

ARTICLE 362

Dispute settlement

This Chapter shall not be subject to dispute settlement under Title I of Part Six.

CHAPTER 3

SUBSIDY CONTROL

ARTICLE 363

Definitions

1. For the purposes of this Chapter, the following definitions apply:
 - (a) "economic actor" means an entity or a group of entities constituting a single economic entity, regardless of its legal status, that is engaged in an economic activity by offering goods or services on a market;

- (b) "subsidy" means financial assistance which:
 - (i) arises from the resources of the Parties, including:
 - (A) a direct or contingent transfer of funds such as direct grants, loans or loan guarantees;
 - (B) the forgoing of revenue that is otherwise due; or
 - (C) the provision of goods or services, or the purchase of goods or services;
 - (ii) confers an economic advantage on one or more economic actors;
 - (iii) is specific insofar as it benefits, as a matter of law or fact, certain economic actors over others in relation to the production of certain goods or services; and
 - (iv) has, or could have, an effect on trade or investment between the Parties.

2. For the purposes of point (b)(iii) of paragraph 1:

- (a) a tax measure shall not be considered as specific unless:
 - (i) certain economic actors obtain a reduction in the tax liability that they otherwise would have borne under the normal taxation regime; and

- (ii) those economic actors are treated more advantageously than others in a comparable position within the normal taxation regime; for the purposes of this point, a normal taxation regime is defined by its internal objective, by its features (such as the tax base, the taxable person, the taxable event or the tax rate) and by an authority which is autonomous institutionally, procedurally, economically and financially and has the competence to design the features of the taxation regime;
- (b) notwithstanding point (a), a subsidy shall not be regarded as specific if it is justified by principles inherent to the design of the general system; in the case of tax measures, examples of such inherent principles are the need to fight fraud or tax evasion, administrative manageability, the avoidance of double taxation, the principle of tax neutrality, the progressive nature of income tax and its redistributive purpose, or the need to respect taxpayers' ability to pay;
- (c) notwithstanding point (a), special purpose levies shall not be regarded as specific if their design is required by non-economic public policy objectives, such as the need to limit the negative impacts of certain activities or products on the environment or human health, insofar as the public policy objectives are not discriminatory¹.

¹ For this purpose, discrimination means that there is less favourable treatment of an economic actor compared with others in like situations and that that differential treatment is not justified by objective criteria.

ARTICLE 364

Scope and exceptions

1. Articles 366, 367 and 374 do not apply to subsidies granted to compensate the damage caused by natural disasters or other exceptional non-economic occurrences.
2. Nothing in this Chapter prevents the Parties from granting subsidies of a social character that are targeted at final consumers.
3. Subsidies that are granted on a temporary basis to respond to a national or global economic emergency shall be targeted, proportionate and effective in order to remedy that emergency. Articles 367 and 374 do not apply to such subsidies.
4. This Chapter does not apply to subsidies where the total amount granted to a single economic actor is below 325 000 Special Drawing Rights over any period of three fiscal years. The Partnership Council may amend this threshold.
5. This Chapter does not apply to subsidies that are subject to the provisions of Part IV or Annex 2 of the Agreement on Agriculture and subsidies related to trade in fish and fish products.
6. This Chapter does not apply to subsidies related to the audio-visual sector.
7. Article 371 does not apply to subsidies financed by resources of a Party at supranational level.

8. For the purposes of subsidies to air carriers, any reference to "effect on trade or investment between the Parties" in this Chapter shall be read as "effect on competition between air carriers of the Parties in the provision of air transport services", including those air transport services not covered under Title I of Heading Two.

ARTICLE 365

Services of public economic interest

1. Subsidies granted to economic actors assigned with particular tasks in the public interest, including public service obligations, are subject to Article 366 insofar as the application of the principles set out in that Article does not obstruct the performance in law or fact of the particular task assigned to the economic actor concerned. The task shall be assigned in advance in a transparent manner.

