



**Asia-Pacific  
Economic Cooperation**

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## **Trilateral Industrial Subsidy Discussions**

Submitted by: United States



**Free Trade Area of the Asia-Pacific Policy  
Dialogue on Competition Related Provisions  
from a Business Perspective  
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# TRILATERAL INDUSTRIAL SUBSIDY DISCUSSIONS

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APEC Policy Dialogue  
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# Trilateral Ministerial Statement

## January 2020

Six proposals to build on the existing Agreement on Subsidies and Countervailing Measures (ASCM):

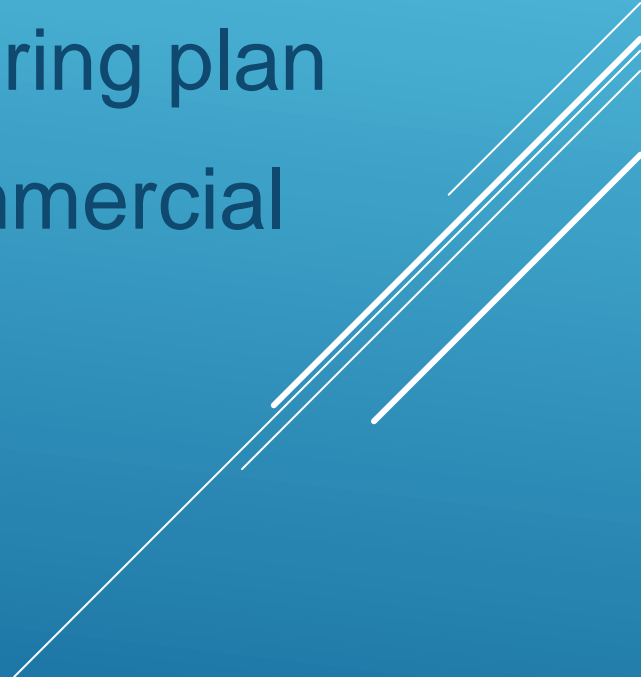
- **Prohibited Subsidies** (Article 3 of the ASCM)
- **Dark(er) Amber Subsidies** (Article 6)
- **Serious Prejudice** (Article 6.3)
- Notification (Article 25)
- External Benchmarks (Article 14)
- Public Body (Article 1)

# PROHIBITED SUBSIDIES IN THE ASCM

- Prohibited *per se*; no requirement to show that the subsidy caused adverse effects
  - Strictest subsidy rule, targeting the most trade-distorting subsidy types
  - But only two subsidy types currently prohibited:
    - ❖ Subsidies contingent upon export performance
    - ❖ Subsidies contingent upon local content
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# TRILATERAL STATEMENT

Expand the prohibited category to include (paragraph 1):

- Unlimited guarantees
  - Bailout subsidies, without a credible restructuring plan
  - Subsidies to companies unable to obtain commercial financing operating in sectors in overcapacity
  - Certain direct debt forgiveness
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- A decorative graphic consisting of several parallel white lines of varying lengths, slanted diagonally from the bottom right towards the top right, set against the blue background.

# DARK AMBER SUBSIDIES IN THE ASCM

- For certain harmful subsidy types, the subsidizing economy had to show that the subsidy did **not** cause adverse effects or "serious prejudice" (lapsed in 2000)
- "Serious Prejudice" is a type of harm that can be caused by a subsidy; Article 6.3 of the ASCM states there is serious prejudice when the effect of the subsidy has been to displace/impede imports/exports; price undercutting, suppression, depression or lost sales, etc.
- If serious prejudice is shown, the subsidy must be withdrawn or adverse effects removed

# DARK AMBER/“SERIOUS PREJUDICE” IN THE ASCM (continued)

- Subsidies in the dark amber category:
  - ❖ Subsidies over five percent of sales or over 15 percent of financing for start-ups
  - ❖ Subsidies to cover operating losses of an industry
  - ❖ Subsidies to cover operating losses of a company, except for one-time adjustment
  - ❖ Direct forgiveness of debt (govt debt; grants to cover debts)

# TRILATERAL STATEMENT

Bring back a dark(er) amber category (paragraph 2):

- “Large” subsidies (similar to five/15 percent rules)
- Subsidies that prop up uncompetitive firms preventing exit from market (*e.g.*, subsidies to cover operating losses of an industry)
- Subsidies creating massive manufacturing capacity, without significant private participation (new/darker)
- Dual pricing (*e.g.*, low domestic price, high export price) (new/darker)




# TRILATERAL STATEMENT

## Bring back a dark(er) amber category (cont'd):

- Like original dark amber, subsidizing economy must demonstrate that the subsidy did **not** cause adverse effects/serious prejudice
- Subsidizer must also show that there has been “effective transparency” with respect to the subsidy (new/“darker”)
- If that cannot be shown, subsidizing economy must withdraw the subsidy (current rules would allow the subsidizer the option of removing the adverse effects as well) (new/“darker”)

# SERIOUS PREJUDICE IN THE ASCM

- As discussed, “serious prejudice” is when the effect of a subsidy has been to displace/impede imports/exports; price undercutting, suppression, depression or lost sales, etc. (Article 6.3)
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# TRILATERAL STATEMENT

## Expand the concept of serious prejudice (paragraph 3):

- Serious prejudice should be expanded to include instances in which the effect of the subsidy is to distort capacity (e.g., the creation of new capacity that otherwise would not have been created).
- Serious prejudice should also explicitly include a “threat” of serious prejudice.
  - In the countervailing duty/antidumping context, there exists a “threat” of injury concept (e.g., injury or harm has not yet occurred but is imminent).

# TRILATERAL STATEMENT

## Remaining paragraphs (4, 5 and 6):

- *Notification* – counter-notification required; if no response subsidy is prohibited
- *External benchmark* – under what conditions can an investigating authority go outside the domestic market
- *Public body* – disagreement with the WTO Appellate Body; no need to show the entity “vested with governmental authority”.

QUESTIONS/COMMENTS?

