SUBSIDY DISCIPLINES

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEAUSURES

SEMINAR ON WTO ACCESSIONS RULES

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Why does the WTO have an interest?

- Does the ASCM prohibit all subsidies?
  - Most forms of subsidies are allowed, but subject to disciplines
  - Only two kinds of subsidies are prohibited
- Why does the WTO regulate the use of subsidies?
  - They can distort international markets

WTO Agreements Prescribing Rules on Subsidies

- GATT 1994
-

What does the ASCM do?

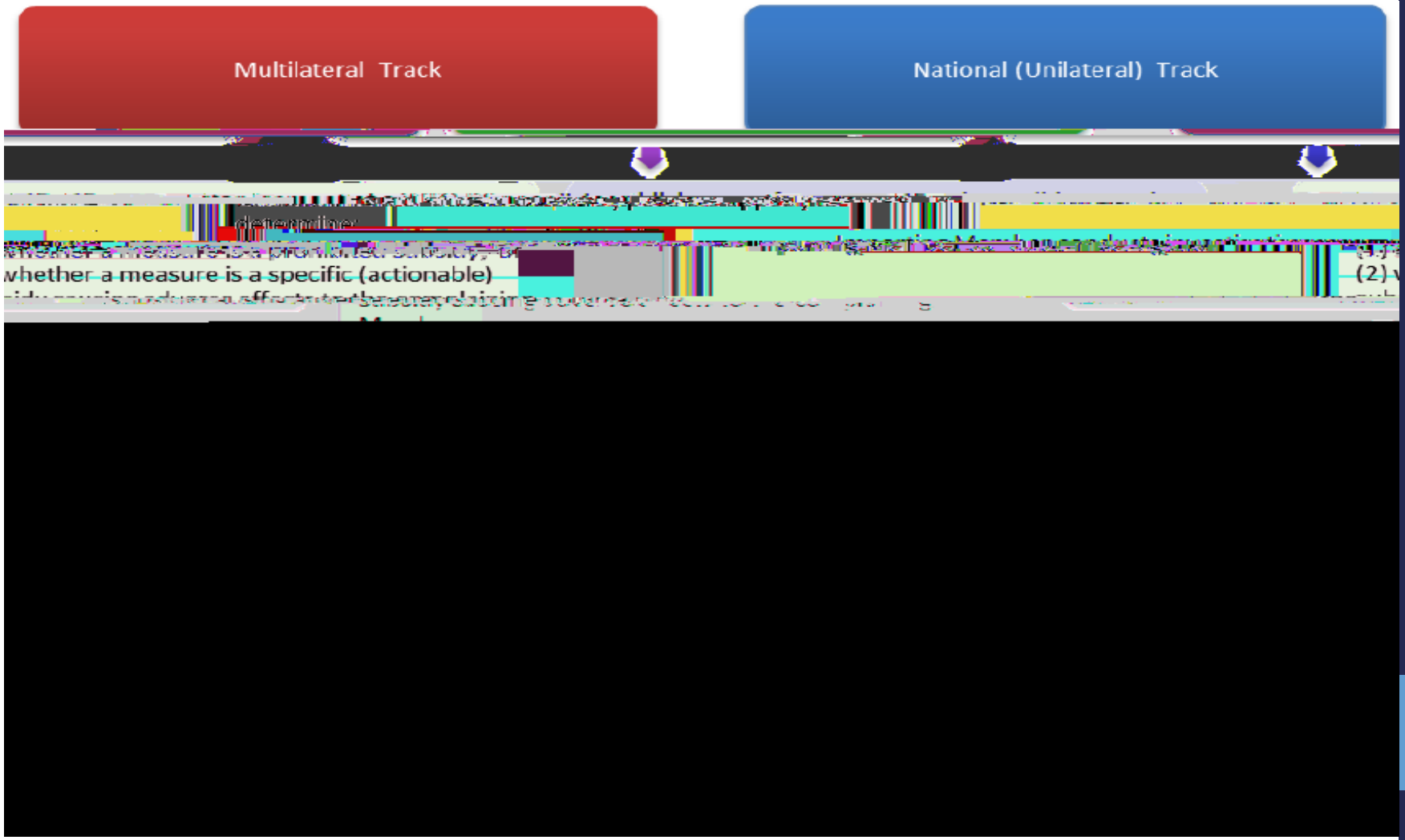
- Any distinctions such as industrial vs other types of subsidies?
- Two functions:
  - Disciplines the use of subsidies by WTO Members
  - Regulates the actions against the effects of subsidies
    - ✓ Multilateral
    - ✓ Unilateral - Countervailing measures

What does the ASCM do?