2. The Parties shall ensure that the amount of compensation granted to an economic actor that is assigned with a task in the public interest is limited to what is necessary to cover all or part of the costs incurred in the discharge of that task, taking into account the relevant receipts and a reasonable profit for discharging that task. The Parties shall ensure that the compensation granted is not used to cross-subsidise activities falling outside the scope of the assigned task. Compensation below 15 million Special Drawing Rights per task shall not be subject to the obligations under Article 369. The Partnership Council may amend this threshold.

3. This Chapter does not apply where the total compensation to an economic actor providing tasks in the public interest is below 750 000 Special Drawing Rights over any period of three fiscal years. The Partnership Council may amend this threshold.

ARTICLE 366

Principles

1. With a view to ensuring that subsidies are not granted where they have or could have a material effect on trade or investment between the Parties, each Party shall have in place and maintain an effective system of subsidy control that ensures that the granting of a subsidy respects the following principles:
 - (a) subsidies pursue a specific public policy objective to remedy an identified market failure or to address an equity rationale such as social difficulties or distributional concerns ("the objective");
 - (b) subsidies are proportionate and limited to what is necessary to achieve the objective;
 - (c) subsidies are designed to bring about a change of economic behaviour of the beneficiary that is conducive to achieving the objective and that would not be achieved in the absence of subsidies being provided;

- (d) subsidies should not normally compensate for the costs the beneficiary would have funded in the absence of any subsidy;
- (e) subsidies are an appropriate policy instrument to achieve a public policy objective and that objective cannot be achieved through other less distortive means;
- (f) subsidies' positive contributions to achieving the objective outweigh any negative effects, in particular the negative effects on trade or investment between the Parties.

2. Without prejudice to paragraph 1 of this Article, each Party shall apply the conditions set out in Article 367, where relevant, if the subsidies concerned have or could have a material effect on trade or investment between the Parties.

3. It is for each Party to determine how its obligations under paragraphs 1 and 2 are implemented in the design of its subsidy control system in its own domestic law, provided that each Party shall ensure that the obligations under paragraphs 1 and 2 are implemented in its law in such a manner that the legality of an individual subsidy will be determined by the principles.

ARTICLE 367

Prohibited subsidies and subsidies subject to conditions

1. The categories of the subsidies referred to in Article 366(2) and the conditions to be applied to them are as follows. The Partnership Council may update these provisions as necessary to ensure the operation of this Article over time.

Subsidies in the form of unlimited guarantees

2. Subsidies in the form of a guarantee of debts or liabilities of an economic actor without any limitation as to the amount of those debts and liabilities or the duration of that guarantee shall be prohibited.

Rescue and restructuring

3. Subsidies for restructuring an ailing or insolvent economic actor without the economic actor having prepared a credible restructuring plan shall be prohibited. The restructuring plan shall be based on realistic assumptions with a view to ensuring the return to long-term viability of the ailing or insolvent economic actor within a reasonable time period. During the preparation of the restructuring plan, the economic actor may receive temporary liquidity support in the form of loans or loan guarantees. Except for small and medium-sized enterprises, an economic actor or its owners, creditors or new investors shall contribute significant funds or assets to the cost of restructuring. For the purposes of this paragraph, an ailing or insolvent economic actor is one that would almost certainly go out of business in the short to medium term without the subsidy.

4. Other than in exceptional circumstances, subsidies for the rescue and restructuring of insolvent or ailing economic actors should only be allowed if they contribute to an objective of public interest by avoiding social hardship or preventing a severe market failure, in particular with regard to job losses or disruption of an important service that is difficult to replicate. Except in the case of unforeseeable circumstances not caused by the beneficiary, they should not be granted more than once in any five year period.

5. Paragraphs 3 and 4 do not apply to subsidies to ailing or insolvent banks, credit institutions and insurance companies.

Banks, credit institutions and insurance companies

6. Without prejudice to Article 184, subsidies to restructure banks, credit institutions and insurance companies may only be granted on the basis of a credible restructuring plan that restores long-term viability. If a return to long-term viability cannot be credibly demonstrated, any subsidy to banks, credit institutions and insurance companies shall be limited to what is needed to ensure their orderly liquidation and exit from the market while minimising the amount of the subsidy and its negative effect on trade or investment between the Parties.

