averages idea was in any event too complicated. It was suggested that the proposal would in fact require 7 years of export competitiveness, and that a simpler approach might be simply to refer to three or perhaps four consecutive years. Various delegations questioned whether the five-year moving average would apply to losing export competitiveness as well as achieving it. While one delegation supported allowing developing Members to re-introduce export subsidies if they lost export competitiveness, other delegations had serious concerns, with one delegation noting that this went beyond "stop-the-clock" proposals previously considered in the SCM Committee.
Verification system for duty rebate schemes / definition of inputs consumed	
ANNEX I ~~ILLUSTRATIVE LIST OF~~ CERTAIN EXPORT SUBSIDIES	Shortly before the issuance of the Chairman's text, a delegation submitted a proposal, later revised, concerning the **verification system** for duty and tax rebate schemes as provided for in items (g), (h) and (i) of Annex I of the SCM Agreement, and Annexes

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. . . .	II and III (TN/RL/GEN/153 and Rev. 1). The proposal also suggested modifying the definition of "inputs consumed in the production process" in this context. Concerning duty rebate schemes, the proponent indicated that the principle underlying its proposal was that in a countervailing duty context, only the excess amount of rebate could be countervailed, rather than the whole scheme, and that in this regard, the Agreement should be clarified to indicate that certain averaging schemes based on standard input-output or similar norms should be presumed to be sufficient for purposes of verifying the use of imported inputs in the production of goods for export. In the same context, the proponent proposed expanding the definition of inputs consumed, to cover capital goods and consumables.
(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes[5865] in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.	A number of delegations supported the principle that only the excess amount of any rebate could be treated as a countervailable subsidy, and expressed a willingness to work on the issues raised in the proposal, but raised questions as to whether the existing language in the Agreement already could accommodate the situations referred to in the proposal. Some also questioned certain practical aspects of the calculations that would be involved. In addition, some delegations questioned the basis for the proposed presumption that an averaging system generated accurate results, including because of changes to production technology over time, whether any such presumption would be rebuttable and if so, on what basis, and how to implement such averaging schemes where taxes being rebated are prior-stage cumulative indirect taxes. Concerning the expansion of the definition of inputs consumed to include capital goods and consumables, some delegations raised questions of principle, noting that under international taxation norms, taxes on goods are to be imposed in the country where they are consumed, which in the case of capital goods would be the country of production of the exported goods. Delegations also raised practical questions concerning how any accounting for the use of capital goods in the production of exported products could be verified, and concerning the definition of "consumables". One delegation noted that the current SCM rules on taxes favoured indirect tax systems, and disadvantaged direct taxes, and that the proposed change to the definition of inputs consumed would further this imbalance.
(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes[5865] on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[67] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.	
(i) The remission or drawback of import charges[5865] in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II and the guidelines in the determination of substitution drawback systems as export subsidies contained in Annex III.	

[56] For the purpose of this Agreement:

The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

"Cumulative" indirect taxes are multi-staged taxes levied where there is

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no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production; "Remission" of taxes includes the refund or rebate of taxes; "Remission or drawback" includes the full or partial exemption or deferral of import charges. [67]Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g). ANNEX II GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS[69] I 1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). 2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate. [69]Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product. II	

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In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis: 1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied. 2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1. 3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process. 4. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer. 5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an	

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important question is whether the authorities in the exporting Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission. ANNEX III GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES I Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed. II In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis: 1. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting Member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question. 2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that	

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the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied. 3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting Member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 2. 4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy. 5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.	

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Export Credit Practices	
(j) The provision by governments (or special institutions controlled by and/or acting under the authority of governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes. (k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those available to the recipient on international capital markets (absent any government guarantee or support), for funds of the same maturity and other credit terms and denominated in the same currency as the export credit. ~~at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.~~ Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members)[68], or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by this Agreement. [68] The parties to such undertaking in effect as of the date of entry into force of the results of the DDA shall notify that undertaking to the Committee not later than 30 days after that date. Upon request by a Member, the Committee shall examine the notified undertaking. Thereafter, any further successor undertaking shall be notified by the parties thereto to the Committee, and Members shall have a period of 30 days from the date of such notification to request examination by the Committee of the notified successor undertaking. Where no such request is made, the provisions of the second paragraph of item (k) shall apply to the notified successor undertaking as from the end of the 30-day period. Where such a request is made, the Committee shall examine the notified successor undertaking within 60 days following the receipt of the request, taking into account the need to maintain effective multilateral disciplines on export credit practices and to preserve a balance of rights and obligations among Members. The provisions of the second paragraph of item (k) shall not apply in respect of the notified successor undertaking until the requested examination has been completed.	In general terms, the proponent of changes in the area of **export credit practices** emphasized that a cost-to-government approach to export credits represented an inherent disadvantage for developing Members whose costs of borrowing are higher due to higher risk. While this delegation generally welcomed the changes proposed in the Chairman's text, it considered that additional adjustments to items (j) and (k) were also required. Specifically, it sought the inclusion of a second test under item (j) for export credit guarantees at premium rates below those available to the recipient on international capital markets for export credit guarantees or insurance of similar terms and denominated in the same currency. It also sought restoration of language in item (k) of the SCM Agreement relating to the payment of costs incurred by exporters or financial institutions in obtaining export credits. Some other delegations had very serious concerns. They considered that the proposed changes in the Chairman's text would disadvantage developing Member borrowers by raising the cost of export credit financing, that they could reduce predictability for export credit agencies, and that they could make export credit agencies irrelevant, and that this would be aggravated by the additional changes being sought by the proponent. These delegations generally considered that a cost-to-government approach was appropriate in this area and that the proposed changes could render items (j) and (k) meaningless. With respect to note 68, the proponent noted that under the so-called "evolutionary" interpretation, a small group of Members can negotiate changes to the OECD Export Credit Arrangement among themselves and that these changes would then apply under the safe haven in item (k) second paragraph without having been agreed by all WTO Members. Thus, the proponent considered that note 68 was desirable, especially in insuring transparency, but that it was not sufficiently clear about the need for the WTO to adopt any changes to the Arrangement. This delegation proposed alternative language under which the provisions of the second paragraph would apply on condition that they be notified to the SCM Committee and that no Member objects within 30 days. While certain delegations supported this language, other delegations were seriously concerned. They were of the view that note 68 would make it difficult if not impossible to effectuate changes to the OECD Arrangement, as the note in the Chairman's text could be taken to require de facto approval, and the proponent's language would in fact make clear all Members had an effective veto. Several delegations noted that the OECD Arrangement had become more transparent and inclusive, such as in the aircraft sector. One delegation noted that it had instructions at the highest level that it could not agree to such language.