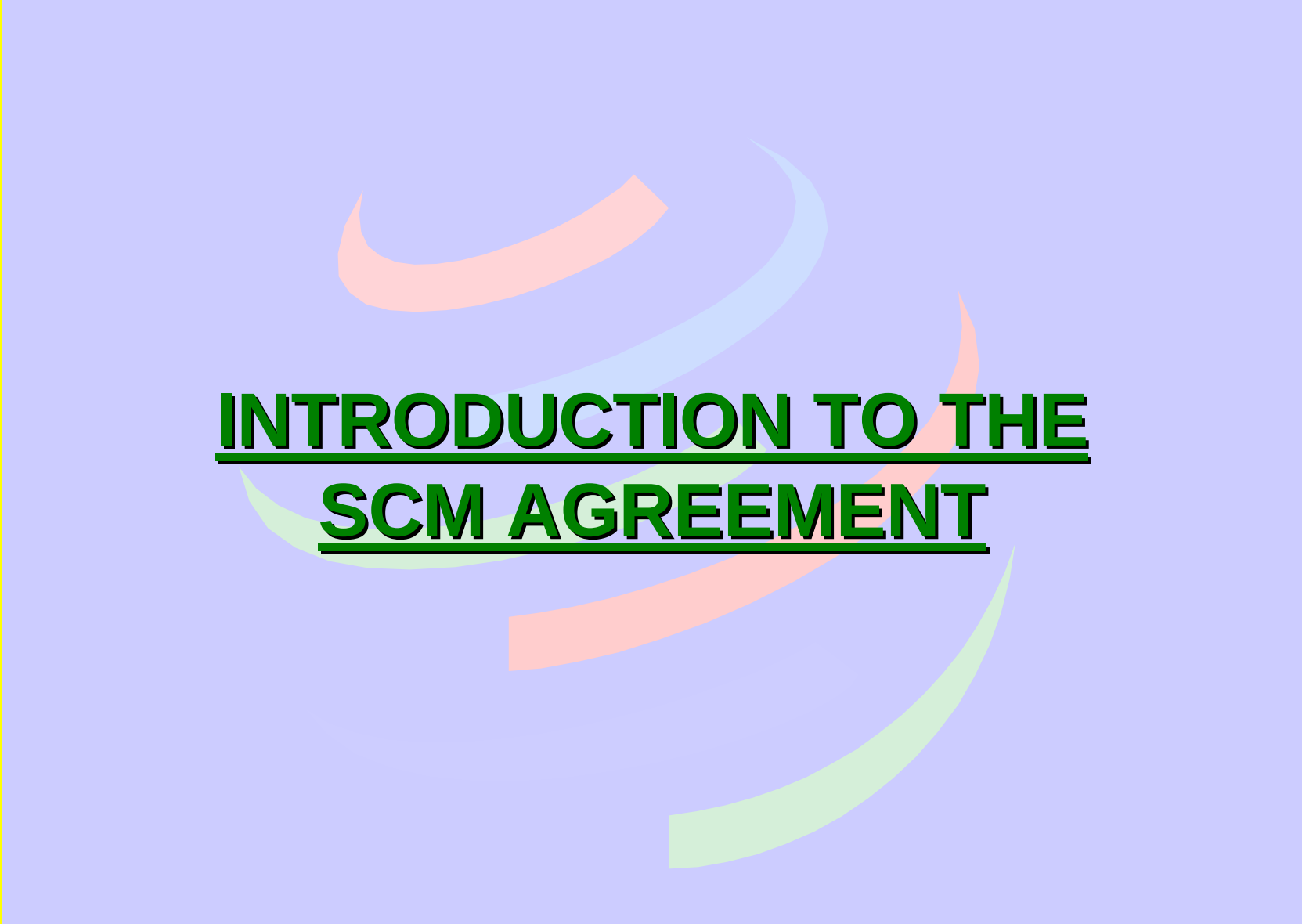


WTO Agreement on Subsidies and Countervailing Measures

Presented by: Susan Hainsworth
Counsellor
Rules Division
WTO



INTRODUCTION TO THE **SCM AGREEMENT**

Expert Meeting - "Trade Friendly Promotion of Renewable Energy"
Brussels, 2 November 2004