7. It shall be ensured that the granting authority is properly remunerated for the restructuring subsidy and that the beneficiary, its shareholders, its creditors or the business group to which the beneficiary belongs, contribute significantly to the restructuring or liquidation costs from their own resources. Subsidies to support liquidity provisions shall be temporary, shall not be used to absorb losses and shall not become capital support. Proper remuneration shall be paid to the granting authority for the subsidies granted to support liquidity provisions.

Export subsidies

8. Subsidies that are contingent in law or in fact¹, whether solely or as one of several other conditions, upon export performance relating to goods or services, shall be prohibited, except in relation to:

- (a) short-term credit insurance for non-marketable risks; or
- (b) export credits and export credit guarantee or insurance programmes that are permissible in accordance with the SCM Agreement, read with any adjustments necessary for context.

¹ For greater certainty, 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 economic actors which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

9. For the purposes of point (a) of paragraph 8, "marketable risk" means commercial and political risks with a maximum risk period of less than two years on public and non-public buyers in marketable risk countries¹. A country may be understood to be temporarily removed from the group of marketable risk countries if there is a lack of sufficient private market capacity because of:

- (a) a significant contraction of private credit insurance capacity;
- (b) a significant deterioration of sovereign sector rating; or
- (c) a significant deterioration of corporate sector performance.

10. Such temporary removal of a marketable risk country shall take effect, as far as a Party is concerned, in accordance with a decision of that Party on the basis of the criteria in paragraph 9, and only if that Party adopts such a decision. The publication of that decision shall be deemed to constitute notice to the other Party of such temporary removal as far as the former Party is concerned.

11. If a subsidised insurer provides export credit insurance, any insurance for marketable risks shall be provided on a commercial basis. In such a case, the insurer shall not directly or indirectly benefit from subsidies for the provision of insurance for marketable risks.

¹ The marketable risk countries are the United Kingdom, the Member States of the Union, Australia, Canada, Iceland, Japan, New Zealand, Norway, Switzerland, and the United States of America.

Subsidies contingent upon the use of domestic content

12. Without prejudice to Articles 132 and 133, subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods or services shall be prohibited.

Large cross-border or international cooperation projects

13. Subsidies may be granted in the context of large cross-border or international cooperation projects, such as those for transport, energy, the environment, research and development, and first deployment projects to incentivise the emergence and deployment of new technologies (excluding manufacturing). The benefits of such cross-border or international cooperation projects must not be limited to the economic actors or to the sector or the States participating, but must have wider benefit and relevance through spillover effects that do not exclusively accrue to the State that grants the subsidy, the relevant sector and beneficiary.

Energy and environment

14. The Parties recognise the importance of a secure, affordable and sustainable energy system and environmental sustainability, notably in relation to the fight against climate change which represents an existential threat to humanity. Therefore, without prejudice to Article 366, subsidies in relation to energy and environment shall be aimed at, and incentivise the beneficiary in, delivering a secure, affordable and sustainable energy system and a well-functioning and competitive energy market or increasing the level of environmental protection compared to the level that would be achieved in absence of the subsidy. Such subsidies shall not relieve the beneficiary from liabilities arising from its responsibilities as a polluter under the law of the relevant Party.

Subsidies to air carriers for the operation of routes

15. Subsidies shall not be granted to an air carrier¹ for the operation of routes except:
- (a) where there is a public service obligation, in accordance with Article 365;
 - (b) in special cases where this funding provides benefits for society at large; or
 - (c) as start-up subsidies for opening new routes to regional airports provided that such subsidies increase the mobility of citizens and stimulate regional development.

¹ For greater certainty, this is without prejudice to Article 364(1) and (2).

ARTICLE 368

Use of subsidies

Each Party shall ensure that economic actors use subsidies only for the specific purpose for which they are granted.

ARTICLE 369

Transparency

1. With respect to any subsidy granted or maintained within its territory, each Party shall within six months from the granting of the subsidy make publicly available, on an official website or a public database, the following information:

- (a) the legal basis and policy objective or purpose of the subsidy;
- (b) the name of the recipient of the subsidy when available;
- (c) the date of the grant of the subsidy, the duration of the subsidy and any other time limits attached to the subsidy; and
- (d) the amount of the subsidy or the amount budgeted for the subsidy.