- Applies to all WTO Members
- Contains special provisions in favour of developing Members
- Establishes detailed disciplines on prohibited and non-prohibited subsidies
- Contains detailed provisions onEMC /ite0 gridies

ASCM: Two Agreements in One

- Two Tracks



Financial Contribution: Art.1.1(a)(1)

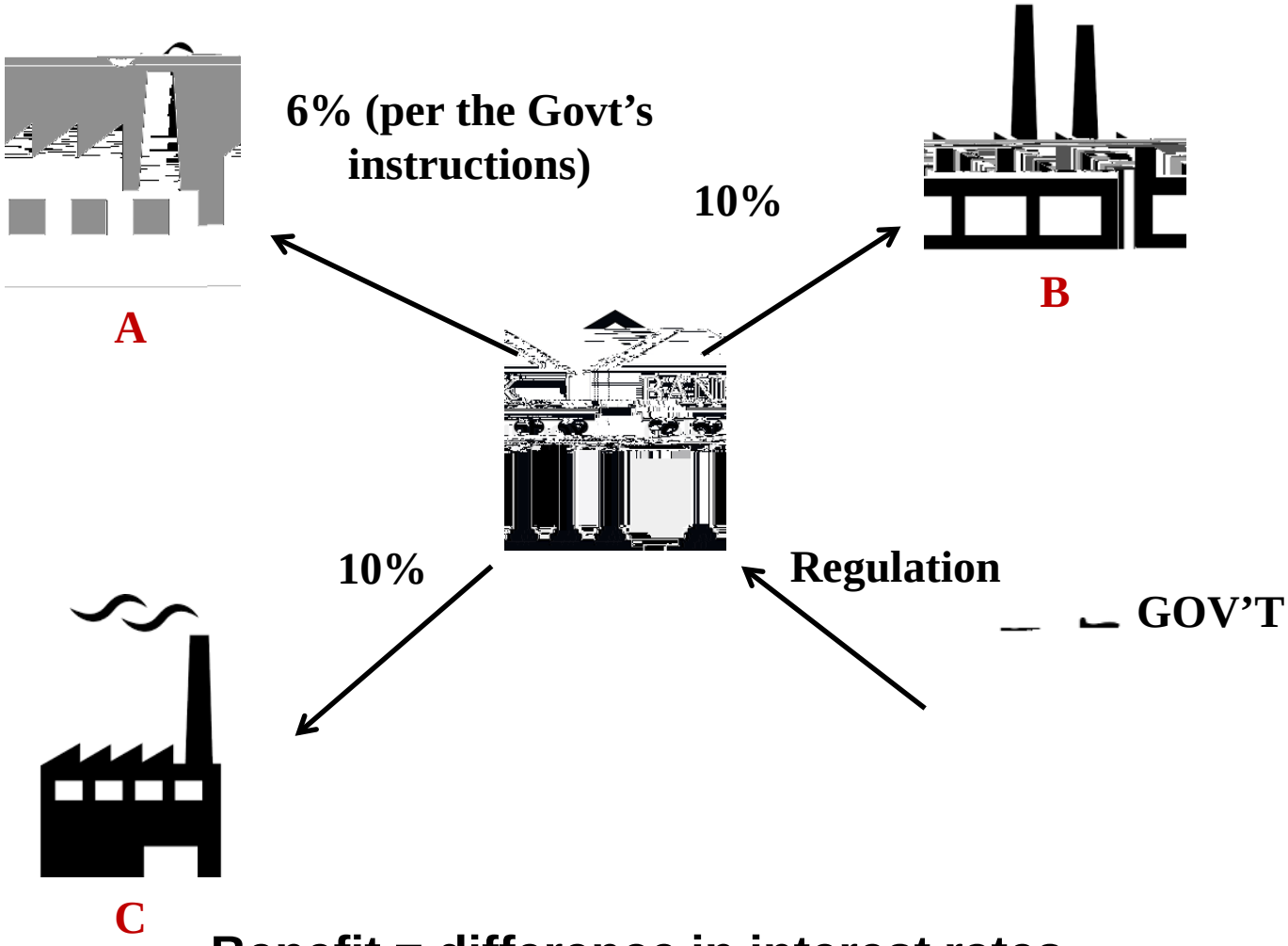
- Direct transfer of funds, e.g.
  - Grants
  - Loans
  - Equity infusions
- Potential direct transfer of funds, e.g.
  - Loan guarantees
- Foregone or uncollected Government revenue, e.g.
  - Tax credits
  - Tax/duty exemptions

Government or Public Body

- Government or public body makes financial contribution OR
- Entrusts or directs a private body to make financial contribution
- National-level governments/public bodies vs sub-national levels of government/public bodies

Benefit

Benefit – Example: "Loan"



Benefit = difference in interest rates

Benefit – Example: "Provision of goods"

Cars

10,000 USD/unit

PRIVATE MOTORS Co.

