The Committee on Subsidies and Countervailing Measures held a regular meeting on 31 October 1995.

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A. **Notification of subsidies**

2. The **Chairman** stated that to date notifications pursuant to Article XVI:1 of the GATT 1947 had been received from the following signatories and observers: Australia, Canada (partial notification), Colombia, the EC, Hong Kong, India, Indonesia, Malaysia, New Zealand, Nicaragua, Norway, Switzerland, Thailand, Turkey and Venezuela. The following signatories had made no notification: Argentina, Brazil, Chile, Egypt, Israel, Japan, Pakistan, the Philippines and Uruguay. The Chairman expressed his disappointment that some signatories had not yet notified pursuant to this provision.

3. The Committee **took note** of the Chairman’s statement.

B. **Semi-annual reports of countervailing actions taken within the period 1 January-30 June 1995**

4. The Chairman stated that to date the following signatories and observers had made notifications pursuant to Article 2:16: Argentina, Australia, Brazil, Canada, Chile, the EC, Mexico (Observer), New Zealand and Peru (Observer) had notified actions. The Czech Republic, Colombia, Hong Kong, Hungary (Observer), Japan, Korea, Malaysia (Observer), Norway, Poland (Observer), Romania (Observer), Switzerland, Tanzania (Observer), Thailand (Observer), Turkey and Uruguay had notified that they took no actions during the period. Egypt, India, Indonesia, Israel, Pakistan and the Philippines had made no notifications. The Chairman expressed his dissatisfaction with the number of Tokyo Round signatories who had failed to meet this notification obligation. This was a bad example to set for WTO Members who were, for the first time, obliged to make semi-annual reports to the WTO Committee. Signatories that had not notified as of 1 December would be identified in an addendum to SCM/192.

5. The Committee **took note** of the Chairman’s statement.

C. **Reports on all preliminary and final countervailing duty actions**

6. The **Chairman** stated that lists of the notifications of preliminary and final countervailing duty actions were circulated to the Committee in documents SCM/W/322, 323 and 324. Since the last regular meeting of the Committee Australia, Canada and Mexico (Observer) had notified preliminary and/or final actions.

7. The Committee **took note** of the Chairman’s statement.

D. **United States - Imposition of countervailing duties on certain hot-rolled lead and bismuth carbon steel products originating in France, Germany and the United Kingdom - Report of the Panel**

8. The Chairman **recalled** that the report of the Panel was circulated to the Committee on 15 November 1994 and had been examined at the Committee’s last regular meeting. He asked whether the Committee was now in a position to adopt the Report.

9. The representative of the **United States** stated that the United States was unable to agree to the adoption of the report at this time. The United States had serious concerns regarding the content of the report. In certain respects, the Panel had adopted an appropriate approach, such as upholding the reasonable private investor standard in examining government equity investments, in taking account of a party’s failure to raise certain issues before the investigating authorities, and in enunciating an appropriate standard of review. However, the Panel had failed in certain instances to heed its own standard of review, as with respect to its review of the valuation of government equity infusions provided to unequityworthy firms and the forgiveness of debt by private banks as part of a government-led restructuring plan.
10. The delegate of the United States stated that, with respect to the valuation of equity, the US Department of Commerce ("the DOC") had found that certain British and French steel companies were unequityworthy, a term of art which meant that no reasonable private investor would invest in the firms. Because the firms were unequityworthy government equity infusions into those firms constituted subsidies and the DOC had to value the amount of the subsidies. Considering the matter from the standpoint of the subsidy beneficiary, i.e., the steel companies, the DOC determined that the full value of equity infusions should be countervailed. The DOC reasoned that when a company was in such poor financial condition that it could not obtain capital, any capital received benefited the company as if it were a grant. The Panel ruled that the DOC's methodology was inconsistent with the Agreement. The Panel acknowledged that the Agreement did not contain specific rules regarding the valuation of subsidies, and stated that in the absence of specific rules its task was to decide whether the DOC's methodology was based on rational analysis. The United States agreed that where, due to ambiguity or silence, the Agreement did not provide specific rules, the Panel should determine whether an authority's actions were irrational or unreasonable. The United States did not claim that the DOC's so-called grant-methodology was the only reasonable methodology. However, it strongly disagreed with the Panel's conclusion that the DOC's methodology was not rational. The Panel found the DOC's methodology to be flawed because the equity provided the governments with ownership rights in the companies and an expectation of an eventual return on their investment. However, the Panel ignored the fact that the companies received capital from the government that the private sector would simply not have provided. The valuation of government equity infusions in unequityworthy firms was one of the most difficult methodological issues arising under countervailing duty regimes. Moreover, the Agreement had little to say on this issue. Thus, the Panel should have been wary of issuing a blanket condemnation of the DOC's methodological choice. In this regard, two judges of the US Court of International Trade confronting the same issue, and a level of statutory ambiguity comparable to the ambiguity of the Agreement, ruled that the DOC's methodology was reasonable. While decisions of domestic courts interpreting domestic law were of course not binding on panels interpreting this Agreement, this disparity in outcome reinforced the US conclusion that the Panel, in rejecting Commerce's methodology, misapplied its own stated analytical standard.

