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Committee on Subsidies and Countervailing Measures

MINUTES OF THE REGULAR MEETING HELD ON 31 OCTOBER 2001

Chairman: Mr. Remo Moretta (Australia)

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| | (ARTICLE 32.7) | |
| A. | NATIONAL LEGISLATION | |
| 1. | Review of notifications of new or amended legislation or regulations not previously reviewed by the Committee (including supplemental notifications of existing provisions not previously reviewed) | |
| 3. | The review of notifications of countervailing duty legislation and regulations was conducted in accordance with procedures adopted by the Committee at its special meeting in April 1996 (G/SCM/W/293). All of the notifications subject to review, and the questions posed with respect to the review, were also on the agenda of the Committee on Anti-Dumping Practices and all of them had been considered at that meeting. | |
| 4. | No questions were raised during the meeting concerning any of these notifications. | |
| 5. | The <u>Chairman</u> noted that written follow-up questions concerning any legislative notification reviewed needed to be submitted not later than 15 November 2001, and written answers not later than 7 January 2002. In order for a previously reviewed notification of legislation to appear on the agenda of the Committee's regular meeting in the week of 30 April 2002, written questions would need to be submitted to the Secretariat, and to the notifying Member, no later than 14 March 2002. The Secretariat would, as usual, issue a reminder note of relevant deadlines for this Committee and the Committees on Anti-Dumping Practices and Safeguards in the following few weeks. | |
| 6. | The Committee <u>took note</u> of the Chairman's statement. | |

B. SUBSIDIES – 2000 UPDATING NOTIFICATIONS (G/SCM/N/60...)

7. The Chairman recalled that the following Members' notifications were on the agenda for review: Cuba, the European Communities, Paraguay, Tunisia and Zimbabwe. He also noted that three of these notifications -- those of Paraguay, Tunisia and Zimbabwe -- were multiple-symbolled and also contained those Members' 2001 new and full notifications. As such, they would be on the agenda of the special meeting for the review of 2001 new and full notifications (G/SCM/M/35) that would immediately follow this regular meeting. The Chairman proposed therefore that only the notifications of Cuba and the European Communities be taken up under this agenda item.

8. The Committee so agreed.

9. Concerning the notification of the European Communities, questions pertaining to the United Kingdom had been received from the United States one week before the meeting, and circulated in the following document:

G/SCM/Q2/EEC/30 – Questions from the United States

NO WRITTEN REPLIES TO THESE QUESTIONS HAVE BEEN RECEIVED.

10. The Chairman recalled that the EC's 2000 updating notification had been circulated, in instalments, as notifications pertaining to the various EC member states were received. Given this, the other pieces of this notification had been reviewed at previous meetings of the Committee, and he noted that a series of written questions had been posed in relation to those earlier reviews, and that the European Communities had not yet replied to them in writing. In particular, the United States had posed questions in document G/SCM/Q2/EEC/27 concerning the EC-level notification and in G/SCM/Q2/EEC/28 concerning the notifications in respect of Austria, France, Greece and Spain. He understood that the delegation of the European Communities wished to make a statement in respect of these outstanding written questions.

11. The representative of the European Communities appreciated the interest, especially of the United States, in the European Communities' notifications. The further questions concerning the recent notification pertaining to the United Kingdom showed that this interest was continuing. However, the European Communities was finding it increasingly difficult to devote its scarce human resources to answering questions while they had no opportunity to review the notification by the United States. No notifications had been received from the United States since the 1998 notification. The resulting imbalance in transparency caused his delegation grave concern. In the interest of transparency, his delegation was prepared to provide answers to the questions within the appropriate time-frame. However, this was only if the United States would give a clear indication that it would, in fact, make the notifications that were outstanding and of the date by which it would make the notification.

12. The delegate of the United States appreciated the comments of the European Communities and could assure the European Communities that a substantial amount of work had been done on the notifications. He was pleased to state that the United States had recently hired additional personnel to work exclusively on the notification. His delegation expected to complete its work and make a submission to the Committee by early 2002.

13. The Chairman urged these delegations to continue their work in the interests of transparency.

14. No written questions had been received, and no oral questions were raised, in respect of the notification of Cuba (G/SCM/N/60/CUB).

