



Possible approaches for associating international standards and disciplines with the TOSSD statistical system

TOSSD Task Force Issues Paper¹
6-7 December 2017

I. INTRODUCTION

1. Over the past three years participants at various consultative events regarding the development of TOSSD have called for efforts to ensure that TOSSD flows meet the requirements of key international economic, environmental and social standards and disciplines. This is of particular concern given the prospect that, over time, more and more commercially driven private resources – not necessarily fully compliant with global standards – that are mobilised by official interventions are likely to materialise and be captured in TOSSD data. It is also true that, while the international system today is characterised by a large number of official financiers – both bilateral and multilateral – that have developed vetting and control systems designed to uphold key global norms, it is not certain that in the constantly evolving context of international development finance these norms will be actively applied to financing operations undertaken by new entrants. Accordingly, as the statistical features of TOSSD are being developed, it behoves the Task Force to consider whether and how global standards could be integrated in the TOSSD measurement framework.

2. At the heart of this inquiry lies the following question: what can be done in the statistical frame to promote and monitor alignment with existing international standards and disciplines? A large number of multilateral and bilateral institutions have developed very comprehensive and detailed sets of guidelines, principles and standards to govern their direct investment and portfolio operations. These safeguards aim at ensuring investments are sustainable, promote equal opportunities and rights, guard against negative environmental, social and climate impacts and risks, and – where unavoidable – limit damage through mitigation measures. They are particularly effective because they are implemented in a very operational context, when projects are being shaped and investment decisions are being taken. But it is not clear whether a global statistical reporting framework – dependent on data that may or may not be recorded in a multitude of widely divergent organisational systems – can include safeguards and monitor compliance, or whether it should focus exclusively on measuring and recording statistical data with no conditions or quality requirements attached.

3. This paper is designed to secure guidance from the Task Force as to whether the TOSSD framework should, and could, integrate global standards and disciplines in the reporting function. It proposes a number of possible approaches in this regard, including i) *a la carte* reporting on compliance with selected United Nations (UN) international standards in diverse areas (environment, labour rights, business and human rights, anti-corruption measures, indigenous peoples, etc.); ii) “piggy-backing” onto existing institutional standards aligned with international commitments that have been established by multilateral institutions whose shareholders are

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broadly representative of all recipient and provider countries; iii) adopting a lighter, more generic approach that aligns with the internationally accepted “do no harm” principle; and/or iv) integrating the development co-operation effectiveness principles for both South-South and North-South development co-operation as enshrined in the Addis Ababa Action Agenda. The present text is a preliminary paper, highlighting key issues, suggesting options and pointing the way to possible follow-on work and discussions by the Task Force.

4. The paper is organised in six sections. Following the introduction, the second section sets out the basic problematique – should the TOSSD statistical system uphold international standards, and if so, what standards, and how? The next two sections describe the nature of, and possible approaches for integrating, the two broad categories of international safeguards that currently exist: environmental and social standards (based on UN legally binding conventions and voluntary guidelines), and economic standards (based on WTO agreements). The fifth section sets out a number of statistical issues that will need to be clarified in the event that reporting in the TOSSD measurement system covers compliance with important international standards and guidelines, followed by a concluding section summarising possible next steps.

II. ASSESSING THE FEASIBILITY OF INCORPORATING STANDARDS AND GUIDELINES IN THE TOSSD SYSTEM

5. At a minimum, the TOSSD statistical system will provide project-level data that will make it possible to carry out analyses and follow up various quality issues. Associating it with international standards could allay concerns about the quality of TOSSD resources, in particular the risks and negative impacts that officially mobilised private resources might create. Integrating indicators and/or criteria regarding compliance with international standards in the reporting framework could also deepen the scope of analytical work. However, establishing such a system of indicators and/or criteria is not a straightforward proposition.

6. The point of departure for considering this issue is to look at the way official providers typically deal with standards – if they do. At what point are assessments about compliance with standards integrated in project design or approval? Do providers have mechanisms in place to ensure this type of quality assurance is done e.g. a screening process, risk assessment procedure, or evaluation function? And most importantly, is the information about project compliance integrated in institutional management information systems in such a way that it could be accessed and registered when reporting TOSSD flows? In other words, do providers have “boxes to tick” in their project databases that would make it possible for this information to be extracted and forwarded to a data centre? If this information is in a database it can be reported. If not, it cannot be reported (it is highly unlikely provider staff will be able to go through their TOSSD database *ex post* to clarify this).

7. At the same time, in constructing a global statistical system it is important to consider whether all providers would be in a position to readily comply with reporting requirements regarding standards. Traditional providers have been subject to standards and disciplines over a number of years with a more or less good track record in terms of compliance and making this information available in the public domain. Emerging providers, however, have not necessarily been involved in similar efforts to align their financing projects with international standards, and may be at different stages in the process of formalising such systems and making this information available

to broader publics. There could be capacity constraints and lag factors in their ability to report such information.

8. Further, there are political nuances and transaction costs to consider. It will be important to balance the scope for tracking compliance with international standards and disciplines in the TOSSD framework with system functionality, the political will among all potential reporting entities to provide this information, and the additional transactions costs that adjustments to existing management information systems might entail for TOSSD reporting.

9. An alternative approach could be to develop a text to be associated with, yet separate from, the TOSSD Reporting Instructions highlighting the importance attached to upholding and promoting international environmental, social and economic standards in TOSSD financing operations, confirming that all activities therein reported are in conformity with these standards, and committing to carrying out periodic, *ad hoc* and random assessments of projects in the TOSSD database to verify compliance with this objective.

Issues for discussion

Should the TOSSD statistical measurement system incorporate information regarding compliance with international standards and disciplines that have been endorsed by the international community? Or should it i) call for providers to ensure reported activities comply with prevailing international standards and ii) establish a mechanism for periodically monitoring this? Or would it be sufficient for the TOSSD system to recommend adherence to these standards and disciplines with no ambition to monitor them?

If this information is collected, what purposes will it serve? How will it be of use to recipient countries? To the UN monitoring process?

III. WHAT APPROACH SHOULD BE TAKEN REGARDING ENVIRONMENTAL AND SOCIAL (E&S) STANDARDS AND DISCIPLINES IN THE TOSSD MEASUREMENT FRAMEWORK?