11. Turning to the second issue, debt forgiveness by private banks, the DOC had found that the German governments in question had initiated a deal with private banks under which both the governments and the banks would forgive certain debts owed by a German steel company and the governments would guarantee the future liquidity of the company. Commerce found that the banks would not have forgiven the debt but for the government intervention. By making the banks an offer too good to refuse the governments accomplished, indirectly, what they chose not to do directly, namely rescue the steel company. The DOC, looking at the substance of the transaction, treated the debt forgiveness by the banks as an indirect subsidy. The Panel recognized that the Agreement encompassed subsidies provided both directly or indirectly and that there was no settled interpretative practice regarding the meaning of "indirectly". The Panel concluded that the banks' actions did not satisfy the standard because the banks were acting in their own commercial interests. The United States was extremely troubled by this aspect of the Panel Report. The Panel crossed the line between permissible interpretation and impermissible legislation and thereby contrary to its own mandate created a new obligation in the Agreement. Indeed, by stating that a private party's action must itself be government action, it was not clear that this Panel would have been prepared to find any set of circumstances sufficient to constitute an indirect subsidy, notwithstanding the explicit recognition in the Agreement that indirect subsidies may exist. Second, given the ambiguity of the Agreement, the Panel failed to ask the proper question. Was Commerce's analysis reasonable or rational? The United States believed it was. In order to bail out the steel company in question, the German Governments had two available options. Through legislation or some other compulsory legal process they could have forced the bank to forgive the debt or they could have used their resources to induce
the banks to forgive the debt. From the standpoint of the steel company, the beneficiary of the governments' efforts, it did not matter whether the government used a carrot or a stick, it simply needed to have its debt forgiven. It was sensible countervailing duty policy to look at the benefit conferred from the standpoint of the beneficiary.

12. The representative of the EC regretted that the United States was unable to accept this Panel Report, especially as the duties were still in force and were still hampering trade in the products concerned, a situation which the EC had carefully avoided in dealing with dispute settlement matters. The EC agreed with the standard of review that the Panel had set itself. The Panel had followed this standard closely. With regard to equity infusions, the Panel acknowledged the difficulties in setting a standard for calculation of the subsidy element which an equity infusion might contain. However, the Panel concluded that the methodology employed by the United States in this case did not take into account the incontrovertible facts. Whether private investors would or would not invest did not alter the fact that the government had rights as a consequence of having made an investment as opposed to an outside grant. The Panel had deemed the US methodology to be irrational because it did not take into account all the relevant facts, a principle which was well accepted in panel jurisprudence. With respect to the debt forgiveness by private banks, this was not a matter of rational analysis but of legal requirements. The Agreement disciplined not only the use of countervailing duties but also the use of subsidies. Although it did not define the term "subsidy," the GATT system dealt with governmental measures. Therefore the Panel had a duty to reject a contention that private action could constitute a subsidy under the Agreement. The Agreement was not a catch-all provision for anything that a signatory did not like. Many actions of signatories caused problems for other signatories. The Agreement provided responses to some of these practices but not to others.

13. The representatives of Japan and Brazil supported the adoption of the Panel Report.

14. The Committee took note of the statements made.

E. German Exchange Rate Scheme for Deutsche Airbus - Report of the Panel

15. The Chairman asked whether the Committee was prepared to adopt the Report of the Panel.

16. The representative of the EC opposed the adoption of the Report. He noted that the exchange rate scheme was no longer being applied by Germany.

17. The representative of the United States regretted that position of the EC. The Report related to matters fundamental to the Agreement.

18. The Committee took note of the statements made.

F. Canada - Imposition of countervailing duties on imports of boneless manufacturing beef from the EEC - Report of the panel

19. The Chairman asked whether the Committee was prepared to adopt the Report of the Panel.

20. The representative of Canada indicated that Canada and the EC had been discussing ways of resolving this matter. Canada was prepared to work with the Chairman with the view to resolving this issue. However, Canada could not support adoption at this time.

21. The representative of the EC regretted that there had been no solution to the trade dispute underlying this Panel Report. In all other cases, even if there had not been agreement between the parties on adoption of the Panel Reports, the trade issues had been resolved.
22. The Committee took note of the statements made.