Slide 2

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

The SCM Agreement regulates:

- Subsidisation by WTO Members
- Use of countervailing measures

STRUCTURE OF THE SCM AGREEMENT

- Part I: General provisions (Arts. 1-2)
- Part II: Prohibited subsidies (Arts. 3-4)
- Part III: Actionable subsidies (Arts. 5-7)
(ARTICLE 6.1 LAPSED)
- Part IV: Non-actionable subsidies (Arts. 8-9)
(LAPSED)
- Part V: Countervailing duties (Arts. 10-23)
- Parts VI / VII: Institutions, notifications, surveillance (Arts. 25-26)
- Part VIII: Developing country Members (Art. 27)

STRUCTURE OF THE SCM AGREEMENT

(cont'd)

- Part IX: Transitional arrangements (Arts. 28-29)
- Part X: Dispute settlement (Art. 30)
- Part XI: Final provisions (Arts. 31-32)
- +
- Annexes I-VII

NOTE: Pursuant to ECT Article 29(2)(a) and Annex W, certain of these provisions are not applicable to ECT Signatories that are non-WTO Members, e.g. certain or all aspects of Articles 4, 5, 6, 7, 8, 9, 24, 26, 27, 29, 30, 31, 32 and Annexes V and VII.

COVERAGE OF SCM AGREEMENT

Applies to a measure that is:

- A subsidy (Article 1)¹
 - Financial contribution
 - By a government or any public body
 - Confers a benefit
- Specific (Article 2)

¹N.B. - Exemption of exported products from duties or taxes on the like product consumed domestically, or non-excessive remission of such duties or taxes, is deemed *not to be a subsidy*.

MULTILATERAL DISCIPLINES VERSUS COUNTERVAILING MEASURES

Multilateral disciplines

- Rules governing what subsidies WTO Members can provide
- Prohibited / actionable causing adverse effects
- Challenge violations or adverse effects through dispute settlement

MULTILATERAL DISCIPLINES VERSUS COUNTERVAILING MEASURES

Countervailing duties

- A duty imposed on an imported product to offset a subsidy
- Unilateral measure by a WTO Member
- Must be preceded by an investigation making certain findings: **subsidization, injury, and causation**. That is why countervailing action is called a contingent trade remedy.
- CV duties or undertakings; only up to the amount of subsidization per unit or *ad valorem* of the product subject to investigation