15. The Committee took note of all of the statements made.

C. SUBSIDIES – 1999 UPDATING NOTIFICATIONS (G/SCM/N/48/...)

16. The Chairman noted that, as under agenda item B, the notifications of Paraguay, Tunisia and Zimbabwe were multiple-symbolled and also contained those Members' 2001 new and full notifications. As such, they would be on the agenda of the special meeting for the review of 2001 new and full notifications (G/SCM/M/35) that would immediately follow this regular meeting. As the notification of Cuba was also multiple-symbolled as a 2000 updating notification and had already been reviewed under agenda item B, the Chairman proposed that only the notification of Cyprus be taken up under this agenda item.

17. The Committee so agreed.

18. Concerning the notification of Cyprus, questions were received from the United States, and circulated in the following document:

G/SCM/Q2/CYP/12 – Questions from the United States

NO WRITTEN REPLIES TO THESE QUESTIONS HAVE BEEN RECEIVED.

19. The Committee took note of all of the statements made.

D. SUBSIDIES – 1998 NEW AND FULL NOTIFICATIONS (G/SCM/N/38...)

20. The Chairman noted that of the two notifications for review under this agenda item that had been circulated in all three languages before the agreed deadline, that of Cuba was multiple-symbolled and had already been reviewed under agenda item A, while that of Tunisia was also multiple-symbolled and would be reviewed at the special meeting for the review of 2001 new and full notifications (G/SCM/M/35) that would immediately follow this regular meeting. No further questions were raised in respect of any of these notifications.

21. The Chairman recalled that any oral questions raised at the meeting concerning any of the subsidy notifications reviewed, for which written responses were desired, needed to be submitted in writing no later than 15 November 2001. Written answers to all written questions needed be submitted no later than 7 January 2002.

E. WORKING PARTY ON SUBSIDY NOTIFICATIONS - CHAIRMAN'S REPORT ON 30 OCTOBER 2001 MEETING

22. The Chairman recalled that the Working Party on Subsidy Notifications had met on 30 October 2001 to discuss two issues. The first was the Committee's request to the Working Party to consider ways to simplify the presentational aspects of subsidy notifications (G/SCM/6), and the second was the Committee's request to the Secretariat to explore the possibilities for holding a subsidy notification seminar back-to-back with the Spring 2002 regular meeting of the Committee. The Chairman stated that he would not attempt to summarize all of the discussions at this meeting, and recalled that the Secretariat had undertaken to circulate a list of all of the questions and comments raised in respect of the issues on notifications.

23. Concerning the possible subsidy notification seminar, the Chairman indicated that a cost estimate had been made available to Members in the meeting. Members would recall that this estimate would include terminal expenses, subsistence, airfare, etc. With respect to this paper on financial implications, the Chairman indicated that he had introduced this document by noting that the

first assumption was that the seminar would be two days long. This assumption was based on points made in discussions in the Working Party and the Committee on this subject. In particular, it had been noted that to be worthwhile, the seminar should be sufficiently long to allow time for a detailed presentation of the *SCM Agreement* and the basic notification requirements as well as for detailed exchanges of ideas and experiences among the individuals who were responsible for gathering information for notifications and for compiling that information into the required format. In this regard, it had been emphasized from the outset that participants should be capital-based individuals with day-to-day responsibility for gathering information about subsidies and for preparing and submitting subsidy notifications based on that information.

24. The second assumption was that there would be financial sponsorship of certain participants and, in particular, that such sponsorship would be provided only for participants from the 30 least-developed country WTO Members. On the basis of previous discussions, it appeared that some Members would be willing to consider contributing to the financing of the possible seminar, and in reality the only significant cost of such an event would be in bringing certain participants to Geneva for it. Otherwise, the costs of meeting rooms, interpreters, etc. would be quite small. Concerning the assumption that only least developed country Members would be sponsored, he had noted that the reasons were: first, that these Members would have the greatest resource constraints in sending participants to the seminar at all; and second, that trying to finance the participation of all developing country Members would be prohibitively expensive.