10. In the event it is agreed that the TOSSD framework will need to incorporate reporting on compliance with international environmental and social standards, Task Force members will need to consider how best to accomplish this. This section spells out four possible approaches: developing a specific set of E&S standards based on UN agreements, aligning with safeguards/standards applied by leading multilateral institutions that govern both public and private resource flows, or associating TOSSD reporting with generic guidelines such as the “do no harm” principle or as set out in the Addis Ababa Action Agenda.

a) Ad hoc assimilation of existing UN disciplines and standards

11. The United Nations has established a broad range of standards and guidelines that have been developed and endorsed by the international community and that are at the core of global governance. One option would be to associate key UN conventions and guidelines with the TOSSD statistical framework, identifying and validating them on the basis of their relevance to SDG investments, the extent of “buy-in” in terms of ratification, and the scope for sourcing data in official management information systems. Annex I lists key UN standards and disciplines applicable to

TOSSD operations and provides a brief summary of their history and scope, their respective means of implementation and their ratification status vis-a-vis signatory States Parties. The following legally-binding instruments have been identified:

- the International Labour Organisation's (ILO) Core Labour Standards,
- the United Nations Framework Convention on Climate Change (UNFCCC),
- the Convention on Biological Diversity (CBD),
- the International Covenant on Civil and Political Rights (ICCPR),
- the International Covenant on Economic, Social and Cultural Rights (ICRSCR),
- the UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW), and
- the UN Convention Against Corruption (UNAC).

12. Annex I also describes a number of UN guidelines and recommendations which do not have the force of law and yet establish important internationally recognised norms and standards governing international public and private life and activities.

13. The key question is whether an *a la carte* approach, identifying specific standards and conventions to be associated with TOSSD reporting, is feasible and appropriate and, if so, what rationale could be developed justifying the choices made. Despite variance across nations in terms of the degree to which these international agreements have been ratified and/or are systematically reported on, they are universal and thus politically endorsed. Nevertheless, they are not specifically cited in existing bilateral and multilateral vetting and control arrangements and this may constitute an additional step in terms of reporting. Further, incorporating this feature in the TOSSD system could duplicate reporting and monitoring efforts of UN agencies who have developed these agreements, conventions and covenants. Finally, it would be necessary to develop a clear, logical approach for identifying which disciplines/standards would be integrated in the TOSSD framework.

b) Adopting standards that have been established by multilateral development institutions

14. Over the past fifty years the official development finance community has established a wide range of institution-specific environmental and social performance standards governing their operations. In particular, the multilateral and bilateral development finance institutions (DFIs) have adopted standards in conformity with many existing international agreements and regimes that apply to both the official and the private components of their project financing arrangements, generally through separate control and vetting systems.

15. Standards governing official financing from multilateral and traditional bilateral institutions are often based on the World Bank Group's standards and guidelines². For example, the French and German bilateral agencies require compliance with specific World Bank standards, and the Asian Development Bank (ADB), the CAF (Development Bank of Latin America), and the Asian

² The World Bank's Environmental and Social Safeguards, the IFC's Performance Standards and the World Bank Group's Environmental, Health and Safety (EHS), Guidelines.

Infrastructure Investment Bank (AIIB) do as well.³ Many traditional bilateral agencies, such as Europeaid, Japan, Sida and DANIDA, have adopted an operational approach, integrating E&S standards in their project screening procedures through environmental and social risk assessments based on agency guidelines.⁴ Although there are some important differences, traditional bilateral and multilateral systems generally have procedures for screening and categorising projects according to the level of E&S risks identified. They usually require Environmental Impact Assessments (EIA) for projects that may have significant adverse environmental and social impacts. They also generally call for consultation processes in the assessment process and require public disclosure of these assessments.

16. Many emerging providers are well-advanced in aligning with international E&S standards. For example, the Ministry of Commerce of the People’s Republic of China has issued guidelines⁵ which, although non-binding, require Chinese companies engaged in overseas investment and co-operation to conduct EIAs, comply with the laws of host countries, respect local customs and protect labour rights. It also “encourages enterprises to research and learn from the principles, standards and practices with respect to environmental protection that are adopted by international organizations and multilateral financial institutions”. The India Infrastructure Finance Company Limited (IIFCL)⁶ has developed an Environmental and Social Safeguards Framework (ESSF), which has significant commonalities with the E&S standards of official financial institutions such as the World Bank, Asian Development Bank, the German KfW development bank, and the Japan Bank for International Co-operation.⁷ The Brazilian Development Bank (BNDES), which finances development projects in Brazil and supports investments made by Brazilian companies abroad, has developed a socio-environmental policy⁸ which includes a requirement to screen projects and perform environmental and social risk assessments.

17. Multilateral development banks (MDBs) play a special role in advancing the uptake of safeguard policies given their leadership role, their long experience with development challenges and their public accountability obligations.⁹ Moreover, because the vast majority of provider and recipient countries are shareholders in these institutions, the nature and scope of their safeguards are widely shared. MDBs tend to address the same key policy areas: Table 1 shows the environmental and social safeguard areas covered by the main multilateral development institutions.

³ These standards are commonly assessed and monitored at three levels: *ex ante* environmental and social risk assessments, monitoring and reporting activities, and evaluations.

⁴ Europeaid relies on its “Guidelines on the Integration of Environment and Climate Change in Development Cooperation”. In Japan, each agency (including JICA and JBIC) establishes its own guideline taking into account international agreements, principles and guidelines. Based on their respective guideline, each agency carries out ex-ante evaluations of the contents, relevance and prospects of projects, as well as implementation monitoring and ex-post evaluations. Sida provides a Green Tool Box, a Gender Tool Box and comprehensive guidance on a “Human Rights Based Approach” in various thematic areas. DANIDA has developed the “Strategic Framework for Natural Resources, Energy and Climate Change”.

⁵ <http://english.mofcom.gov.cn/article/policyrelease/bbb/201303/20130300043226.shtml>

⁶ The IIFCL is engaged in providing long-term financial assistance to commercially viable infrastructure projects including priority PPP projects in India in designated sectors.

⁷ Environmental and Social Safeguards Framework, The India Infrastructure Finance Company Limited, p. 5.

⁸ https://www.bndes.gov.br/SiteBNDES/bndes/bndes_en/Institucional/Social_and_Environmental_Responsibility/socioenvironmental_poli_cv/

⁹ Civil society networks have played a key role in promoting and shaping the development of MDB safeguard systems, including the Bank Information Centre (BIC) for the World Bank and other MDBs, the NGO Forum on ADB, the EBRD-CEE Bankwatch Network, and ECA Watch (an international CSO campaign monitoring export credit agencies).