2. For subsidies in the form of tax measures, information shall be made public within one year from the date the tax declaration is due. The transparency obligations for subsidies in the form of tax measures concern the same information as listed in paragraph 1, except for the information required under point (d) of that paragraph, which may be provided as a range.
3. In addition to the obligation set out in paragraph 1, the Parties shall make subsidy information available in accordance with paragraph 4 or 5.
4. For the Union, compliance with paragraph 3 of this Article means that with respect to any subsidy granted or maintained within its territory, within six months from the grant of the subsidy, information is made publicly available, on an official website or a public database, that allows interested parties to assess compliance with the principles set out in Article 366.
5. For the United Kingdom, compliance with paragraph 3 means that the United Kingdom shall ensure that:
 - (a) if an interested party communicates to the granting authority that it may apply for a review by a court or tribunal of:
 - (i) the grant of a subsidy by a granting authority; or
 - (ii) any relevant decision by the granting authority or the independent body or authority;

- (b) then, within 28 days of the request being made in writing, the granting authority, independent body or authority shall provide that interested party with the information that allows the interested party to assess the application of the principles set out in Article 366, subject to any proportionate restrictions which pursue a legitimate objective, such as commercial sensitivity, confidentiality or legal privilege.

The information referred to in point (b) of the first subparagraph shall be provided to the interested party for the purposes of enabling it to make an informed decision as to whether to make a claim or to understand and properly identify the issues in dispute in the proposed claim.

6. For the purposes of this Article and Articles 372 and 373, "interested party" means any natural or legal person, economic actor or association of economic actors whose interest might be affected by the granting of a subsidy, in particular the beneficiary, economic actors competing with the beneficiary or relevant trade associations.

7. The obligations in this Article are without prejudice to the obligations of the Parties under their respective laws concerning the freedom of information or access to documents.

ARTICLE 370

Consultations on subsidy control

1. If a Party considers that a subsidy has been granted by the other Party or that there is clear evidence that the other Party intends to grant a subsidy and that the granting of the subsidy has or could have a negative effect on trade or investment between the Parties, it may request to the other Party to provide an explanation of how the principles set out in Article 366 have been respected with regard to that subsidy.
2. A Party may also request the information listed in Article 369(1) to the extent that the information has not already been made publicly available on an official website or a public database as referred to in Article 369(1), or to the extent that the information has not been made available in an easily and readily accessible manner.
3. The other Party shall provide the requested information in writing no later than 60 days of the receipt of the request. If any requested information cannot be provided, that Party shall explain the absence of such information in its written response.
4. If after receiving the information requested, the requesting Party still considers that the subsidy granted or intended to be granted by the other Party has or could have a negative effect on trade or investment between the Parties, the requesting Party may request consultations within the Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development. The request shall be in writing and shall include an explanation of the requesting Party's reasons for requesting the consultation.

5. The Trade Specialised Committee on Level Playing Field for Open and Fair Competition and Sustainable Development shall make every attempt to arrive at a mutually satisfactory resolution of the matter. It shall hold its first meeting within 30 days of the request for consultation.

6. The timeframes for the consultations referred to in paragraphs 3 and 5 may be extended by agreement between the Parties.

ARTICLE 371

Independent authority or body and cooperation

1. Each Party shall establish or maintain an operationally independent authority or body with an appropriate role in its subsidy control regime. That independent authority or body shall have the necessary guarantees of independence in exercising its operational functions and shall act impartially.

2. The Parties shall encourage their respective independent authorities or bodies to cooperate with each other on issues of common interest within their respective functions, including the application of Articles 363 to 369 as applicable, within the limits established by their respective legal frameworks. The Parties, or their respective independent authorities or bodies, may agree upon a separate framework regarding cooperation between those independent authorities.