25. The third assumption was that there would be two participants from each least developed country Member. This assumption again came from the prior discussions of the possible seminar, in which it had been noted that for many Members, the individuals responsible for gathering information to be notified were different from those responsible for preparing and submitting notifications. Thus, the thought was that each Member should send two capital-based officials, one from each of these domains.

26. The fourth assumption was that the financial sponsorship would be limited to round-trip airfare and terminal expenses, plus subsistence more or less on the basis of full board for the two days of the seminar. This assumption was employed to keep the costs to a minimum. In particular, paying each sponsored participant the standard *per diem* for Geneva would add CHF 176 per participant, and paying in addition standard *per diem* for two travel days would add CHF 576 per participant to the total cost.

27. Finally, the standard 10 per cent for contingencies, such as increases in airfares, had been included, as well as the standard 13 per cent for overhead, calculated on the subtotal. These were standard figures used for all technical cooperation estimates that did not come out of the WTO's regular budget. The overhead figure, which had been adopted by a decision of the General Council some years ago for use in this context, was meant to allow for any extra costs for meeting rooms, interpreters, etc.

28. One additional issue not identified in the document which would need to be answered at some point was what should be done with any surplus, assuming that the seminar was financed as outlined, but that not all of the sponsored Members sent participants. He noted that there seemed to be two main options for any such surplus. The first would be simply to return it to the sponsors. The second would be to make it available, on a first-come, first served basis, to other developing country Members, on the basis of a formula and procedure to be determined. As Members had only seen this cost estimate for the first time at the Working Party meeting, there had been essentially no discussion of its substance. Members would thus need to revert to this question to try to clarify their thoughts about the financial aspects of the seminar.

29. The Committee took note of the Chairman's report.

F. SEMI-ANNUAL REPORTS OF COUNTERVAILING ACTIONS - NOTIFICATIONS (ARTICLE 25.11)

30. The Chairman recalled that a request for semi-annual reports for the first half of 2001, to be submitted by 31 August 2001, had been circulated to Members in G/SCM/N/75, dated 29 June 2001. As was unfortunately almost always the case, a number of the semi-annual reports had been received later. He reminded Members that semi-annual reports were always due at the end of August for the period January through June of the current year, and at the end of February for the period July through December of the previous year. He urged all Members to take the steps necessary to submit these notifications on time. Particularly for those Members that had taken no actions, this notification should be purely a matter of routine, as all that was required was a one-sentence letter stating that no actions had been taken.

31. Members who had submitted semi-annual reports were identified in paragraph 1 of the document G/SCM/N/75/Add.1, dated 17 October 2001. To the extent possible, the semi-annual reports had been translated and circulated to the Committee, and were included in the documents made available for the meeting. In addition to the seven Members who had submitted semi-annual reports of countervailing actions, 43 Members, listed in paragraph 2 of document G/SCM/N/75/Add.1 had notified the Committee that they had not taken any countervailing actions during the period in question. He noted that while Members who took actions appeared generally to comply with this notification requirement, there remained a significant number of Members who had not responded to the request for semi-annual reports, and had therefore failed to comply with this important requirement set forth in Article 25.11 of the Agreement. These Members were identified in document G/SCM/N/75/Add.1, paragraph 3.

32. No Member raised any comments or questions to the semi-annual reports submitted.

33. The Committee took note of the statements made.

G. NOTIFICATIONS OF PRELIMINARY AND FINAL COUNTERVAILING ACTIONS

34. The Chairman recalled that lists of the notifications of preliminary and final countervailing duty actions received by the Committee had been circulated in documents G/SCM/N/72-73 and N/76-78. Since the previous meeting of the Committee, preliminary and final countervailing actions had been notified by Argentina, Australia, Canada, the European Communities, Peru and the United States.

35. No questions or comments were raised in respect of any of these notifications.¹

H. REQUEST FROM PAPUA NEW GUINEA FOR AN EXTENSION UNDER ARTICLE 27.4 (G/SCM/N/74/PNG)

36. The Chairman recalled that a request had been received from Papua New Guinea for an extension, pursuant to Article 27.4, of the transition period for export subsidies, shortly before the May 2001 meeting. This request was contained in document G/SCM/N/74/PNG. The Committee had deferred to this meeting its consideration of Papua New Guinea's request, in view of the fact that the request had been received only two working days before that meeting.