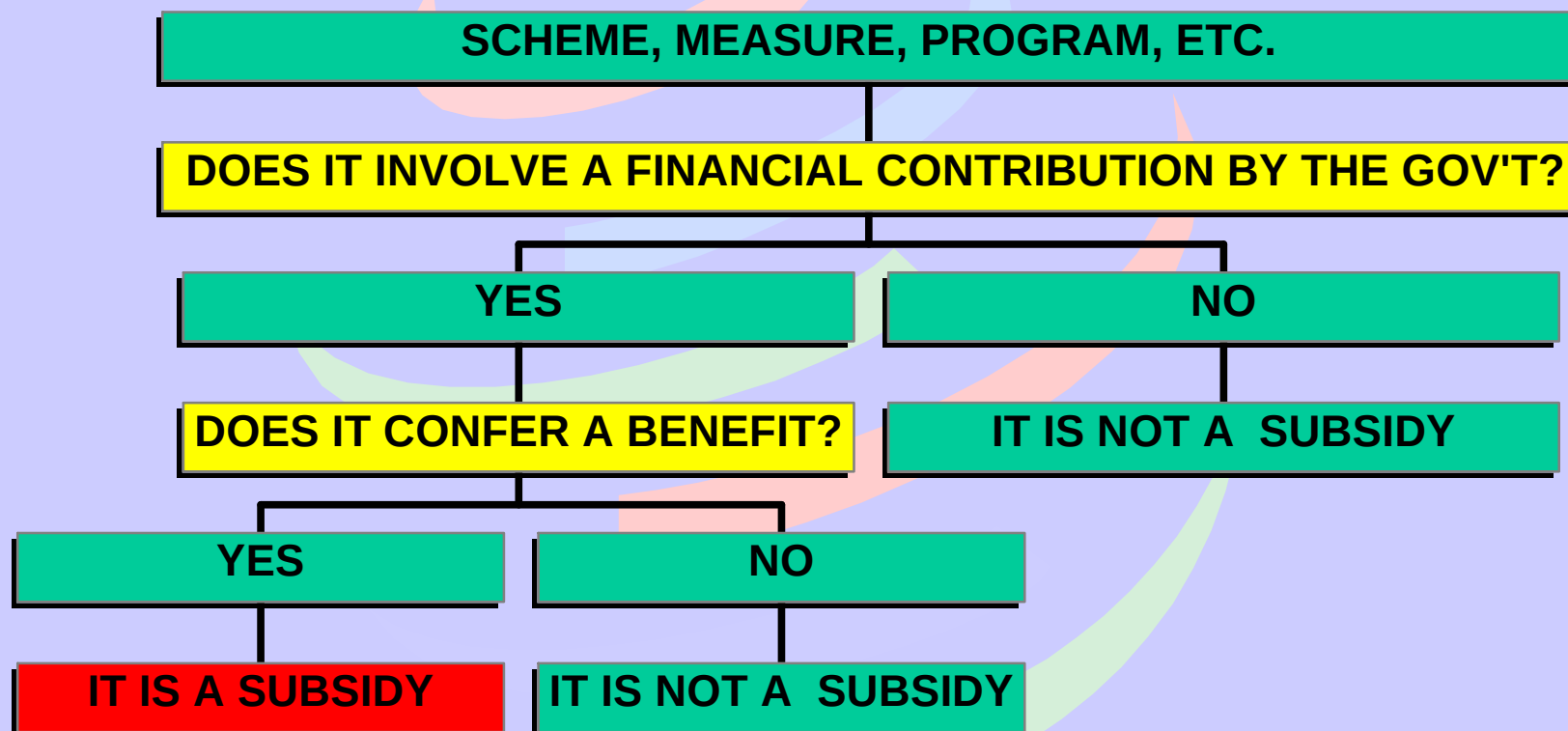
HORIZONTAL ISSUES

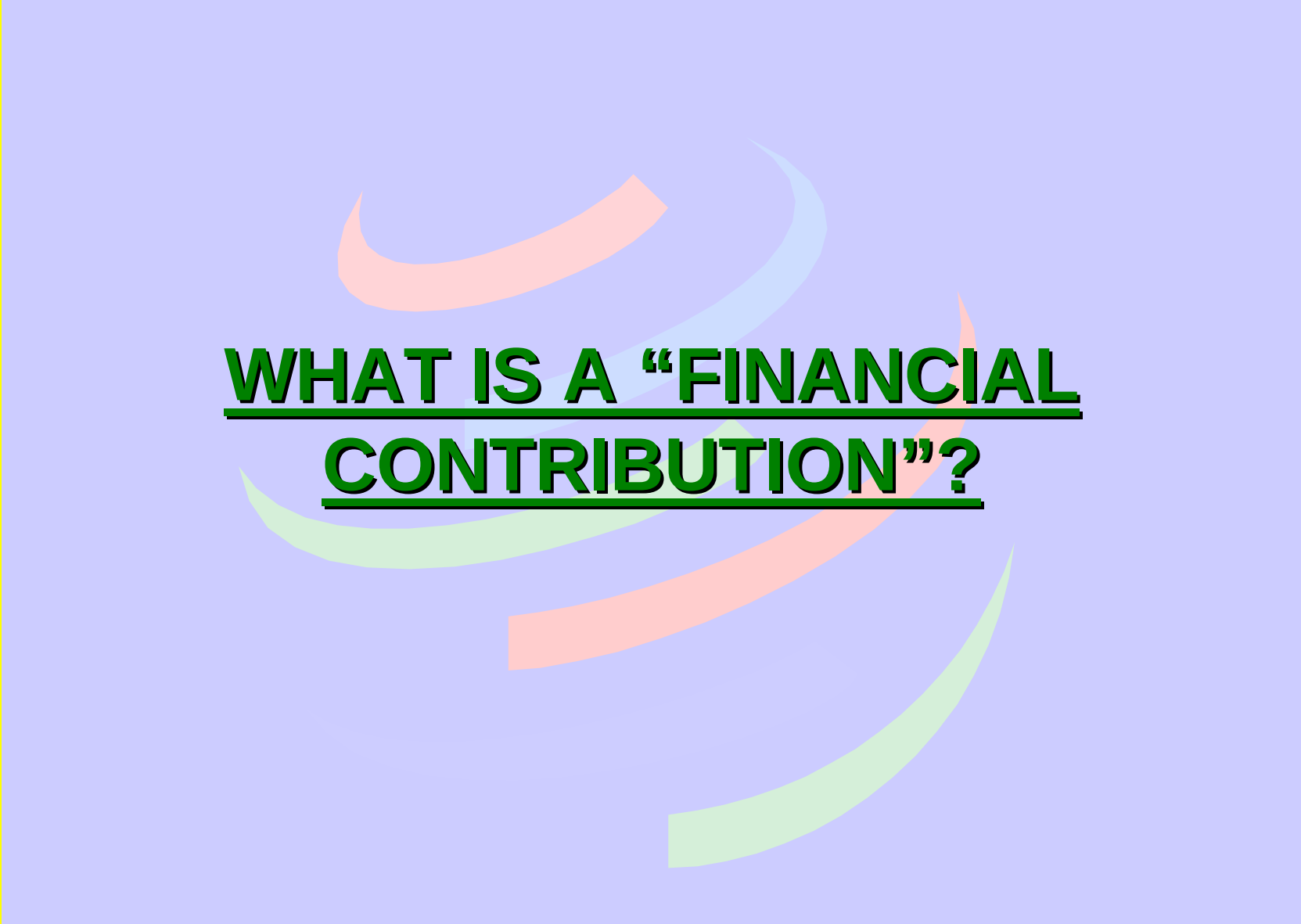
The three key elements when examining whether a program, scheme, etc. constitutes a subsidy are:

- 1) **FINANCIAL CONTRIBUTION**
- 2) **BY A GOV'T OR ANY PUBLIC BODY**
- 3) **BENEFIT**

If any of the three elements is missing, then the program, scheme, etc. is NOT a subsidy under the SCM Agreement

WHAT IS A SUBSIDY?





WHAT IS A “FINANCIAL CONTRIBUTION”?