ARTICLE 372

Courts and tribunals

1. Each Party shall ensure, in accordance with its general and constitutional laws and procedures, that its courts or tribunals are competent to:
 - (a) review subsidy decisions taken by a granting authority or, where relevant, the independent authority or body for compliance with that Party's law implementing Article 366;
 - (b) review any other relevant decisions of the independent authority or body and any relevant failure to act;
 - (c) impose remedies that are effective in relation to point (a) or (b), including the suspension, prohibition or requirement of action by the granting authority, the award of damages, and the recovery of a subsidy from its beneficiary, if and to the extent that those remedies are available under the respective laws on the date of entry into force of this Agreement;
 - (d) hear claims from interested parties in respect of subsidies that are subject to this Chapter where an interested party has standing to bring a claim in respect of a subsidy under that Party's law.

2. Each Party shall have the right to intervene with the permission, where required, of the court or tribunal concerned, in accordance with the general laws and procedures of the other Party in cases referred to in paragraph 1.

3. Without prejudice to the obligations to maintain or, where necessary, to create the competencies, remedies and rights of intervention referred to in paragraphs 1 and 2 of this Article, and Article 373, nothing in this Article requires either Party to create rights of action, remedies, procedures, or widen the scope or grounds of review of decisions of their respective public authorities, beyond those existing under its law on the date of entry into force of this Agreement.

4. Nothing in this Article requires either Party to widen the scope or grounds of review by its courts and tribunals of Acts of the United Kingdom Parliament, of acts of the European Parliament and the Council of the European Union, or of acts of the Council of the European Union beyond those existing under its law on the date of entry into force of this Agreement.¹

¹ For greater certainty, the law of the United Kingdom for the purposes of this Article does not include any law [i] having effect by virtue of section 2(1) of the European Communities Act 1972, as saved by section 1A of the European Union (Withdrawal) Act 2018, or [ii] passed or made under, or for a purpose specified in, section 2(2) of the European Communities Act 1972.

ARTICLE 373

Recovery

1. Each Party shall have in place an effective mechanism of recovery in respect of subsidies in accordance with the following provisions, without prejudice to other remedies that exist in that Party's law.¹

2. Each Party shall ensure that, provided that the interested party as defined in Article 369 has challenged a decision to grant a subsidy before a court or a tribunal within the specified time period, as defined in paragraph 3 of this Article, recovery may be ordered if a court or tribunal of a Party makes a finding of a material error of law, in that:
 - (a) a measure constituting a subsidy was not treated by the grantor as a subsidy;

 - (b) the grantor of a subsidy has failed to apply the principles set out in Article 366, as implemented in that Party's law, or applied them in a manner which falls below the standard of review applicable in that Party's law; or

¹ For the United Kingdom, this Article requires a new remedy of recovery which would be available at the end of a successful judicial review, in accordance with the standard of review under national law, commenced within the specified time period; such review is not expanded in any other way, in accordance with Article 372(3). No beneficiary would be able to raise a legitimate expectation to resist such recovery.

- (c) the grantor of a subsidy has, by deciding to grant that subsidy, acted outside the scope of its powers or misused those powers in relation to the principles set out in Article 366, as implemented in that Party's law.
3. For the purposes of this Article, the specified time period shall be determined as follows:
- (a) for the Union, it shall commence on the date on which information specified in Article 369(1), (2) and (4) was made available on the official website or public database and be no shorter than one month.
 - (b) for the United Kingdom:
 - (i) it shall commence on the date on which information specified in Article 369(1) and (2) was made available on the official website or public database;
 - (ii) it shall terminate one month later, unless, prior to that date, the interested party has requested information under the process specified in Article 369(5);
 - (iii) once the interested party has received the information identified in point (b) of Article 369(5) sufficient for the purposes identified in Article 369(5), there shall be a further one month period at the end of which the specified time period shall terminate;

- (iv) the date of receipt of the information in point (iii) will be the date on which the granting authority certifies that it has provided the information identified in point (b) of Article 369(5) sufficient for those purposes, irrespective of further or clarificatory correspondence after that date;
- (v) the time periods identified in points (i), (ii) and (iii) may be increased by legislation.