G. EC subsidies on exports of pasta products - Report of the Panel

23. The Chairman asked whether the Committee was in a position to adopt this Report.


25. The Committee took note of the statements made.

H. EC subsidies on exports of wheat flour - Report of the Panel

26. The Chairman asked whether the Committee was prepared to adopt the Report of the Panel.

27. The representative of the United States stated that for reasons previously stated the United States could not agree to the adoption of this Report.

28. The Committee took note of the statements made.

I. Derestriction of documents

29. The Chairman proposed that the Committee direct the Secretariat to issue a list of all documents in the SCM/W and SCM/M series, and propose them for derestriction in accordance with the normal procedure followed prior to this time with respect to documents in the SCM series. Signatories would be given an opportunity to object to the derestriction of any document or part of any document which would then not be derestricted. Any future documents in the SCM/W and SCM/M series would be treated in the same fashion. This was the same decision that had been taken by the Committee on Anti-Dumping Practices. The proposal would not affect the status of unadopted panel reports.

30. The Committee so decided.

J. Other business

31. The representative of the Philippines informed the Committee of ongoing consultations between the Philippines and Brazil on the matter of countervailing duties imposed on desiccated coconut exports from the Philippines to Brazil. An application for a countervailing investigation in August of 1993 resulted in a provisional anti-dumping duty of 134.44 per cent in November 1993, effective for four months. The anti-dumping investigation was subsequently terminated and the duty lifted in March 1994 but again a countervailing duty investigation was initiated in June 1994. Then on 28 March 1995 Brazil imposed a provisional duty of 14.1 per cent on the product. On 21 August 1995 Brazil imposed a definitive duty of 121.5 per cent. The Philippines believed that the countervailed assistance programmes to the coconut sector were not trade-distorting and did not offer price support and thus should not have been considered as subsidies in the sense of the Agreement. The Philippines further considered, inter alia, that it was not given a reasonable opportunity throughout the period of the investigation to clarify the factual situation and to resolve the matter, that Brazil had not been able to clearly define the domestic industry and the like product in the course of the investigation, that Brazil had attributed the entire assistance programmes for the coconut industry to the much smaller desiccated coconut processing industry, treating such programmes as indirect subsidies to processing, that Brazil had not been able to provide adequate data on imports, so as to enable it to assess its effects, and that Brazil had not been able unequivocally to establish injury and causality. The Philippines reserved its rights and signalled the possibility that it might request a special meeting of this Committee in the near future for any further action deemed necessary.
32. The representative of Brazil confirmed that informal consultations had been taking place between the delegation of Brazil and the delegation of the Philippines. Brazil was examining the issues which had been raised by the delegation of the Philippines and hoped to be able to find a mutually satisfactory solution.

33. The representative of Indonesia stated that Indonesia fully shared the views expressed by the Philippines. Indonesia also reserved its rights and signalled the possibility that it might request a special meeting of this Committee in the near future for any further action deemed necessary.

34. The Committee took note of the statements made.

K. Officers for future special meetings

35. The Chairman recalled that the Committee had decided, at its meeting of 8 December 1994, that the Agreement would terminate one year after the date of entry into force of the WTO Agreement, and that in the light of unforeseen circumstances the signatories could decide to postpone the date of termination by no more than one year. The Committee further decided that for a period of two years from the date of entry into force of the WTO Agreement, the Committee would continue to exist for the purpose of dealing with any dispute arising out of any countervailing duty investigation or review not subject to the WTO Agreement on Subsidies and Countervailing Measures. There had been no indication from any signatory that unforeseen circumstances require the postponement of the date of termination of the Agreement. Accordingly, this would be the last regular meeting of the Committee. If any signatory believed that a special meeting of the Committee was necessary for the purpose of dealing with any dispute arising out of any countervailing duty investigation or review not subject to the WTO Agreement, that signatory should advise the Secretariat that a special meeting was requested. Signatories should keep in mind that at least ten days notice was required for a meeting of the Committee.

36. The Chairman stated that, given that there would be no more regular meetings of this Committee, the Committee should make a decision now as to officers to preside over any future special meeting. He proposed that should a special meeting of the Committee be held the Chairman of the WTO Committee would preside at the meeting. In the event the Chairman was not available or was from a WTO Member not a signatory of the Agreement, the Vice-Chairman of the WTO Committee would preside. If both were from WTO Members not signatories of the Tokyo Round Agreement, the Committee would elect a Chairman to preside at such a meeting. This was precisely the decision adopted by the Committee on Anti-Dumping Practices.

37. The Committee so decided.

L. Annual Report to the CONTRACTING PARTIES

38. The Committee adopted its Annual Report to the CONTRACTING PARTIES.