Cars

8,000 USD/unit

GOV'T OWNED MOTORS Co.

Benefit = 2000 USD/unit

Benefit – Example: “Purchase of goods”

SITUATION A
(price to private company)

100 USD/Unit

PRIVATE PC Co.

SITUATION B
(price to Gov’t)

120 USD/Unit

PRIVATE PC Co.

Benefit = 20 USD/Unit

Specificity…cont'd

- ASCM covers both and specific subsidies
  - specificity: access to subsidies is limited, in the law or by the granting authority, to certain enterprises.
  - specificity: access to subsidies is limited

Specificity…cont'd

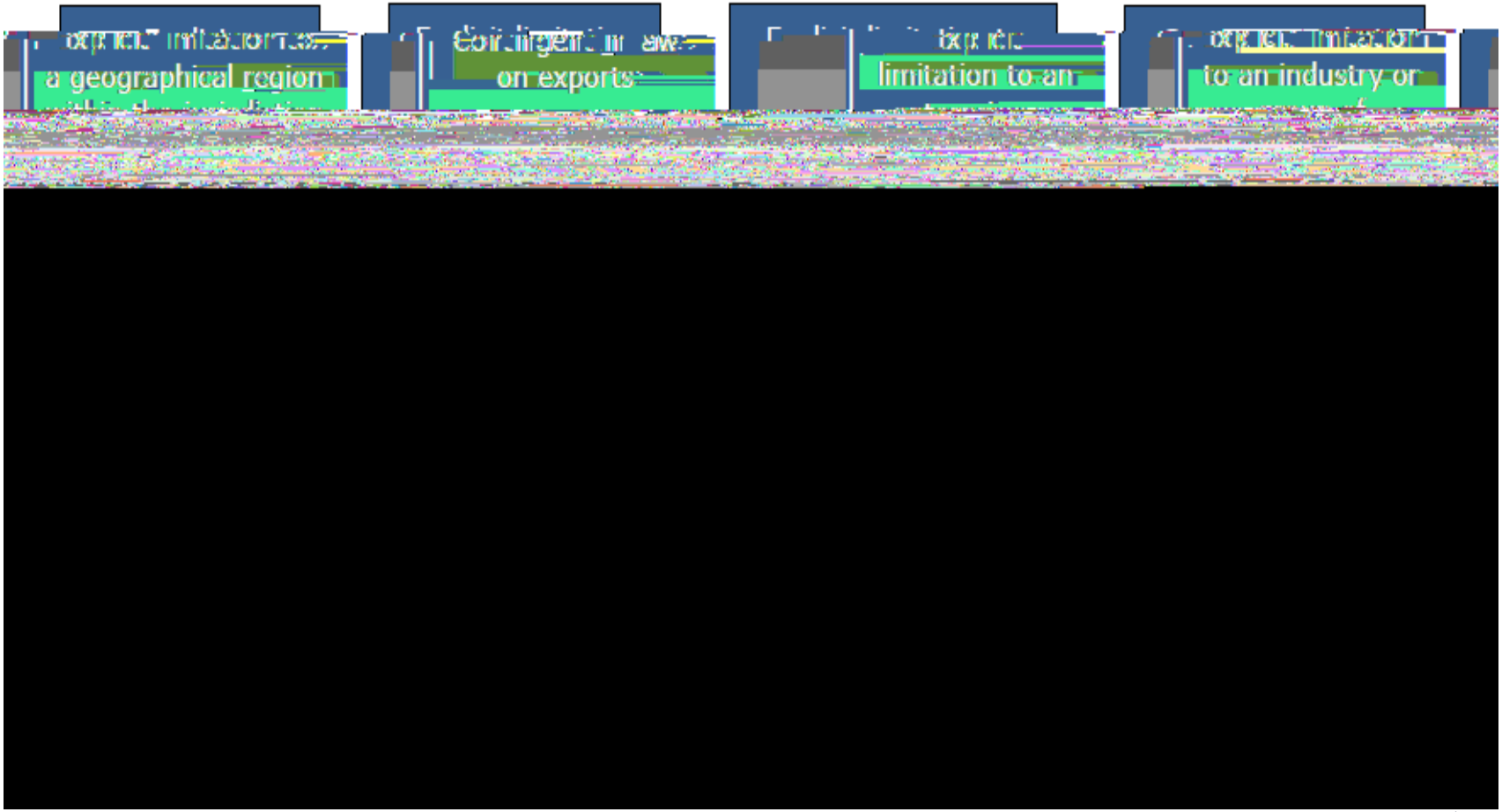
- Specificity can still be established if the facts demonstrate that in practice the subsidy is limited to only certain of the nominally eligible recipients.
  - The use of the subsidy by a limited number of certain enterprises;
  - The predominant use of the subsidy by certain enterprises;
  -