37. The Chairman recalled that under Article 27.4, if a developing country Member deemed it necessary to apply export subsidies beyond the eight-year transition period (which would expire on

¹ The United States made a technical clarification with respect to its own notification, of actions listed in document G/SCM/N/72 in respect of stainless steel bar.

31 December 2002) it needed, not later than one year before the expiry of that period (i.e. not later than 31 December 2001), to enter into consultations with the Committee, which would determine whether an extension of the period was justified, after examining all the relevant economic, financial and development needs of the developing country Member in question.

38. The Chairman noted that the delegation of Papua New Guinea was not represented at the meeting, and that no other delegation wished to take the floor. He proposed therefore that the Committee revert to this matter in 2002.

39. The Committee so agreed.

I. IMPLEMENTATION-RELATED ISSUES REFERRED TO THE COMMITTEE FROM THE GENERAL COUNCIL - REPORT BY THE CHAIR

40. The Chairman stated that, as Members were all aware, the Committee had since its last regular meeting been engaged in an intensive schedule of informal consultations and formal and informal meetings in respect of the various implementation-related issues referred to the Committee, first in the General Council's decision of 15 December 2000, then by letter from the Chair of the General Council on 2 August and 15 October. During the period since the last regular meeting, the Chairman had submitted to the General Council three reports, on his own responsibility, on the Committee's activities on these implementation-related issues. These reports had been circulated in documents G/SCM/34, G/SCM/36 and G/SCM/38. He opened the floor for comments from delegations.

41. The delegate of Colombia wished to express her country's concern with regard to the implementation proposal for a framework for Article 27.4 export subsidy extensions for developing countries with small trade shares and to underline Colombia's constructive role in the implementation discussion -- a discussion which Colombia believed was very useful for all developing countries and the whole organization. However, her delegation wished to stress that, as a result of the implementation process, her country was in a very negative position relative to what they believed might prevail at the end of the Uruguay Round. All Members should understand that all of Colombia's neighbours were included in the proposed special and preferential regime, but that unfortunately, Colombia was not. The criteria had no technical basis and this would result in very negative repercussions on employment and investment, and Colombia would not be able to continue competing with the countries that would benefit from this sort of treatment.

42. The delegate of the Dominican Republic stated that, in relation to the proposal to extend the period for developing countries with small shares in world trade, the information relating to the programme of the Dominican Republic was available from the Secretariat, in case any Member wished to consult it.

43. The delegate of Honduras stated that, in response to requests from delegations, Honduras had submitted to the Secretariat information on the programmes in Honduras that were covered by the proposal with regard to Article 27.4.

44. The Chairman stated that he had been informed by the Secretariat that a similar communication had been received from Guatemala. All of these were available for Members' inspection with the Rules Division of the Secretariat. He also wished to thank Colombia for having participated constructively in the implementation debate.

45. The Committee took note of the statements made.

J. FINANCIAL SUPPORT BY THE GOVERNMENT OF KOREA FOR HYNIX SEMICONDUCTOR INC. –
ITEM REQUESTED BY THE EUROPEAN COMMUNITIES AND THE UNITED STATES

46. The delegate from the United States wished to bring to the attention of the Committee its ongoing concern about the continued and commercially questionable support which various Korean Government authorities were providing to Hynix Semiconductor, Inc. This support had had the effect of shielding Hynix from market discipline and exacerbating the already distressed state of the global semiconductor market. The Committee would recall that at its last regular meeting in May 2001, the United States had raised this issue and had sought clarifications and assurances from the Korean delegation that the extraordinary credit guarantees and other interventions undertaken by Korean state-owned and state-controlled institutions with respect to Hynix would be compatible with Korean financial reform objectives, consistent with Korea's multilateral trade obligations, and of a finite nature. At that time, and in other settings, Korean officials had attempted to assure the United States Government that Hynix benefited from no government-subsidized support, and that the special government-orchestrated measures that Korea claimed were intended to compensate for an underdeveloped Korean capital market would be of limited duration.