4. For the purposes of point (b) of paragraph 3 in relation to schemes, the specified time period commences when the information under point (b) of this paragraph is published, not when subsequent payments are made, where:

- (a) a subsidy is ostensibly granted in accordance with the terms of a scheme;
- (b) the maker of the scheme has made publicly available the information required to be published by Article 369(1) and (2) in respect of the scheme; and
- (c) the information provided about the scheme under point (b) of this paragraph contains information about the subsidy that would enable an interested party to determine whether it may be affected by the scheme, which at a minimum shall cover the purpose of the subsidy, the categories of beneficiary, the terms and conditions of eligibility for the subsidy and the basis for the calculation of the subsidy (including any relevant conditions relating to subsidy ratios or amounts).

5. For the purposes of this Article, recovery of a subsidy is not required where a subsidy is granted on the basis of an Act of the Parliament of the United Kingdom, of an act of the European Parliament and of the Council of the European Union or of an act of the Council of the European Union.

6. Nothing in this Article prevents a Party from choosing to provide additional situations where recovery is a remedy, beyond those specified in this Article, in accordance with its law.

7. The Parties recognise that recovery is an important remedial tool in any system of subsidy control. At the request of either Party, the Parties shall within the Partnership Council consider additional or alternative mechanisms for recovery, as well as corresponding amendments to this Article. Within the Partnership Council, either Party may propose amendments to allow for different arrangements for their respective mechanisms for recovery. A Party shall consider a proposal made by the other Party in good faith and agree to it, provided that that Party considers that it contains arrangements which represent at least as effective a means of securing recovery as the existing mechanisms of the other Party. The Partnership Council may then make corresponding amendments to this Article.¹

¹ The Parties note that the United Kingdom will implement a new system of subsidy control subsequent to the entry into force of this Agreement.

ARTICLE 374

Remedial measures

1. A Party may deliver to the other Party a written request for information and consultations regarding a subsidy that it considers causes, or there is a serious risk that it will cause, a significant negative effect on trade or investment between the Parties. The requesting Party should provide in that request all relevant information to enable the Parties to find a mutually acceptable solution, including a description of the subsidy and the concerns of the requesting Party regarding its effect on trade or investment.
2. No later than 30 days from the date of delivery of the request, the requested Party shall deliver a written response providing the requested information to the requesting Party, and the Parties shall enter into consultations, which shall be deemed concluded 60 days from the date of delivery of that request, unless the Parties agree otherwise. Such consultations, and in particular all information designated as confidential and positions taken by the Parties during consultations, shall be confidential and shall be without prejudice to the rights of either Party in any further proceedings.
3. No earlier than 60 days from the date of delivery of the request referred to in paragraph 1, the requesting Party may unilaterally take appropriate remedial measures if there is evidence that a subsidy of the requested Party causes, or there is a serious risk that it will cause, a significant negative effect on trade or investment between the Parties.

4. No earlier than 45 days from the date of delivery of the request referred to in paragraph 1, the requesting Party shall notify the requested Party of the remedial measures that it intends to take in accordance with paragraph 3. The requesting Party shall provide all relevant information in relation to the measures that it intends to take to enable the Parties to find a mutually acceptable solution. The requesting Party may not take those remedial measures earlier than 15 days from the date of delivery of the notification of those measures to the requested Party.

5. A Party's assessment of the existence of a serious risk of a significant negative effect shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances that would create a situation in which the subsidy would cause such a significant negative effect must be clearly predictable.

6. A Party's assessment of the existence of a subsidy or of a significant negative effect on trade or investment between the Parties caused by the subsidy shall be based on reliable evidence and not merely on conjecture or remote possibility, and shall relate to identifiable goods, service suppliers or other economic actors, including, if relevant, in the case of subsidy schemes.

7. The Partnership Council may maintain an illustrative list of what would amount to a significant negative effect on trade or investment between the Parties within the meaning of this Article. This shall be without prejudice to the right of the Parties to take remedial measures.

8. The remedial measures taken pursuant to paragraph 3 shall be restricted to what is strictly necessary and proportionate in order to remedy the significant negative effect caused or to address the serious risk of such an effect. Priority shall be given to measures that will least disturb the functioning of this Agreement.