Specificity…cont'd

- Specificity cannot be found if eligibility for the subsidy is based on objective criteria ;
  - which are set forth explicitly in law, regulation or other official document and therefore verifiable;
  - those criteria are strictly adhered to and are applied in an automatic manner
- Objective criteria: neutral, that do not favour certain enterprises over others, and that are economic in nature and horizontal in application.

Specificity…cont'd

- How specificity works



Implications of Specificity

- 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
    and can be countervailed (Part V)
  - Must notify specific subsidies to the SCM Committee
- For Members affected by others' subsidies:
  - Can challenge or countervail
    other Members' specific subsidies

CATEGORIES OF SUBSIDIES UNDER THE SCM AGREEMENT:
PROHIBITED SUBSIDIES

Prohibited Subsidies

- Export subsidies
  - Subsidies contingent, in law ( ) or in fact ( ), upon export performance
  -

Prohibited Subsidies…cont'd

- Import substitution subsidies (domestic content subsidies)
  - Subsidies which are "contingent" on the use of domestic over imported goods.
  - Contingency can be one among several other factors, and it can be either
    or .

Exceptions for Prohibited Subsidies

- S&D provisions on export subsidies
  - Annex VII countries (Article 27) – LDCs and countries listed in Annex VII(b)

CATEGORIES OF SUBSIDIES UNDER THE SCM AGREEMENT:
ACTIONABLE SUBSIDIES

Actionable Subsidies

- All other specific subsidies
  - Adverse effects through use of subsidies, i.e.:
    - Serious prejudice
    - Injury to a domestic industry
    - fe

Serious Prejudice (Articles 5 & 6)

- Adverse trade effects through serious prejudice to the interests of a Member. Four possible scenarios:
  - Displace / impede imports of like product into subsidizing country market (Article 6.3(a))
  - Displace / impede exports from third-country market (Article 6.3(b))
  - Significant price undercutting, price suppression, price depression, or lost sales of like product in the same market (Article 6.3(c))
  - Increased world market share for primary commodity (like product by definition) (Article 6.3(d))

Actionable Subsidies – Injury

- Material injury or threat of material injury to the domestic industry producing the product that is "like" the subsidized product
- Material retardation of the establishment of a domestic industry producing that product.

Actionable Subsidies – Nullification or Impairment of Benefits

- A subsidy provided within the territory of a Member may directly undercut the market-opening concessions that that Member has negotiated with its WTO trading partners