47. In light of developments over the last few months since the last regular Committee meeting, the United States remained concerned about the variety, magnitude and direction of government support in Korea for Hynix as well as the implications of this support for the integrity of Korea's trade commitments. The situation was of immediate concern to the United States, as it should be to other WTO Members, as a result of the adverse trade effects that resulted from these interventionist policies. The Korean Government's financial and other support had enabled Hynix to maintain capacity and production at uneconomic levels contributing significantly to the global supply/demand imbalance for DRAM semiconductors. This had led to increased incidences of price undercutting by Hynix in international markets and damage to its competitors. In view of the staggering losses the company had incurred and its immense debt load, Hynix's creditors increasingly appeared willing to continue support to the firm only because of pressure from, or the intervention of, Korean government officials and the consequent perception that the government simply would not let Hynix fail.

48. The United States would briefly review for other Members' information the developments that they had informed the Committee of in May and what had transpired since then. According to some reports, at the beginning of the year, Hynix had carried a corporate debt of approximately \$5 billion, of which some \$2.6 billion were in corporate bonds that were scheduled to come due in 2001. In December 2000, motivated in large measure by the desire to help Hynix meet its short-term financing needs, Korean authorities initiated the Korea Development Bank (KDB) bond programme. Under this programme, the state-owned KDB intervened as an investor of last resort, committing to re-finance -- under certain conditions -- up to 80 per cent of Hynix's corporate bonds coming due in 2001. To date, KDB purchases of Hynix bonds totalled about \$700 million, and approximately 40 per cent of these bonds had been repackaged into collateralized bond obligations and resold by the KDB to institutional investors, with associated government credit guarantees to ensure investor interest. Although several other firms participated in this programme, Hynix had been the principal beneficiary. In effect, the KDB bond programme was a targeted response to meet the needs of a very few enterprises whose financial needs were so great that they could not attract sufficient financing even under the government's general bond-purchase programme for cash-strapped and debt-burdened companies.

49. The Korean authorities no doubt hoped that the KDB bond programme would be enough to keep Hynix afloat until the DRAM chip market recovered. However, the market -- and Hynix -- continued to decline, in no small part because of Hynix's artificially sustained capacity and production and its aggressive pricing behaviour. In May, not long after the Committee's spring meeting and the assurances the United States had received from the Korean delegation, Korean state-owned and state-controlled banks and several investment trust companies provided additional assistance to Hynix under a complex refinancing agreement organized by Salomon Smith Barney. While the package

involved Hynix itself issuing the equivalent of \$1.25 billion in global depository receipts, this was accompanied by the company's Korean bank creditors agreeing to fully restore credit lines that had only recently been reduced, to restructure \$1.5 billion in Hynix loans and to purchase 1 trillion won in Hynix convertible bonds. In addition, 16 investment trust companies had agreed to re-finance \$500 million in three-year bonds that Hynix would issue on the condition that the Korean Government, through Seoul Guarantee Insurance Co., would guarantee \$440 million of them.

50. More recently, at the instigation of Korea Exchange Bank, Hynix's creditor banks reportedly had agreed to a new bailout totalling almost \$4 billion. This arrangement was said to include a 3 month freeze on debt repayments, a \$2.3 billion debt-for-equity swap (which might be increased by another 37 per cent), and the rollover of \$1.6 billion in maturing bonds and loans. This came at a time when Hynix reported losses of \$1.25 billion in the third quarter and \$2.8 billion for the year. If, as the Korean government claimed, the banks were making market-based decisions, why were Hynix's creditor banks adding to loan-loss provisions (some in the amount of 50 per cent of their exposure to Hynix) while simultaneously considering the extension of fresh loans to the company? In the current year alone, it had been estimated that Hynix would suffer in excess of \$3 billion in losses. Yet, as recently as September, Hynix's vice president for world-wide marketing was quoted as saying: "The Korean government won't let us fail".