Table 1. E&S safeguard areas integrated in multilateral institutions' operations

Safeguard areas covered	WB	IFC	ADB	AFDB	EBRD	IDB	IIC	AIIB	UNDP
Environmental and social risk assessment	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Biodiversity/Natural habitat	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Climate change mitigation	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Rights of indigenous people	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Involuntary resettlement	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Labour, health and safety	Yes	Yes	Yes	Yes	Yes	No	Yes	Yes	Yes
Cultural heritage	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Transparency	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Consultation requirements	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Grievance procedure	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes	Yes

18. The leading reference for performance standards for officially mobilised private sector finance is the International Finance Corporation's (IFC) Environmental and Social Performance Standards (PS), which were adopted in 2006 and updated in 2012. Most MDBs, including the Inter-American Development Bank (IADB), the European Bank for Reconstruction and Development (EBRD), and the Asian Development Bank (ADB), have updated their systems following the lead of the IFC. The Inter-American Investment Corporation¹⁰ (IIC) and the Asian Infrastructure Investment Bank (AIIB) require direct compliance with some of the IFC's PS, and Japan as well as the 15 bilateral DFIs who are members of the Association of European Development Finance Institutions (EDFI) use IFC's PS as a benchmark. Moreover, the Equator Principles (EPs), which have been adopted by a number of private banks and are considered the private sector "gold standard" for promoting environmental and social sustainability, derive directly from the IFC's PS. The Equator Principles play a powerful role in promoting compliance with international E&S standards: according to the EP Association, the 91 financial institutions adhering to the EPs are responsible for 70% of the current international project finance debt in emerging countries.¹¹

19. The IFC's Environmental and Social PS "provide guidance on how to identify risks and impacts, and are designed to help avoid, mitigate, and manage risks and impacts as a way of doing business in a sustainable way, including stakeholder engagement and disclosure obligations of the client in relation to project-level activities." Together, the eight Performance Standards (detailed below and more comprehensively described in Annex II) "establish standards that the client¹² is to meet throughout the life of an investment by IFC".¹³

- PS 1: Assessment and Management of Environmental and Social Risks and Impacts
- PS 2: Labour and Working Conditions
- PS 3: Resource Efficiency and Pollution Prevention

¹⁰ IIC is the private sector investment arm of the Inter-American Development Bank Group.

¹¹ See <http://www.equator-principles.com/index.php/about-ep/about-ep>.

¹² The term "client" is used throughout the IFC's PS broadly to refer to the party responsible for implementing and operating the project that is being financed, or the recipient of the financing, depending on the project structure and type of financing. The term "project" is defined in Performance Standard 1.

¹³ "IFC Performance Standards on Environmental and Social Sustainability", 2012, p 2.

- PS 4: Community Health, Safety, and Security
- PS 5: Land Acquisition and Involuntary Resettlement
- PS 6: Biodiversity Conservation and Sustainable Management of Living Natural Resources
- PS 7: Indigenous Peoples
- PS 8: Cultural Heritage

20. Both the World Bank's and the IFC's E&S standards frameworks may be useful references for the TOSSD statistical system, particularly given that their shareholders – who cover the full spectrum of recipient countries and provider countries – have implicitly endorsed these frameworks. Nevertheless, there are some downsides that would need to be assessed in adapting them, in particular:

- MBD financing is focused on infrastructure and productive capacity where the link to E&S standards is clearly needed – but E&S standards may be less pertinent to other forms of co-operation that will be captured in the TOSSD framework, including South-South knowledge transfer.
- Compliance with E&S guidelines can be readily integrated in large financial packages but could be a burden for smaller operations. Moreover, the costs of compliance with the broad sweep of the IFC's PS guidelines may deter private financiers from engaging in co-financing or blended finance operations.
- Reporting on standards should not create disincentives for providing TOSSD data.

c) "Do no harm"

21. Safeguards are generally associated, either in the form of a direct commitment or as an underlying premise, with the "do no harm" principle. This principle, which is taken from medical ethics, aims at minimising the negative impact of development activities. The concept has been associated with development co-operation provided in fragile and conflictual contexts, where both the intended and unintended consequences of interventions need to be assessed in order to ensure "no harm" to statebuilding efforts. It also relates to general guidance governing the operations of many development assistance agencies vis-à-vis environmental and social risks that could be caused by an investment. For example, in its "Policy on Environmental and Social Sustainability", the IFC states that "central to IFC's development mission are its efforts to carry out investment and advisory activities with the intent to "do no harm" to people and the environment". The first principle set out in the safeguards and risk management framework of the Australian Department of Foreign Affairs and Trade (DFAT) is the "do no harm" principle. Safeguards usually also associate the concept of mitigation with the "do no harm" principle, which permits the occurrence, to a certain extent, of adverse impacts, provided that they cannot be avoided and are mitigated.¹⁴

22. The "do no harm" approach is often viewed as a minimum obligatory requirement as opposed to the "do good" approach, which implies a more active role towards environmental and

¹⁴ For example the World Bank's Environmental and Social Safeguards Policy states "The objective of these policies is to prevent and mitigate undue harm to people and their environment in the development process."

social issues. For example, the new World Bank Environmental and Social Framework states that “...the Bank’s vision goes beyond ‘do no harm’ to maximizing development gains”.

23. At a minimum, the “do no harm” principle could be a basic eligibility criterion for the TOSSD system. This could be described in the introduction to the Reporting Instructions, where a summary of the context, objectives and aims of TOSSD would be set out. Integrating the “do no harm” principle in the TOSSD framework, in combination with provisions for a grievance mechanism to enable stakeholders to report alleged breaches or abuses, could be an acceptable lower threshold standard for TOSSD.

d) Adopting development co-operation effectiveness standards

24. The Addis Ababa Action Agenda (AAAA), which sets out the financing strategy for securing resources needed to achieve the SDGs, contains clear references to the quality of development co-operation. Although there are no indications of explicit standards associated in the AAAA document, there are references to other international guidance documents and forums. The following AAAA excerpt refers to South-South co-operation:

“57. We encourage developing countries to voluntarily step up their efforts to strengthen South-South cooperation, and to further improve its development effectiveness in accordance with the provisions of the Nairobi outcome document of the High-level United Nations Conference on South-South Cooperation.”

25. The excerpt relating to all development co-operation, with clear linkages to North-South development co-operation and in particular the Busan and Paris Declarations, is as follows:

“58. We welcome continued efforts to improve the quality, impact and effectiveness of development cooperation and other international efforts in public finance, including adherence to agreed development cooperation effectiveness principles. We will align activities with national priorities, including by reducing fragmentation, accelerating the untying of aid, particularly for least developed countries and countries most in need. We will promote country ownership and results orientation and strengthen country systems, use programme-based approaches where appropriate, strengthen partnerships for development, reduce transaction costs, and increase transparency and mutual accountability. We will make development more effective and predictable by providing developing countries with regular and timely indicative information on planned support in the medium term. We will pursue these efforts in the Development Cooperation Forum of the Economic and Social Council and in this regard we also take account of efforts in other relevant forums, such as the Global Partnership for Effective Development Cooperation, in a complementary manner.”

26. Many in the international community have called for the application of sustainable development principles to all projects where official and private finance are used together, while continuing to apply effectiveness principles to the official portion. These concerns have been voiced by civil society in the course of several TOSSD consultation processes and events.

27. It is difficult to see how the TOSSD reporting system could address this need, not least given the complexity of identifying relevant indicators to be monitored and the challenge of securing relevant information in providers’ databases. As it stands, the South-South community have a long

history of monitoring and updating the principles and commitments they've established. And the development effectiveness principles¹⁵ endorsed by a wide range of countries and organisations in the 2011 Busan Partnership agreement¹⁶ are periodically monitored through a comprehensive evidence-based tracking system¹⁷ underpinned by developing country-level reports. Integrating development co-operation effectiveness standards in the TOSSD monitoring framework risks duplicating existing processes in the international system.