FINANCIAL CONTRIBUTION **(ARTICLE 1.1)**

- Direct transfer of funds, e.g.
 - Grants
 - Loans
 - Equity infusions

FINANCIAL CONTRIBUTION **(ARTICLE 1.1)**

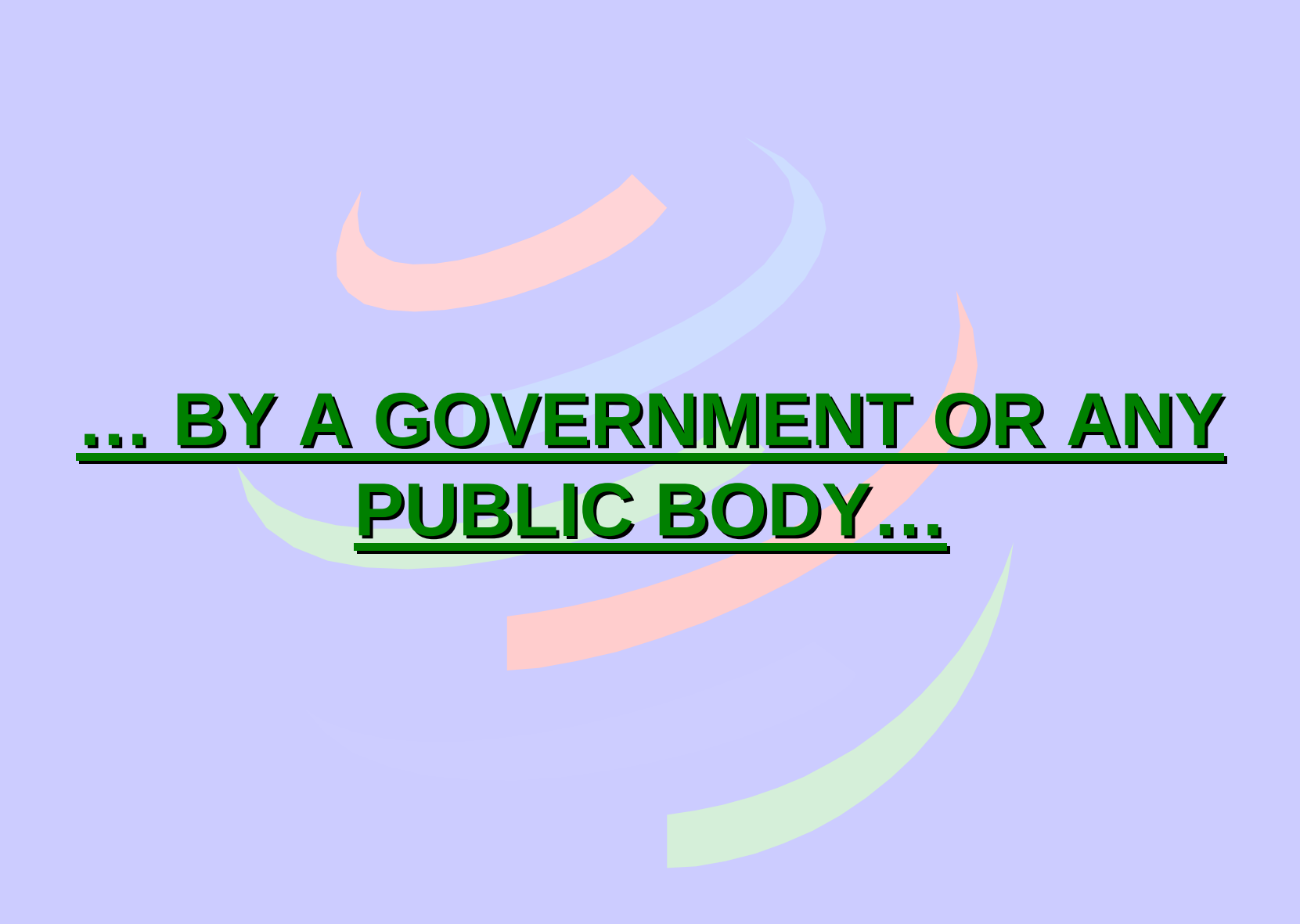
- Potential direct transfer of funds, e.g.
 - Loan guarantees

FINANCIAL CONTRIBUTION **(ARTICLE 1.1)**

- Government revenue that is “otherwise due” is foregone or not collected, e.g. tax credits or import duty exemption on machinery
- United States - Tax Treatment for “Foreign Sales Corporations” (DS108)

FINANCIAL CONTRIBUTION **(ARTICLE 1.1)**

- Provision of goods or services other than general infrastructure; or purchase of goods -- energy as a “good”
- Income or price support