51. The behaviour of Hynix's state-owned and state-controlled creditors would not readily contradict that view. Just the previous day, yet another bail-out proposal for Hynix was announced. According to Korea Exchange Bank officials, this latest proposal called for outright debt forgiveness and an even larger debt-for-equity swap. Incredibly, this latest bail-out proposal called for the government-owned banks and others to forgive 70 per cent of their loans to Hynix. It was extremely difficult to understand how this degree of debt forgiveness could be commercially justified. Given the continued state ownership in many of Hynix's creditors, and the historical record of government influence over the allocation of credit in the Korean economy, it was critical for the Korean authorities to demonstrate unequivocally their commitment to the stated policy of non-interference in the commercial judgement of banks and other financial institutions with respect to the future of Hynix. The extraordinary support that the Korean Government had provided to Hynix in the past had served to undermine the ability of the market to determine Hynix's fate, and the costs of such policies were borne by Hynix's competitors and Korea's trading partners. The United States, therefore, urged the Korean authorities to take immediate, transparent and affirmative steps to assure that the Korean government would not provide additional subsidies to Hynix and that the creditors of Hynix would not be pressured or influenced by the government into taking any decisions that could not be justified solely on commercial terms.

52. The delegate of the European Communities stated that his delegation had decided to raise the issue of financial support granted by the Government of Korea to Hynix Semiconductor, Inc., a point which was of considerable concern to the European Communities. The European Communities had already underlined during the previous meeting of the Committee that government intervention in the financial sector in Korea amounting to subsidies to certain companies or sectors would be closely followed by the European Communities. Recent developments had forced the European Communities, like the United States, to address the question in more detail again at the present meeting for the following reasons: first, the European Communities wanted to bring to the attention of the Committee government practices in Korea which had created severe trade distortions in a product of strategic importance for many industrial sectors, world-wide. In the case in question, government support appeared to have been specifically targeted at one company, Hynix, with the result that this company, which was one of the world's main exporters of DRAM semiconductors, had caused adverse effects to its competitors, notably those based in the EC. Furthermore, these government activities were, in the EC view, clearly relevant for this Committee as they concerned the operation of the *SCM Agreement*, and appeared to be inconsistent with it. The European Communities did not intend to go into the details of each and every government practice in this case.

The Committee would not be the appropriate forum and this might soon have to be done in a different framework. However, the European Communities wished to focus on some key aspects of the way the Korean Government had intervened in the operation of this one particular company.

53. There was a general "*leitmotif*" which had governed actions taken in the course of the last twelve months: that a company such as Hynix, heavily dependent on exports, and therefore in direct competition with other global players on the world market, was shielded from market forces through direct or indirect government financial support and the use of government influence. Through a network of government-owned banks and regulatory activities relating to the company and its creditors, the Government of Korea had provided Hynix with a continuous stream of cash which allowed the company to sell at very low prices. This influx of capital would clearly not have been available to the company on market terms. One particularly conspicuous example of this practice was the so-called "fast-track" or "quick underwriting programme" of the Korea Development Bank, a 100 per cent government-owned agency. This scheme allowed the KDB to purchase bonds of companies which could not revolve their bonds on their own at market conditions. Since January 2001, the KDB had purchased bonds of over 1 trillion won, bonds which, according to the scheme's very own terms, could not have been paid back by the company under market conditions. Did this conform to the usual investment practice of private investors in Korea? His delegation had serious doubts.

54. In this respect, the European Communities, of course, appreciated the efforts of the Korean Government to reform the financial sector in Korea as a whole. However, this programme was, in its operation, geared towards supporting only a very few companies, and predominantly benefited Hynix, which received by far the highest amounts under this programme. In the EC view, these measures had therefore to be distinguished from legitimate structural policy actions, since they targeted selected companies only.

55. In addition to the participation in this programme, several "rescue packages" had been drawn up under circumstances which pointed to an unusual degree of government involvement. As Members had just heard, there was another rescue package under discussion. While the European Communities did not want to repeat the account of apparent government direction of creditors given by the United States, the European Communities also seriously questioned whether a group of prudent creditors and lenders would have made decisions such as the ones made concerning Hynix. For example, why, in a convertible bond issue operation, did some investors require a government guarantee while the creditors, mostly government banks, did not? Why would creditors convert their debt into equity at a time when, in the view of many observers, holding debt was a more certain way to recover the investment than equity? And again, another proposal concerning a debt-for-equity swap was under consideration. In this respect, all measures taken by creditors turned into investors in the future would require careful analysis under the "private investor" principle.

56. Finally, the European Communities wanted to note reports that stated that such government guarantees had not been made contingent upon payment of adequate fees. In the case of export financing, this would, of course, mean that the guarantee would amount to a prohibited export subsidy.