Actionable Subsidies – Nullification or Impairment of Benefits: An example

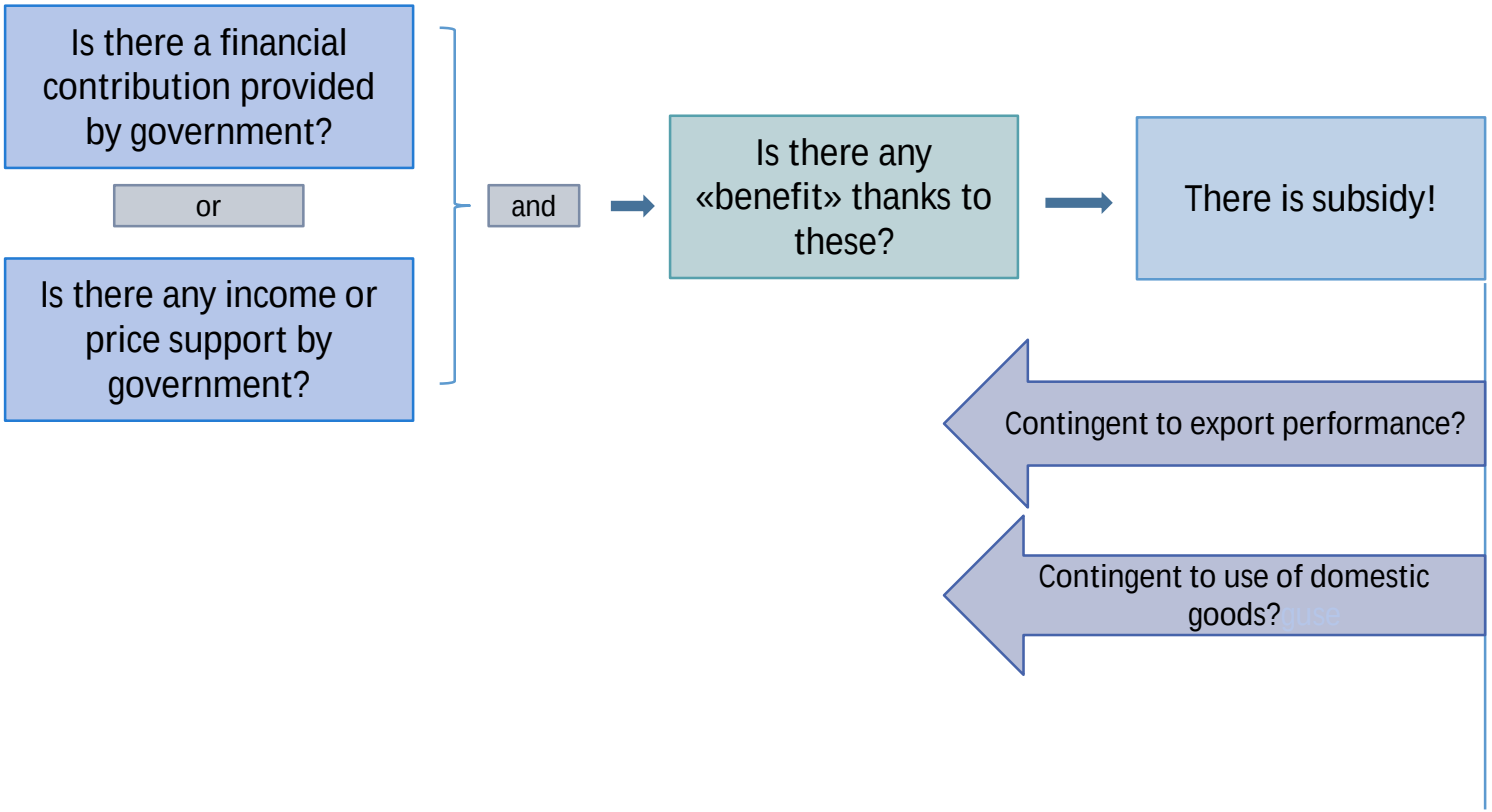
- Country A agrees in trade negotiations to reduce its tariff on imported barley by 10 per cent. Country B, which is a barley exporter, thus expects that its exports to Country A will increase when the tariff cut takes effect.
- These expectations are not realized because Country A, begins to subsidize its domestic purchasers of barley by an amount equal to the tariff reduction.
- Purchasers continue to buy the domestic barley; therefore Country B's benefits have been nullified or impaired by Country A's subsidy.

Non-Actionable Subsidies

- EXPIRED at the end of 1999!
- The covered subsidies (specific R&D subsidies, environmental subsidies and subsidies to disadvantaged regions) reverted to actionable status

“REMEDIES” under the ASCM

- Subsidy: Legal Definition → ASCM Article 1



Free Zones and ASCM

Free Zones and ASCM

- Not all advantages are within the ASCM definition – remember the definition of “financial contribution”:
  - Potential/direct transfer of funds
  - Forgone revenue
  - Provision of goods/services
  - Purchase of goods
  - Certain types of price or income support
- Two items are excluded from the definition

Free Zones and ASCM

- Some examples of specific subsidies that have been provided in free zones:
  - Exemption from import duties and charges
  - Total or partial exemption from direct taxes and social welfare charges
  - Exemptions from indirect taxes (e.g. sales taxes) and value-added taxes
  - Provision of goods and services to zone users at below market price
- Some advantages such as less onerous labour regulations or trade facilitating measures – not deemed to constitute financial contributions.

Free Zones and ASCM

- Risk of prohibited subsidies:
  - requirements that zone users export a part of their production or that they use a prescribed level of domestically produced inputs in their operations

OR

  - when the government imposes limitations on the extent to which goods in zones may be exported to the domestic market of the host countries

Free Zones and ASCM

- Even if there are no requirements to export, use domestically produced inputs or limitations on sales to the national customs territory the incentives provided in the zones may still qualify as actionable subsidies and are open to challenge by a WTO Member.
- Regardless of their classification as prohibited or actionable, any specific subsidy may also be subject to countervailing measures

Thank you for your attention…