CHAPTER 6 SUBSIDIES AND COUNTERVAILING MEASURES

1. OVERVIEW OF RULES

(1) Subsidies and Countervailing Measures

Subsidies have been provided widely throughout the world as a tool for realizing government policies, in such forms as grants (normal subsidies), tax exemptions, low-interest financing, investments and export credits. There are six primary categories of subsidies, divided by purpose: 1) export subsidies, 2) subsidies contingent upon the use of domestic over imported goods, 3) industrial promotion subsidies, 4) structural adjustment subsidies, 5) regional development subsidies, and 6) research and development subsidies. By beneficiary, there are two primary categories: 1) subsidies that are not limited to specific businesses or industries (non-specific subsidies), and 2) subsidies that are limited to specific businesses and industries (specific subsidies).

Although governments articulate ostensibly legitimate goals for their subsidy programmes, it is widely perceived that government subsidies may give excessive protection to domestic industries. In such cases, subsidies act as a barrier to trade, by distorting the competitive relationships that develop naturally in a free trading system. Exports of subsidized products may injure the domestic industry producing the same product in the importing country. Similarly, subsidized products may gain artificial advantages in third-country markets and impede other countries’ exports to those markets.

Because of this potential the WTO Agreements prohibit with respect to industrial goods any export subsidies and subsidies contingent upon the use of domestic over imported goods, as having a particularly high trade-distorting effect. Furthermore, even for subsidies that are not prohibited, it allows Member countries importing subsidized goods to enact countermeasures, such as countervailing duties if such goods injure the domestic industry and certain procedural requirements are met. For agricultural products, the WTO Agreements requires obligations such as reducing export subsidies and domestic supports.

(2) Legal Framework

Concerning the legal framework for subsidies, the basic principles are provided in Articles VI and XVI of the GATT. Furthermore, there is the Agreement on Subsidies and Countervailing Measures (hereinafter the “Subsidies Agreement”) as the implementation agreement for subsidies in general. The Subsidies Agreement was negotiated during the Uruguay Round to provide new disciplines in place of the Agreement on the Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade (hereinafter the “Subsidies Code”) adopted during the Tokyo Round. Compared to the Subsidies Code, the Subsidies Agreement provides more explicit definitions of subsidies and stronger, clearer disciplines on countervailing duty.

There have also been some sector-specific discussions of subsidies. The Uruguay Round resulted in the Agreement on Agriculture, which includes provisions for reducing domestic subsidies and exports subsidies for agricultural products. Running parallel to the Uruguay Round were negotiations on subsidy disciplines in individual industries, particularly revisions to the Agreement on Trade in Civil Aircraft and a Multilateral Steel Agreement (MSA). These negotiations have not been concluded.
The Subsidies Agreement provides a definition of subsidies and classifies them into three categories based on purpose and nature. The Agreement also defines the relationship between countervailing measures and remedies for each type of subsidy, provides special and differential treatments for developing country members, and offers transitional arrangements for members transitioning from a centrally-planned economy to a market economy. Below is a more detailed outline of the agreement's key aspects:

(i) Definition of Subsidies (Article 1)

In the Subsidies Agreement, a subsidy is considered to exist if: “there is a financial contribution (i.e., a fiscal burden) by a government or any public body within the territory of a Member” or “there is any form of income or price support in the sense of Article XVI of GATT 1994,” and “a benefit is thereby conferred.” Actions constituting “financial contributions” include:

(a) Direct transfers of funds (for example, grants, loans, and equity infusions) and potential direct transfers of funds or liabilities (for example, government guarantees).
(b) Foregoing or non-collection of government revenue that is otherwise due (for example, fiscal incentives such as tax credits).
(c) Government provision of goods or services (other than infrastructure) or government purchases of goods.
(d) Government making payments to a funding mechanism or entrusting or directing a private body to carry out one or more of the type of functions above which would normally be vested in the government and which in practice does not differ from practices normally followed by governments.
(ii) **Categories of Subsidies**

The Subsidies Agreement defines three categories of subsidies according to specificity, purpose and nature: 1) subsidies that are prohibited outright (hereinafter “red-light subsidies”), 2) subsidies that are not prohibited but which may be subject to countervailing measures (hereinafter “yellow-light subsidies”), and 3) subsidies that are neither prohibited nor subject to countervailing measures (hereinafter “green-light subsidies”) (see Figure 6-1). It also defines the relationship between countervailing measures and remedies for each type of subsidy.