57. The European Communities wished to draw certain conclusions and was very interested in hearing other Members' views on this. This case clearly showed that government support to export-oriented companies producing a globally-traded commodity could have immediate and far-reaching adverse effects in other markets. In this case, the unfair subsidization of Hynix had led directly to lower sales and prices for its main competitors. Such trade-distorting effects could result from direct or indirect government intervention in lending and investment decisions, in just the same way as they resulted from outright grants or tax breaks. In the EC view, the disciplines of the *SCM Agreement* clearly applied to such government practices as well. Otherwise, the core of this set of rules would be

undermined. For the case at issue this could mean only one thing: creditors and investors of Hynix had to be able to use their own business judgement in deciding on the future of this company. As just heard, such decisions were currently pending. The European Communities therefore urged the Government of Korea to ensure that such decisions were made without any pressure, directly or indirectly, from the government.

58. The delegate of Korea thanked the United States and the European Communities for their interest in the Hynix financing programme. It had been only the previous day that his delegation had received the US and EC statements and they had not had sufficient time to consult with their capital. However, he wished to respond to the points raised in as much detail as possible. Regarding the KDB bond programme mentioned by both the United States and the European Communities, the Korean Government firmly believed that the programme was in full compliance with the *SCM Agreement*. In January 2001, KDB introduced its underwriting programme of corporate bonds as a temporary means to address the discrepancy between the supply and demand for corporate bonds under special circumstances where Korea's bond market was not functioning properly. So far, six companies had participated in the programme, and the programme would be terminated by the end of the year. The KDB programme was being implemented in a manner consistent with Korea's obligations under the *SCM Agreement*. Firstly, the programme was not narrowly targeted as an assistance to Hynix or to firms in the semiconductor sector. All firms that met the criteria of being seriously affected by the distress in the bond market and of passing the viability test could take part. In fact, Hynix had not taken part in the programme since August. Secondly, the cost of participation in the programme was linked rigorously to normal market costs for comparable credits. The financial cost of the participating companies, including Hynix, was clearly above a comparable market-based rate cost.

59. As to the recent arrangement by the creditors of Hynix, which had been pointed out by the US delegate, Korea had to emphasize that it was based on the autonomous decisions of the creditor financial institutions, and most certainly not influenced by the Korean Government. In response to Hynix's worsened financial conditions brought about by a drop in semiconductor prices, the creditors of the company had decided to take certain management normalization measures. The management normalization plans were based entirely on the decisions made by the creditor financial institutions and motivated by market principles and maximization of loan recovery. Although the Korean Government had to assume shares of certain financial institutions as an inevitable process of restructuring in the wake of the financial crisis of 1997, it did not and could not exercise influence on matters relating to the institutions' handling of general loans. The government only monitored the results of the management performance of these financial institutions based on the memorandum of understanding signed between the government and the institutions stipulating the major management performance targets. Each financial institution's autonomy, in terms of business operations or loan rescheduling decisions, was fully guaranteed. This principle was explicitly stipulated in the Prime Minister's Directive of November 2000 (Regulations on the Responsible Management of Financial Institutions and the Guarantee of Transparency in Financial Administration). The decision to extend bank credit could only be made by the credit committee within the bank, and it was impossible for the government to interfere in this decision-making process. In fact, the Chairman of the credit committee of Hynix's main creditor bank -- Korea Exchange Bank -- was the Vice-President of the bank's majority shareholder, Commerzbank. Therefore, there was no room for the government to interfere. Unlike in the past, in accordance with the law, the Korea Deposit Insurance Corporation would be able to press civil or criminal charges against management personnel responsible for causing the insolvency of financial institutions, and, therefore, it was highly unlikely that they would act contrary to their commercial interests. Finally, in order to prevent further misunderstandings concerning government-owned financial institutions, Korea's Government would work to achieve early privatization of these financial institutions.

60. The Chairman asked the delegation of Korea whether it could be specific with respect to the termination date of the KDB bond programme.

61. The delegate of Korea replied that, as he had stated at the previous meeting, the programme was only temporary, and its duration was one year. While he had no specific date, the termination date might be by the end of the year.