Issues for discussion

Which approach from among the four set out above is most promising for adapting to/integrating in the TOSSD statistical measurement framework? What kind of additional considerations need to be explored? What analytical, policy or consultative work is needed to advance the Task Force's work in this area?

Should the approach cover all TOSSD operations, or should mobilised finance be dealt with in a "separate", specific way in the statistical framework?

IV. WHAT APPROACH SHOULD BE TAKEN REGARDING ECONOMIC STANDARDS AND DISCIPLINES IN THE TOSSD MEASUREMENT FRAMEWORK?

World Trade Organisation (WTO) Agreement on Subsidies and Countervailing Measures

28. Concerns were raised during numerous TOSSD consultative events over the past three years about possible economic distortions that could be created and/or encouraged by TOSSD-eligible operations involving the private sector, in particular through financial support such as export subsidies, concessional local currency loans, tax holidays, etc. Accordingly, the Secretariat has surveyed the performance standards established by numerous official development co-operation actors to assess whether economic standards targeting these practices exist.

29. In contrast to the widespread adoption of E&S standards among bilateral and multilateral institutions, very few explicit economic safeguards have been established¹⁸. This is because the international community has established through the WTO a regulatory regime to counter payments or arrangements that distort markets and confer benefits to specific economic actors. The main features of the key WTO instrument – the Agreement on Subsidies and Countervailing Measures (SCM Agreement) -- are detailed below and described in further detail in Annex III:

¹⁵ The Busan principles call for i) ownership of development priorities by developing countries, ii) a focus on results, iii) the centrality of broad-based partnerships for development and iv) transparency and shared responsibility for development co-operation.

¹⁶ More than 160 countries and territories and more than 60 international organisations have formally endorsed the Busan Partnership for Effective Development Co-operation Declaration.

¹⁷ The most recent monitoring report (2016) was led by 81 low and middle-income countries and involved the participation of 125 countries, 74 development organisations and hundreds of civil society organisations, private sector representatives, trade unions, foundations and parliamentarians.

¹⁸ The OECD Arrangement on Officially Supported Export Credits has been established to regulate officially supported export credit. The Arrangement places limitations on the terms and conditions of export credits that benefit from official support. With respect to Official Development Assistance (ODA), the OECD has developed rules to regulate the use of tied aid through the Arrangement on Officially Supported Export Credits and the DAC Recommendation on Untying Official Development Assistance to the Least Developed Countries and Heavily Indebted Poor Countries.

- The SCM Agreement disciplines the use of subsidies and regulates the actions countries can take to counter the effects of subsidies (either multilaterally through the WTO’s dispute settlement procedure or unilaterally through charging extra duties).
- Subsidies are defined as financial contributions (direct transfers)¹⁹, the provision of goods and services other than general infrastructure, or foregone or uncollected government revenue such as tax credits or duty exemptions, provided by a government or public body directly or indirectly; or any form of income or price support in the sense of Article XVI of GATT 1994 that confers a benefit to the recipient leading to an advantage.²⁰
- The SCM Agreement does not make reference to “nationality”: instead, the reference is to “territoriality”. Therefore, subsidies provided by either a provider government to a national company or a recipient government to a foreign investor are covered by the SCM so long as the subsidisation takes place within the territory of a WTO member. Currently 21 developing countries are not covered by the SCM e.g. they are negotiating WTO membership.
- The SCM Agreement defines two categories of subsidies: prohibited and actionable. Prohibited subsidies are those which are contingent upon export performance and those contingent upon the use of domestic over imported goods. Actionable subsidies are those which cause adverse effects to the interests of other WTO Members.²¹
- There are two exemptions to the prohibition of export subsidies: (i) UN-designated LDC Members and developing Members with a GNP per capita of less than \$1,000 are exempted from the prohibition on prohibited export subsidies; and (ii) export credit practices that are in accordance with the OECD Arrangement on Guidelines for Officially Supported Export Credits.

The WTO government procurement arrangement

30. Non-discrimination and transparency are two fundamental principles that support fair competition. In the area of government procurement this is accomplished by ensuring that all potential parties to a transaction have access to the same information and are eligible to compete. These principles are enshrined in the WTO’s Agreement on Government Procurement (GPA), and are increasingly shared across sovereign states today in the context of progressive harmonisation of government procurement rules. To date, the GPA counts nineteen parties covering forty seven WTO members²². Ten other WTO members, including Albania, Australia, China, Georgia, Jordan, Kyrgyz Republic, Oman, Russian Federation, Tajikistan and the former Yugoslav Republic of Macedonia, are in the process of acceding. Moreover, the GPA serves as a reference for development banks such as the World Bank and the EBRD.

31. Given the broad international acceptance, legal standing and established track record of the WTO trade regime – which is applicable to official support provided by both sending and receiving countries – it would not seem necessary for the TOSSD framework to establish additional safeguards regarding economic standards. However, there might be scope for the Task Force to give further

¹⁹ Including potential direct transfer of funds or liabilities such as loan guarantees.

²⁰ See the WTO Agreement on Subsidies and Countervailing Measures, Article 1.

²¹ See the WTO Agreement on Subsidies and Countervailing Measures, Article 3 and 5, respectively.

²² The 28 European Union member states are all represented as one party by the European Union.

consideration at its next meeting to including a proviso on the importance of non-discrimination and transparency in public procurement in the introduction to the TOSSD Reporting Instructions.

Issues for discussion

Do Task Force members have any views on the implications of WTO rules for TOSSD operations?

Are there any additional widely acknowledged or accepted economic standards in the international arena that should be considered in shaping the TOSSD statistical framework?

Should further work be carried out by the Secretariat to assess the relevance of the GPA to the TOSSD statistical system and whether/how the principles of non-discrimination and transparency could be taken up in that regard?

V. SHAPING THE STATISTICAL FEATURES OF TOSSD TO FACILITATE TRACKING AND MONITORING COMPLIANCE WITH INTERNATIONAL STANDARDS AND DISCIPLINES

32. In the event the TOSSD framework will integrate information on compliance with international standards and disciplines, a number of reporting issues will need to be considered, including:

- While official development finance can be provided for a mix of purposes (e.g. developmental, commercial, political and/or cultural), the main objective of private financiers is commercial gain. Should the application of standards and disciplines in the TOSSD system apply to the full financing package (e.g. both the official and the mobilised private resources)? Or should it only focus on private resources mobilised through official interventions?
- Should TOSSD standards and disciplines reporting apply to all projects regardless of their size? E&S safeguards are of particular importance for infrastructure projects with large environmental footprints and potential community resettlement activities, while the costs of compliance with standards are disproportionately high for small enterprises. Would it be more useful and appropriate in terms of monitoring to set a minimum threshold for projects that would be assessed against the safeguard system and/or to focus on TOSSD operations in specific sectors e.g. energy, water, transportation?
- What would be included in the TOSSD Reporting Instructions to guide the statisticians who will be interpreting data e.g. eligibility criteria, questions to reporters, etc.?
- What would be the mechanism for ensuring that TOSSD reporting on standards and disciplines conforms to the spirit and letter of the Reporting Instructions? Spot checks of reporting on an *ad hoc*, random basis? A periodic, structured cross-country survey to verify reporting?