<table>
<thead>
<tr>
<th>Specific</th>
<th>Red-light Subsidies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Export subsidies and subsidies contingent upon the use of domestic over imported</td>
</tr>
<tr>
<td></td>
<td>goods fall into the category of red-light Subsidies.</td>
</tr>
<tr>
<td></td>
<td>- Red-light Subsidies may be subject to countervailing measures.</td>
</tr>
<tr>
<td></td>
<td>- Red-light subsidies are deemed to be specific.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Yellow-light Subsidies</th>
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</thead>
<tbody>
<tr>
<td>- Specific subsidies fall into the category of yellow-light subsidies.</td>
</tr>
<tr>
<td>- Yellow-light subsidies may be subject to countervailing measures.</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Non-Specific</th>
<th>Green-light Subsidies</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>- Non-specific subsidies fall into the category of green-light subsidies.</td>
</tr>
<tr>
<td></td>
<td>- Green-light subsidies are not subject to countervailing measures.</td>
</tr>
</tbody>
</table>

1 The following principles are applied to decide specificity (Article 2). In addition, any subsidies falling into the category of “red-light subsidies” shall be deemed to be specific.

(a) There is specificity when legislation explicitly limits the availability of a subsidy to certain enterprises or industries.

(b) There is no specificity when there are objective criteria or conditions for determining eligibility for, and the amounts of, subsidies, and the subsidies are automatically granted to any and all who meet the eligibility requirements. However, the objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.

(c) Notwithstanding any appearance of non-specificity resulting from the application of the principle laid down in a) and b) above, if there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. These factors are:

1. use of a subsidy program by a limited number of certain enterprises;
2. predominant use by certain enterprises;
3. the granting of disproportionately large amounts of subsidy to certain enterprises; and
4. the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

2 - Countervailing measures include the imposition of countervailing duties or the undertaking of price changes that would offset the subsidy.

- Remedies include referring the subsidy to consultations and the dispute settlement body, obtaining a panel report, adopting the report, and obtaining approval for retaliation. Different remedies apply to different categories of subsidy: red-light, yellow-light, and green-light.
(a) Red-light Subsidies

Red-light subsidies mean prohibited subsidies. With certain exceptions, such as preferential treatment for developing countries and transitional economies, all red-light subsidies must be eliminated (Article 3). If a red-light subsidy is granted, it may be subject to the remedies for red-light subsidies (Article 4). Furthermore, the remedies for red-light subsidies may be invoked in parallel with countervailing measures; however, with regard to the effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty or the defined remedies) shall be available.

There are two categories of red subsidies: export subsidies and subsidies contingent upon the use of domestic over imported goods. The Subsidies Agreement illustrates the following measures as export subsidies.

- Measures which provide direct subsidies contingent upon export performance.
- Measures which involve a bonus on exports, such as currency retention schemes.
- Measures which treat internal transport and freight charges on export shipments on terms more favourable than for domestic shipments.
- Measures which provide products or services for use in the production of exported goods on terms or conditions more favourable than for domestic consumption.
- Measures which allow the full or partial exemption, remission or deferral specifically related to exports, of direct taxes or social welfare charges.
- Measures which allow the exemption or remission, in respect of exported products, of indirect taxes in excess of those levied in respect of like products when sold for domestic consumption.
- Measures which provided export credit guarantees or insurance programmes at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.
- With some exceptions, government export credits granted at rates below those which the government actually has to pay for the funds so employed, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

(b) Yellow-light Subsidies

Yellow-light subsidies are not prohibited per se but may be subject to the remedies for yellow subsidies if they cause adverse effects, such as serious injury (“serious prejudice”) to other countries (Article 7). Furthermore, the remedies for yellow-light subsidies may be invoked in parallel with countervailing measures; however, with regard to the effects of a particular subsidy in the domestic market of the importing member, only one form of relief (either a countervailing duty or the defined remedies) shall be available.