9. Within five days from the date on which the remedial measures referred to in paragraph 3 enter into effect and without having prior recourse to consultations in accordance with Article 738, the notified Party may request, in accordance with Article 739(2), the establishment of an arbitration tribunal by means of a written request delivered to the requesting Party in order for the arbitration tribunal to decide whether:

- (a) a remedial measure taken by the requesting Party is inconsistent with paragraph 3 or 8;
- (b) the requesting Party did not participate in the consultations after the requested Party delivered the requested information and agreed to the holding of such consultations; or
- (c) there was a failure to take or notify a remedial measure in accordance with the time periods referred to in paragraph 3 or 4 respectively.

That request shall not have a suspensive effect on the remedial measures. Furthermore, the arbitration tribunal shall not assess the application by the Parties of Articles 366 and 367.

10. The arbitration tribunal established following the request referred to in paragraph 9 of this Article shall conduct its proceedings in accordance with Article 760 and deliver its final ruling within 30 days from its establishment.

11. In the case of a finding against the respondent Party, the respondent Party shall, at the latest 30 days from the date of delivery of the ruling of the arbitration tribunal, deliver a notification to the complaining Party of any measure that it has taken to comply with that ruling.

12. Following a finding against the respondent Party in the procedure referred to paragraph 10 of this Article, the complaining Party may request the arbitration tribunal, within 30 days from its ruling, to determine a level of suspension of obligations under this Agreement or a supplementing agreement not exceeding the level equivalent to the nullification or impairment caused by the application of the remedial measures, if it finds that the inconsistency of the remedial measures with paragraph 3 or 8 of this Article is significant. The request shall propose a level of suspension of obligations in accordance with the principles set out in Article 761. The complaining Party may suspend obligations under this Agreement or a supplementing agreement in accordance with the level of suspension of obligations determined by the arbitration tribunal. Such suspension shall not be applied sooner than 15 days following such ruling.

13. A Party shall not invoke the WTO Agreement or any other international agreement to preclude the other Party from taking measures pursuant to this Article, including where those measures consist in the suspension of obligations under this Agreement or under a supplementing agreement.

14. For the purposes of assessing whether imposing or maintaining remedial measures on imports of the same product is restricted to what is strictly necessary or proportionate for the purposes of this Article, a Party:

- (a) shall take into account countervailing measures applied or maintained pursuant to Article 32(3); and
- (b) may take into account anti-dumping measures applied or maintained pursuant to Article 32(3).

15. A Party shall not apply simultaneously a remedial measure under this Article and a rebalancing measure under Article 411 to remedy the impact on trade or investment caused directly by the same subsidy.

16. If the Party against which remedial measures were taken does not submit a request pursuant to paragraph 9 of this Article within the time period laid down in that paragraph, that Party may initiate the arbitration procedure referred to in Article 739 to challenge a remedial measure on the grounds set out in paragraph 9 of this Article without having prior recourse to consultations in accordance with Article 738. An arbitration tribunal shall treat the issue as a case of urgency for the purpose of Article 744.

17. For the purposes of the proceedings under paragraphs 9 and 16, in assessing whether a remedial measure is strictly necessary or proportionate, the arbitration tribunal shall pay due regard to the principles set out in paragraphs 5 and 6, as well as to paragraphs 13, 14 and 15.

ARTICLE 375

Dispute settlement

1. Subject to paragraphs 2 and 3 of this Article, Title I of Part Six applies to disputes between the Parties concerning the interpretation and application of this Chapter, except for Articles 371 and 372.

2. An arbitration tribunal shall have no jurisdiction regarding:
 - (a) an individual subsidy, including whether such a subsidy has respected the principles set out in Article 366(1), other than with regard to the conditions set out in Article 367(2), Article 367(3), (4) and (5), Article 367(8) to (11) and Article 367(12); and
 - (b) whether the recovery remedy within the meaning of Article 373 has been correctly applied in any individual case.
3. Title I of Part Six shall apply to Article 374 in accordance with that Article and Article 760.