Issues for discussion

Do Task Force members have any views on the questions posed above?

VI. NEXT STEPS

33. Based on the outcome of discussions regarding i) the advisability and feasibility of incorporating standards in the TOSSD statistical framework, ii) possible options for doing so, and iii) relevant statistical issues to be clarified, the Secretariat will propose options regarding how future work on international standards could be conducted and possible issues to be considered at the Task Force's next meeting in January 2018.

ANNEX I

LEADING INTERNATIONAL STANDARDS AND GUIDELINES

A. LEGALLY-BINDING INSTRUMENTS

International Labour Organisation (ILO) Core Labour Standards

Basic objectives and scope

1. The **Declaration on Fundamental Principles and Rights at Work** was adopted by the International Labour Conference on 18 June 1998. It sets out four principles and rights which have been codified in eight fundamental Conventions:

- Freedom of association and the effective recognition of the right to collective bargaining
 - Freedom of Association and Protection of the Right to Organise Convention, 1948
 - Right to Organise and Collective Bargaining Convention, 1949
- Elimination all forms of forced or compulsory labour
 - Forced Labour Convention, 1930
 - Abolition of Forced Labour Convention, 1957
- Abolition of child labour
 - Minimum Age Convention, 1973
 - Worst Forms of Child Labour Convention, 1999
- Elimination of discrimination in respect of employment and occupation.
 - Equal Remuneration Convention, 1951
 - Discrimination (Employment and Occupation) Convention, 1958

2. The Declaration states that Member States have an obligation arising from the very fact of their membership in the ILO to promote and to realise these principles, whether or not they have ratified the corresponding conventions.

Implementation

3. The Declaration provides for follow-up and reporting procedures. In particular, Member States who have not ratified one or more of the core Conventions are requested each year to report on the status of the relevant rights and principles within their borders, identifying areas where assistance may be required.

Ratification status

4. Notwithstanding the language of the Declaration cited above, the eight fundamental Conventions remain non-legally binding until ratified. At the present time, the Freedom of Association and Protection of the Right to Organise Convention has not been ratified by 33 ILO members, the Right to Organise and Collective Bargaining Convention has not been ratified by 22 members and the Minimum Age Convention has not been ratified by 17 members.

United Nations Framework Convention on Climate Change (UNFCCC)

Basic objectives and scope

5. The United Nations Framework Convention on Climate Change (UNFCCC) is an international treaty that was adopted in 1992 with the aim of providing a framework for international cooperation to address climate change by limiting average global temperature increases.

6. The most recent key step achieved by the Parties to the UNFCCC is the 2015 Paris Agreement, which entered into force on 4 November 2016. The Paris Agreement's central aim is "to strengthen the global response to the threat of climate change by keeping a global temperature rise this century well below 2 degrees Celsius above pre-industrial levels and to pursue efforts to limit the temperature increase even further to 1.5 degrees Celsius."

Implementation

7. The Paris Agreement requires all Parties to establish "nationally determined contributions" (NDCs) which are communicated to the Secretariat and maintained in a public registry. The requirements include also regular reports by the Parties on their emissions and on their implementation efforts.

8. In terms of technical assessments and methodologies, the UN climate regime relies on the Intergovernmental Panel on Climate Change (IPCC). The IFC requires that quantification of greenhouse gas emissions are conducted by the client in accordance with estimation methodologies provided by the IPCC.

Ratification status

9. All countries except the Syrian Arab Republic and Nicaragua have signed the Agreement. To date, among the 197 Parties to the Convention, 169 Parties have ratified the Paris Agreement.

The Convention on Biological Diversity (CBD)

Basic objectives and scope

10. The Convention on Biological Diversity (CBD) was adopted on 5 June 1992 at the Rio Earth Summit and entered into force on 29 December 1993. It has three main objectives: the conservation of biological diversity, the sustainable use of its components and the fair and equitable sharing of the benefits arising out of the utilisation of genetic resources.

Implementation

11. The Convention has several implementing mechanisms. The main one is the requirement for countries to prepare National Biodiversity Strategies and Action Plans (NBSAPs) and to ensure their implementation. To date, 189 of 196 Parties have developed NDSAPs. Article 26 of the Convention provides for a system of national reporting to assess the implementation of the Convention, in particular through the measures identified in the NBSAPs. National reports are made publicly available.

12. Each country that is a Party to the CBD has to establish a National Focal Point (NFP) for the Convention on Biological Diversity to represent the Party and undertake activities such as communications, dissemination of information, responding to various request, collaboration with other stakeholder groups, monitoring, and promoting and/or facilitating national implementation of the Convention.

Ratification status

13. The Convention has 196 Parties. All UN member states, with the exception of the United States, have ratified the treaty²³. Non-UN member states that have ratified the treaty include the Cook Islands, Niue and the West Bank and Gaza Strip.

The International Covenant on Civil and Political Rights (ICCPR) and the International Covenant on Economic, Social and Cultural Rights (ICESCR)

14. The Universal Declaration of Human Rights (a non-legally binding document) has given rise to two legally binding treaties covering the rights enshrined in the Declaration.

The International Covenant on Civil and Political Rights (ICCPR)

Basic objectives and scope

15. The ICCPR was adopted by the United Nations General Assembly on 16 December 1966 and entered into force on 23 March 1976. The ICCPR provides the legal framework to protect and preserve the most basic civil and political rights, including the right to life, freedom from slavery and the right to equality.

Implementation

16. The Human Rights Committee (HRC) is the independent expert body appointed to oversee states Parties' implementation of the ICCPR and its Optional Protocols. All States Parties are obliged to submit regular reports to the Committee on how the rights are being implemented. Civil Society Organisations are also invited to present, in the form of parallel reports, alternative evidence, views and findings and/or raise issues that are not covered by the State Party report.

The International Covenant on Economic, Social and Cultural Rights (ICESCR)

Basic objectives and scope

17. The ICESCR was adopted by the United Nations General Assembly on 16 December 1966, and entered into force on 3 January 1976. It includes rights related to education, labour, health, standards of living and culture (including language and religion).

Implementation

18. Similar to the ICCPR, the ICESCR also requires States Parties to submit reports on their implementation of the Covenant. The Committee on Economic, Social and Cultural Rights (CESCR) is in charge of monitoring the implementation of the ICESCR.