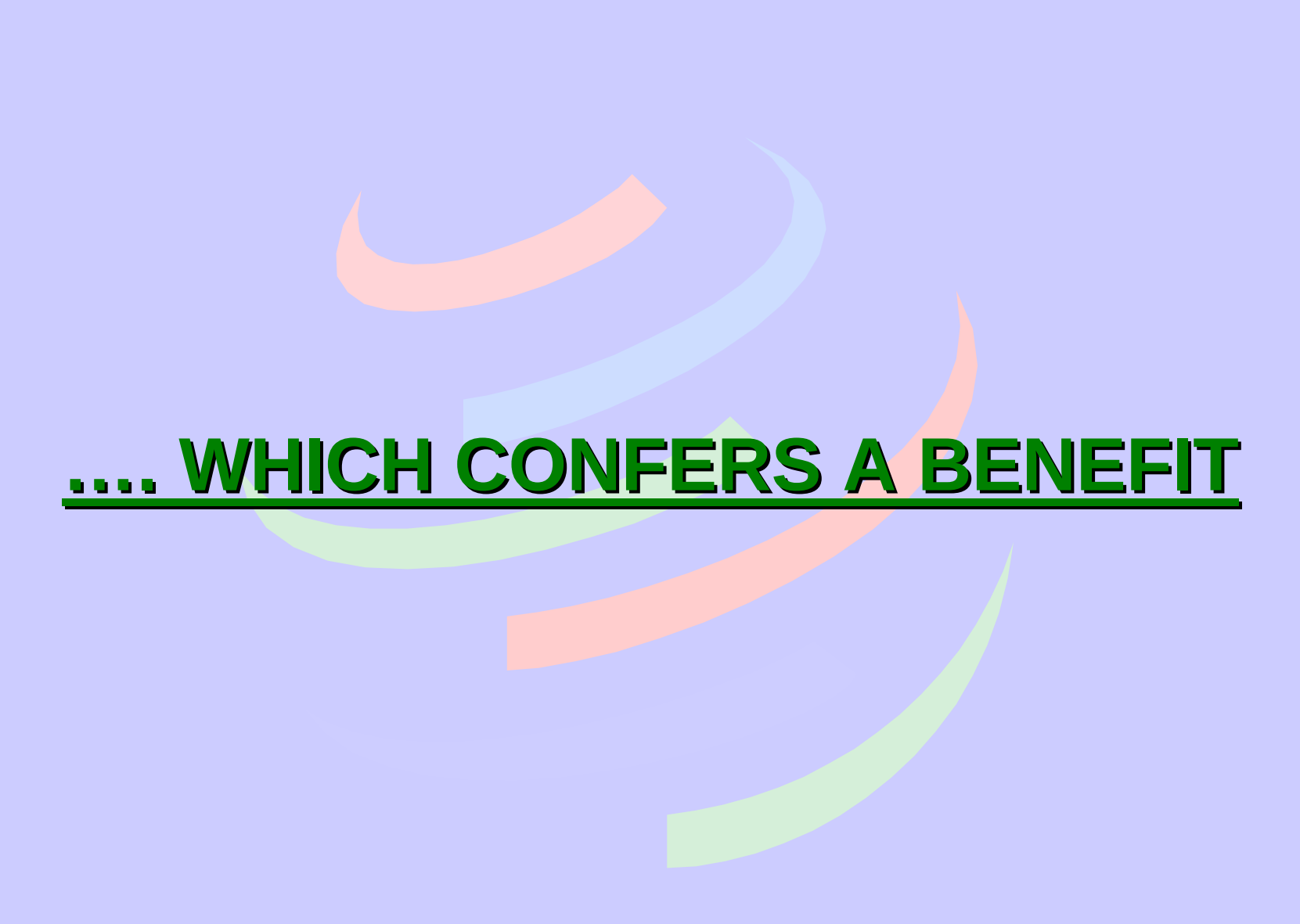


**... BY A GOVERNMENT OR ANY
PUBLIC BODY...**

BY A GOVERNMENT OR ANY PUBLIC BODY **(ARTICLE 1.1)**

Requirements under the SCM Agreement:

- Financial contribution granted by **a** Government (e.g. Federal, Regional, or Municipal Government) **OR** by a public body (e.g. National Bank, National Power Company, etc.)
- **OR** Government entrustment to or direction of private body to make financial contribution
- Within the territory of a Member



.... WHICH CONFERS A BENEFIT

CONCEPT OF BENEFIT: SUBSIDIES

“Benefit to recipient (i.e., not cost to government)”

Canada - Measures Affecting the Export of Civilian Aircraft (DS70)
(Panel, upheld by Appellate Body):

Benefit = **advantage (to recipient), not cost to government**

Issue: “whether the financial contribution places the recipient in a more advantageous position than would have been the case but for the financial contribution.”

Basis for comparison = **marketplace**

Issue: Is the financial contribution “provided on terms which are more advantageous than those that would have been available to the recipient on the market.”