62. The delegate of Japan said that, like the United States and European Communities delegations, his delegation was also interested in the causes and effects of Korean Government financial support aiding a certain industry sector, including Hynix. Japan would watch this situation closely.

63. The delegate of Singapore stated that Singapore understood the concerns expressed by the delegations of the United States and European Communities. Singapore recognized the right of Members to take actions in pursuit of their industrial development policies, such as the necessary use of incentives to promote productivity and entrepreneurship. However, Members should also ensure that such actions would not go against the *SCM Agreement* by affording unfair protection and consequently displacing or impeding exports from countries with competitive productive industries. The *SCM Agreement* set up key principles governing subsidies that all Members were obliged to adhere to, and Singapore urged Members to take these principles into serious consideration when enacting their subsidies policies.

64. The delegate of the European Communities thanked the delegate of Korea for his statement and took note of the statement that apparently only six companies had participated in the KDB bond programme. The European Communities' understanding was that most of those six companies would be part of the same group of companies, the Hyundai *chaebol*, out of which Hynix evolved. This would, of course, indicate that this was a programme targeted at a specific sector, which would make the programme a specific programme. The European Communities had also noted that this programme would be terminated at the end of the year. However, it would still be possible to receive further benefits under this programme for companies which had participated under the programme, in particular, concerning the further treatment of the bonds that had been purchased by the Korean Development Bank. If those banks had not been repaid according to the repayment schedule linked to those bonds, there would of course be the possibility of further subsidization, so the termination of the bond programme did not alleviate all the EC concerns. His delegation had also taken careful note of the commitment of the Government of Korea that further decisions of creditor banks would be made under the "private investor" principle, in market conditions not influenced by the government. Words would have to be followed by deeds, and the European Communities would watch very closely whether the actual decisions of the creditors were in line with normal business judgement of creditor banks in this area.

65. The delegate of the United States also wished to thank the Korean delegate for his statement. With respect to the question whether the banks were acting in their commercial interest, the latest bail-out proposal was most telling. As mentioned, the latest proposal was to forgive 70 per cent of Hynix's debt. He found it hard to believe that a truly commercial bank would forgive 70 per cent of its loans to a company outside of a bankruptcy proceeding. The United States was encouraged by Korea's statement that the banks would be privatized and hoped that this would happen as soon as possible.

66. The delegate of Korea appreciated the further comments made by delegations and wished to respond to some points made. With regard to Singapore's comment that the incentives should be consistent with the *SCM Agreement*, in Korea's view, these were not incentives, but rather only the results of overcoming the financial crisis and the structural reform of the financial and private sectors. The programme was not specific, did not provide a benefit and was not contingent upon export performance. Korea believed therefore that it was in full compliance with the *SCM Agreement*. Recalling the statement by the EC delegate that only six companies participated in the programme,

most of them from the same conglomerate, although companies of the Hyundai group were included in the KDB bond purchase programme, the bonds of these companies are arranged appropriately so as to split the risk. The decision to include these companies in the programme was made autonomously by the creditors banks, KDB and other financial institutions. Therefore, it would be difficult for the government to explain the reasons for the decision. However, the government knew that the factors for determining a company's eligibility for this programme were based on the overall evaluations made on the industrial, management and financial risks as well as on the company's future cash-flow capability. The main creditor bank provided this overall evaluation to the other creditor banks and KDB. Based on this evaluation, each agency would make its own assessments and, at the level of its own credit committee, would make its final decision on whether or not to accord eligibility.

67. The Committee took note of the statements made.

K. OTHER BUSINESS

68. No delegation raised any items under other business.

L. DATE OF NEXT REGULAR MEETING

69. The Chairman noted that the meetings of the Anti-Dumping Committee were scheduled for the entire week of 23 April 2002. In accordance with the Committee's decision adopted in February 1995, the Committee's spring meetings would be held during the week of 30 April 2002.

70. The Committee took note of the Chairman's statement.

M. ANNUAL REPORT TO THE COUNCIL FOR TRADE IN GOODS (ARTICLE 32.7)

71. The Committee adopted its annual report. The report was subsequently circulated in document G/L/496.

72. The meeting was adjourned.