²³ The United States has signed but not ratified the treaty.

Ratification status of the ICCPR and the ICESR

19. Twenty-two countries have not signed the ICCPR, and a further six countries who have signed the Covenant have not yet ratified it. Twenty-four countries have not signed the ICESR, and four have not ratified it.

UN Convention on the Elimination of all Forms of Discrimination against Women (CEDAW)

Basic objectives and scope

20. The Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) was adopted in 1979 by the UN General Assembly and entered into force on 3 September 1981. By accepting the Convention, States commit themselves to undertake a series of measures to end discrimination against women in all forms, including:

- to incorporate the principle of equality of men and women in their legal system, abolish all discriminatory laws and adopt appropriate ones prohibiting discrimination against women;
- to establish tribunals and other public institutions to ensure the effective protection of women against discrimination; and
- to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

Implementation

21. Countries that have ratified the Convention are committed to submit national reports, at least every four years, on measures they have taken to comply with their treaty obligations. These reports are reviewed by The Committee on the Elimination of Discrimination against Women.

Ratification status

22. Six UN countries, including Iran, the Holy See, Niue, Somalia, Sudan and Tonga have not signed the Convention. Two countries, including Palau and the United States, have signed but not ratified it.

The UN Convention against Corruption (UNAC)

Basic objectives and scope

23. The United Nations Convention against Corruption (UNAC) was adopted 31 October 2003 and entered into force on 14 December 2005. It is the only legally binding universal anti-corruption instrument. The vast majority of United Nations Member States are Parties to the Convention.

24. While some of the provisions of UNAC are mandatory, others are optional. Acts that States are required to criminalise are bribery, embezzlement of public funds, obstruction of justice and the concealment, conversion or transfer of criminal proceeds. The provisions also include preventive measures such as transparent procurement and sound financial management, effective access to public information and measures to prevent money laundering. Finally, one of the fundamental and

innovative principles of the Convention is the right to recovery of stolen public assets (asset recovery).

Implementation

25. The actual implementation of the Convention into domestic law by States Parties is evaluated through a peer-review process, the Implementation Review Mechanism (IRM). The Mechanism provides the Conference of the States Parties with information on measures taken by States Parties in implementing the Convention and the difficulties encountered by them in doing so, and helps States Parties to identify areas where assistance may be required.

Ratification status

26. Countries that have not ratified the Convention include Andorra, Barbados, Chad, Equatorial Guinea, Eritrea, Monaco, Democratic People's Republic of Korea, Saint Kitts and Nevis, Saint Vincent and the Grenadines, Samoa, San Marino, Somalia, Suriname, Syrian Arab Republic, and Tonga.

B. VOLUNTARY INSTRUMENTS

UN Declaration on the Rights of Indigenous People (UNDRIP)

27. The United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) was adopted by the General Assembly on 13 September 2007. As a UNGA declaration, it is not subject to ratification and does not have legally binding status. The Declaration establishes a universal framework of minimum standards for the survival, dignity and well-being of the indigenous peoples of the world and it elaborates on existing human rights standards and fundamental freedoms as they apply to the specific situation of indigenous peoples.

UN Guiding Principles on Business and Human Rights (UNGPs)

28. The UNGPs are global standards unanimously adopted by the United Nations Human Rights Council in 2011 and endorsed by businesses worldwide. They provide the internationally-accepted framework for enhancing standards and practices with regard to business and human rights. They include 31 principles addressing three main issues: i) the state's duty to protect human rights; ii) the corporate responsibility to respect human rights; and iii) access to remedy.

29. There are no implementation or reporting requirements associated with the UNGPs. However several tools and guidance exist. In particular, the UNGP Reporting Framework, which was developed by Shift²⁴ and the firm Mazars, comprises a series of questions designed to help companies report on how they respect human rights. The Global Reporting Initiative (GRI) has also developed a guide to corporate human rights reporting.

30. Several initiatives have taken place to align with UNGPs. The OECD Guidelines on Multinational Enterprises and the IFC Performance Standards have been updated to align with the UNGPs. The Organisation of American States has recognised the UNGPs through several resolutions and encouraged Member States and businesses to apply them. The UNGPs have also been

²⁴ Shift is the leading centre of expertise of the UNGPs.

incorporated in the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security.

UN Principles for Responsible Investment (UNPRI)

31. They include six voluntary principles that have been developed by institutional investors and endorsed by the UN in 2005. They commit investors who have signed on to the principles to take various steps regarding environmental, social and governance (ESG) issues. There are now 1837 signatories²⁵ from 48 countries. The six principles are:

- Principle 1: We will incorporate ESG issues into investment analysis and decision-making processes.
- Principle 2: We will be active owners and incorporate ESG issues into our ownership policies and practices.
- Principle 3: We will seek appropriate disclosure on ESG issues by the entities in which we invest.
- Principle 4: We will promote acceptance and implementation of the principles within the investment industry.
- Principle 5: We will work together to enhance our effectiveness in implementing the principles.
- Principle 6: We will report on our activities and progress towards implementing the principles.

32. All asset owner and investment manager signatories are required to report to the Reporting Framework through the PRI Reporting Tool, otherwise they are delisted. Their activities are analysed in three different reports:

- Report on Progress: analysis of the progress and activities of the signatory base as a whole;
- Transparency Report: a public record of their reporting, which allows companies to demonstrate to the public how they incorporate ESG issues;
- Assessment Report: a confidential evaluation measuring their year-on-year progress and comparing them to their peers. It is up to individual signatories to share their report or keep it in-house.

Equator Principles

33. The Equator Principles initiative was launched in 2003 by the leading banks of the day, including Barclays, Citibank and ABN Amro. The Principles draw on the environmental and social safeguard policies of the World Bank and the International Finance Corporation (IFC) as their foundation. Equator Principles apply to all projects which financial institutions may engage in with financing of over USD \$10 million. Financial institutions that have adopted them have to report annually on their activities and the implementation of the Principles.

²⁵ Signatories of the UN Principles for Responsible Investment include asset owners, investment managers and service providers.

34. There are currently 91 Equator Principles Financial Institutions (EPFIs) in 37 countries (including South-South providers such as China and India) who have officially adopted the Equator Principles. These institutions account for over 70 percent of international project finance debt in emerging markets, with a significant focus on private co-financing that has been provided to middle-income countries. They are seen as embodying the market standard in terms of environmental and social safeguards.

FAO Voluntary Guidelines on the Governance of Tenure (of Land, Fisheries and Forests in the Context of National Food Security)

35. The Guidelines promote responsible governance of the tenure of land, fisheries and forests, with respect to all forms of tenure – public, private, communal, indigenous, customary, and informal. Their overarching goals are to achieve food security for all and support the progressive realisation of the right to adequate food in the context of national food security. While supporting efforts towards the eradication of hunger and poverty, the Guidelines are also intended to contribute to achieving sustainable livelihoods, social stability, housing security, rural development, environmental protection, and sustainable social and economic development.