CALCULATION OF TOTAL SUBSIDY AMOUNT: CVD

- **Agreement foresees two bases to calculate total subsidy amount in CVD context**
 - **Benefit to recipient** (how much advantage to the recipient, compared with what it could obtain on the market) (Art. 14 Guidelines)
 - **Cost to government** (how much did it cost the government to provide the subsidy) (no guidance in Agreement)

SUMMARY: IS THERE A SUBSIDY?

Example: government measure requiring private company to provide electricity at a certain price in the domestic market (lower than export price)

is there: (i) a financial contribution;

(ii) by a government or public body;

(iii) that confers a benefit?

TO BE COVERED BY THE SCM
AGREEMENT, AND HENCE SUBJECT
TO MULTILATERAL DISCIPLINES OR
COUNTERVAILABLE, A SUBSIDY
MUST BE “SPECIFIC”

SPECIFICITY (ARTICLE 2)

Principle - Distorted resource allocation

SPECIFICITY (ARTICLE 2)

Types of specificity:

- Enterprise (Art. 2.1)
- Industry (Art. 2.1)
- Regional (Art. 2.2)
- Prohibited subsidies deemed to be specific (Art. 2.3 and 3):
 - Export subsidies
 - Import substitution subsidies

SPECIFICITY (ARTICLE 2)

Where not *de jure* specific, possibility of *de facto* specificity

- **Factors that may be considered**
 - **Limited number of users**
 - **Predominant use** by, or **disproportionately large amounts** to, certain enterprises
 - **Exercise of discretion** by granting authority
- Must take account of **economic diversification** within territory of granting authority

SPECIFICITY (ARTICLE 2)

- Panel Report, **UNITED STATES – FINAL COUNTERVAILING DUTY DETERMINATION WITH RESPECT TO CERTAIN SOFTWOOD LUMBER FROM CANADA** (WT/DS257/R, August 2003)

“... In the case of a *good* that is provided by the government - and not just money, which is fungible – and that has utility only for certain enterprises (because of its inherent characteristics), it is all the more likely that a subsidy conferred via the provision of that good is specifically provided to certain enterprises only. We do not consider that this would imply that any provision of a good in the form of a natural resource automatically would be specific, precisely because in some cases, the goods provided (such as for example oil, gas, water, etc.) may be used by an indefinite number of industries. ...”



PROHIBITED SUBSIDIES **(“RED LIGHT”)**

PROHIBITED SUBSIDIES (ARTICLE 3)

Two types:

- Contingent on export performance
(Illustrative List of Export Subsidies in Annex I)
- Contingent on use of domestic over imported goods



ACTIONABLE SUBSIDIES **(YELLOW LIGHT)**

NON-ACTIONABLE SUBSIDIES
(GREEN LIGHT)
Articles 8 and 9

PROVISIONS LAPSED
31 DECEMBER 1999

**ARE THE RULES IDENTICAL FOR ALL
MEMBERS? –**

**NO: SCM Agreement provides for
special and differential treatment**

**(provisions not applicable to non-WTO
Members under ECT)**

DISPUTE SETTLEMENT:
MULTILATERAL TRACK FOR
CHALLENGING ANOTHER MEMBER'S
SUBSIDIES or CVD MEASURES –

**WTO dispute settlement procedures
not applicable to non- WTO Members
under ECT**

NOTIFICATION OF SUBSIDIES

Purpose of notification requirement:
transparency; no legal implications

Scope of notification requirement:
subsidy (Article 1) is “specific” (Article 2)
OR
has the effects on imports and exports
described in Article XVI of the GATT 1994

NOTIFICATION OF SUBSIDIES: WHEN AND HOW?

- Art. 25 - New and full notification each three years, annual updating notification (of any changes) each intervening year.
- Understanding in the Committee - new and full each two years; and de-emphasize updates. (Understanding reconfirmed Spring 2003)
- Notification no later than 30 June in year due, covering the previous completed calendar or fiscal year(s)
- Must use agreed questionnaire format (G/SCM/6/Rev.1), and be sufficiently precise to permit an assessment of the trade effects and an understanding of the functioning of the programmes notified

The end

Thank you.