36. The Guidelines serve as a reference and set out principles and internationally accepted standards for practices for the responsible governance of tenure. They provide a framework that States can use when developing their own strategies, policies, legislation, programmes and activities. They allow governments, civil society, the private sector and citizens to judge whether their proposed actions and the actions of others constitute acceptable practices.

ANNEX II

WORLD BANK GROUP ENVIRONMENTAL AND SOCIAL SAFEGUARD SYSTEMS

A. IFC'S ENVIRONMENTAL AND SOCIAL PERFORMANCE STANDARDS²⁶

1. The IFC issued in 2006 its own institutional safeguards policy framework, the Sustainability Framework, following many years of adherence to World Bank safeguards.²⁷ The Sustainability Framework, which includes eight Performance Standards and was updated in 2012, draws on World Bank standards and policies²⁸ and includes additional performance standards that address labour and working conditions, pollution prevention and abatement, and community health, safety, and security.

2. The IFC Performance Standards establish requirements to avoid, minimise and – where adverse impact is unavoidable – to offset and/or compensate for risks and impacts affecting communities. The IFC relies on the World Bank's Environmental, Health and Safety (EHS) Guidelines²⁹ as a technical source of information during project appraisal.

3. The key requirements of the eight Performance Standards are summarised in Table 1.

Table 1. Key requirements of the IFC Performance Standards

Performance Standard	Key requirements
Assessment and Management of Environmental and Social Risks and Impacts	<ul style="list-style-type: none">• Integrated assessment to identify the environmental and social impacts, risks and opportunities of projects.• Effective community engagement through disclosure of project-related information and consultation with communities on matters that directly affect them.• Client must have an environmental and social management system throughout the life of the project.• Establishment by the client of grievance mechanisms where there are affected communities.

²⁶ See IFC's Sustainability Framework http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/sustainability+framework

²⁷ The IFC's Sustainability Framework includes the Policy on Environmental and Social Sustainability, the Performance Standards and the Access to Information Policy.

²⁸ The Performance Standards on involuntary resettlement, biodiversity conservation, indigenous peoples, and cultural heritage are largely inspired by World Bank policies.

²⁹ The World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines) are technical reference documents with general and industry-specific examples of good international industry practice.

Performance Standard	Key requirements
Labour and Working Conditions	<ul style="list-style-type: none"> • Protection of fundamental rights of workers as defined by the ILO Conventions and the UN Convention on the Rights of the Child and the UN Convention on the Protection of the Rights of all Migrant Workers and Members of their Families. • Monitoring of risks related to child labour and safety issues identified in supply chains.
Resource efficiency and pollution and pollution prevention	<ul style="list-style-type: none"> • Avoid or minimise adverse impacts on human health and the environment by avoiding or minimising pollution from project activities, in consistence with the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines). • Promote more sustainable use of resources, including energy and water. • Reduce project-related GHG emissions.
Community Health, Safety, and Security	<ul style="list-style-type: none"> • Evaluate the risk and impact of affected communities and establish preventive and control measure based on the World Bank Group Environmental, Health and Safety Guidelines (EHS Guidelines). • More specific requirement on Infrastructure and Equipment Design and Safety, Hazardous Materials Management and Safety, Community Exposure to Disease.
Land Acquisition and Involuntary Resettlement	<ul style="list-style-type: none"> • Avoiding or minimising involuntary resettlement. • Compensation of resettled people at full "replacement cost".
Biodiversity Conservation and Sustainable Management of Living Natural Resources	<ul style="list-style-type: none"> • Assessment of impact on biodiversity. • Prohibition of projects in critical habitats unless no other alternative exists and the projects does not lead to measurable adverse impact.
Indigenous People	<ul style="list-style-type: none"> • Identification by the client of all communities of Indigenous Peoples within the project "area of influence" who may be affected by the project. • avoid and, where avoidance is impossible, to mitigate adverse impacts on indigenous peoples • Management of ecosystem services by the client.
Cultural Heritage	<ul style="list-style-type: none"> • Compliance with national law and the Convention Concerning the Protection of the World Cultural and Natural Heritage.

B. WORLD BANK SAFEGUARD POLICIES AND THE NEW WORLD BANK ENVIRONMENTAL AND SOCIAL FRAMEWORK

4. The World Bank was the first multilateral development bank to establish an environmental and social safeguard system (the “Environmental and Social Safeguards Policies”). The requirements include, in particular, environmental assessments of projects before financing is approved, compensation for people involuntarily resettled, and protection for the rights of indigenous peoples when projects impact their lands.

5. After an extensive consultation process, in 2017 the World Bank released a new framework which will be officially launched in 2018. The new Environmental and Social Framework partly aligns with IFC’s Performance Standards including, for example, for the first time protections on labour and working conditions and community health and safety. It includes the following ten Environmental and Social Standards:

- Assessment and Management of Environmental and Social Risks and Impacts
- Labour and Working Conditions
- Resource Efficiency and Pollution Prevention and Management
- Community Health and Safety
- Land Acquisition, Restrictions on Land Use and Involuntary Resettlement
- Biodiversity Conservation and Sustainable Management of Living Natural Resources
- Indigenous Peoples/Sub-Saharan African Historically Underserved Traditional Local Communities
- Cultural Heritage
- Financial Intermediaries
- Stakeholder Engagement and Information Disclosure

C. THE WORLD BANK GROUP ENVIRONMENTAL, HEALTH AND SAFETY (EHS) GUIDELINES

6. The World Bank Group (WBG) Environmental, Health and Safety (EHS) Guidelines establish performance levels and measures on pollution control and health and safety measures that are considered generally acceptable by the WBG and that should be met by industrial projects. These standards are referred to as Good International Industry Practice (GIIP)³⁰. The Guidelines are intended to be “living documents” and are regularly updated.³¹

7. The EHS Guidelines set out general guidelines applicable to all projects and 62 industry-specific guidelines covering sectors in forestry, agribusiness/food production, chemicals, oil and gas, infrastructure, mining, general manufacturing and power generation.

³⁰ In its Performance Standard 3 the IFC defines GIIP as “the exercise of professional skill, diligence, prudence, and foresight that would reasonably be expected from skilled and experienced professionals engaged in the same type of undertaking under the same or similar circumstances globally or regionally. The outcome of such exercise should be that the project employs the most appropriate technologies in the project-specific circumstances.”

³¹ The most updated versions of the EHS Guidelines can be accessed here http://www.ifc.org/wps/wcm/connect/topics_ext_content/ifc_external_corporate_site/sustainability-at-ifc/policies-standards/ehs-guidelines

8. The Guidelines are considered to be the main source of internationally recognised guidance on pollution control and health and safety standards in the industrial sector. In addition to the WBG and its clients, they serve as a reference for many bilateral³² and multilateral³³ institutions as well as Equator Principles Financial Institutions and other private sector actors.

³² Examples of government institutions using the EHS Guidelines as a reference include the French Development Agency (AFD), KfW Development Bank, the European Development Finance Institutions (EDFI) members, and the OECD Export Credit Agencies.

³³ The Multilateral Financial Institutions Working Group on Environment (MFI-WGE), which is composed of the major MFIs, has adopted the World Bank's EHS Guidelines as a standard. Other examples include the Asian Infrastructure Investment Bank and the New Development Bank.

ANNEX III

THE WTO AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES (SCM AGREEMENT)

A. TYPES OF SUBSIDIES THAT ARE SUBJECT TO THE PROVISIONS OF THE SCM AGREEMENT

1. Definition of a subsidy according to the Subsidies and Countervailing Measures (SCM) Agreement:

- **Financial contribution** in the form of direct transfer of funds, such as grants, loans, equity infusions, or potential direct transfer of funds or liabilities such as loan guarantees, or forgone or uncollected government revenue such as tax credits or duty exemptions, or the provision of goods or services other than general infrastructure³⁴, or income or price support.
- Provided by a **government or a public body** directly or indirectly through a funding mechanism or a private body.
- The financial contribution has to confer a **benefit** to the recipient leading to an advantage. The existence of an advantage is assessed by comparing the conditions of the subsidy programme to the market conditions.³⁵

2. The SCM Agreement only covers **specific** subsidies i.e. subsidies that are only available to a specific enterprise, industry or region. It defines two categories of specific subsidies:

- **Prohibited** subsidies, which are contingent upon export performance³⁶ (de jure or de facto³⁷) or upon the use of domestic over imported goods (local content subsidies); and
- **Actionable** subsidies, which include all other specific subsidies.

3. Only prohibited subsidies are illegal as they are specifically designed to be trade-distortive. Actionable subsidies are permitted. However, they are actionable in the sense that they can lead to multilateral dispute settlement or unilateral countervailing measures. Actionable subsidies are classified according to the type of adverse effects they cause:

- **Injury** to a Member's domestic industry caused by subsidised imports. Subsidies resulting in an injury are the only ones that can lead to unilateral countervailing measures;
- **Serious prejudice** caused to the export interests of a WTO Member in the market of the subsidising Member or in the market of a third country;
- **Nullification or impairment** of benefits arising from the WTO membership by subsidisation practices.

³⁴ General infrastructure refer to infrastructure that is not provided for the use of one single entity or a limited group of entities.

³⁵ According to the Panel in Canada – Aircraft, "a financial contribution will only confer a 'benefit', i.e., an advantage, if it is provided on terms that are more advantageous than those that would have been available to the recipient on the market".

³⁶ The WTO's Appellate Body upheld the Panel's finding that contingency upon export performance exists if there is a relationship of conditionality or dependence between the grant of the subsidy and the anticipated exportation or export earnings.

³⁷ Determination of de facto export contingency is considerably more difficult. In particular, it is necessary to look at the facts surrounding the granting of the subsidy to ascertain the extent to which exportation, or anticipation of exportation, figured in the granting authority's decision to provide the subsidy.

B. COUNTRY COVERAGE

4. The SCM Agreement does not make any reference to nationality. However, it does specify that a subsidy shall be deemed to exist if it is provided by a government or a public body **within the territory of a Member**. This means that subsidies provided in countries that are not members of the WTO are not covered by the SCM rules. The following countries are currently negotiating their WTO membership:

Country	Application date
Algeria	1987
Belarus	1993
Sudan	1994
Uzbekistan	1994
Azerbaijan	1997
Andorra	1999
Lebanon	1999
Bosnia and Herzegovina	1999
Bhutan	1999
Bahamas	2001
Syrian Arab Republic	2001
Ethiopia	2003
Libya	2004
Iraq	2004
Serbia	2004
Iran	2005
Sao Tomé and Príncipe	2005
Comoros	2007
Equatorial Guinea	2007
Somalia	2015
Timor - Leste	2015

C. REMEDIES

5. All subsidies can be challenged through the WTO dispute settlement system. According to the dispute settlement rules, if a challenged subsidy is found to be prohibited it must be withdrawn immediately. If a challenged (actionable) subsidy is found to be causing specified adverse effects, the subsidising Member must withdraw the subsidy or remove the adverse effects.

6. In the case of (actionable) subsidies resulting in an injury to a country's domestic industry, that country can unilaterally take, after having undertaken an anti-subsidy investigation, **countervailing measures** to offset the subsidy.

D. EXEMPTIONS

The OECD Arrangement on Officially Supported Export Credits

7. The SCM Agreement provides one important exemption: officially supported export credits³⁸ which fall under the rules of the OECD Arrangement. The agreement specifies also that if a non-OECD member is following in practice the Arrangement rules with regard to export credits, those export credits shall not be considered as export subsidies.

8. The Arrangement applies to all official support for exports of goods and/or services, or to financial leases, which have repayment terms of two years or more. This is regardless of whether the official support for export credits is given by means of direct credit/financing, refinancing, interest rate support, guarantee or insurance. The Arrangement places limitations on the terms and conditions of export credits that benefit from official support.³⁹

Exemptions for developing countries

9. Article 27 of the SCM Agreement contains extensive special and differential treatment rules regarding the prohibition of export subsidies for various categories of developing country Members. First, least-developed countries (LDCs) are excluded from the prohibition altogether, pursuant to Annex VII(a). Second, certain countries with a GNP per capita of less than 1,000 USD, listed in Annex VII(b), are also exempt from the prohibition until their GNP per capita reaches that threshold. Concerning Annex VII(b), in Doha Ministers clarified that the Members listed therein, i.e. those subject to the per capita GNP threshold, would remain in Annex VII(b) until their GNP per capita reaches 1,000 USD in constant 1990 dollars for three consecutive years, and that a Member shall not leave the Annex so long as its GNP per capita in current dollars has not reached 1,000 USD based upon the most recent World Bank data.⁴⁰

10. There is also more favourable treatment with respect to actionable subsidies. In this regard, certain subsidies related to developing country Members' privatisation programmes are not actionable multilaterally, and the presumption of serious prejudice for the specified subsidies does not apply to developing country Members. With respect to countervailing measures, developing country Members' exporters are entitled to more favourable treatment with respect to the termination of investigations where the level of subsidization or volume of imports is small.

³⁸ Pursuant to paragraph (k) of Annex I to the SCM Agreement, "(...)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), 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."

³⁹ Limitations include a minimum cash down-payment (15%), maximum repayment terms, minimum risk premium rates and minimum interest rates for official financing support.

⁴⁰ Paragraph 10.1 of the Doha Ministerial Decision on Implementation-Related Issues and Concerns, WT/MIN(01)/17. The WTO Secretariat circulates annually the World Bank calculations pursuant to this decision, in the document series G/SCM/110. For the most recent calculations see G/SCM/110/Add.14.