(b) Green-light Subsidies

Green-light subsidies are neither prohibited nor subject to countervailing measures (Article 8). Green-light subsidies includes non-specific subsidies and those specific subsidies

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3 - Among those subsidies likely to have "serious prejudice" are subsidies to cover recurring losses, direct debt relief, and subsidies in excess of "quantitative discipline"(Articles 5 and 6).

- "Quantitative discipline" means that subsidies exceeding 5 percent of a product's price create the rebuttable presumption that the subsidies cause serious prejudice to the industries concerned.
that meet certain conditions found below. Specific green-light subsidies include research and development subsidies, regional development subsidies, and environmental conservation subsidies that have been reported to the Committee before they take effect, reviewed by the WTO Secretariat, and approved by the Committee.

Furthermore, specific green-light subsidies may be subject to the remedies for green-light subsidies (Article 9) if they cause damage which would be difficult to repair to the domestic industry of a member.

- Research and Development Subsidies:
  Among research and development subsidies, those for industrial research must cover no more than 75 percent of expenses; those for pre-competitive development activities, no more than 50 percent. There are also limits on the uses to which funds can be put within this context, for example, to cover wage costs.

- Regional Development Subsidies:
  This includes assistance to disadvantaged areas within a member's borders when it is provided under a general regional development scheme. However, the subsidy should not have specificity within the region, and the region involved must have an unemployment rate that is at least 10 percent higher than the national average or income that is at least 15 percent lower.

- Environmental Conservation Subsidies:
  Environmental conservation subsidies to promote the upgrade of existing equipment to new environmental criteria set forth in legislation are permitted when such upgrades would impose heavy constraints or financial burdens on companies and the subsidy meets the following conditions: one-time only, covering no more than 20 percent of expenses; subsidy does not cover the cost of replacing or operating equipment; subsidy is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution; subsidy does not cover any manufacturing cost savings which may be achieved; and subsidy is available to all firms which can adopt the new equipment and/or production processes.

(iii) Countervailing Measures (Articles 10 to 23)

Countervailing measures may be used for red-light and yellow-light subsidies when imports of subsidized goods harm a competing domestic industry. They are used to offset the effect of the subsidy by, for example, imposing a countervailing duty (limited to the amount of the subsidy) on the import of subsidized goods or securing quid pro quo commitments from the subsidizing country (that it will abolish or restrict the subsidy, or that exporters will raise prices).

Countervailing duties may only be applied after an investigation has been initiated and conducted according to procedures specified in the Agreement. Countervailing duties are also subject to a "sunset clause" and a "de minimis clause".

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4 Sunset Clause: A clause that stipulates the termination of the countervailing duty no later than five years after its imposition unless the authorities determine, in a review initiated on their own initiative or upon a duly substantiated request made by the domestic industry, and the investigating authorities find that injury from the subsidy continues or has the potential to recur (Article 21.3).

5 De Minimis Clause: A clause that stipulates the termination of an investigation in such cases as where the total ad valorem subsidization of a product is less than 1 per cent (Article 11.9)
Furthermore, countries are obligated to explicitly articulate the method by which the amount of assistance will be calculated in either their national legislation or their implementing regulations. The Subsidies Agreement provides guidelines for calculating the benefits of government equity infusions, loans, debt guarantees, and provisions or procurement of goods and services by governments.

(iv) **Institutional Framework (Article 24)**

The Subsidies Agreement calls for the establishment of a Committee on Subsidies and Countervailing Measures ("the Committee" hereinafter) and a Permanent Group of Experts. The Permanent Group of Experts is an institution that reviews the nature of subsidies in line with the disciplines in the Agreement. If requested by a panel, it may render a verdict on whether a subsidy is prohibited. It may also issue advisory opinions on the existence and nature of a subsidy if requested by a panel or by any member.

(v) **Notification and Surveillance (Article 25 and 26)**

To ensure the transparency of subsidies, the Subsidies Agreement contains detailed rules on members' obligation to provide notification of specific subsidies, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, a Committee reviews of notified subsidies. For countervailing measures, the Agreement also contains disciplines on reporting measures, furnishing semi-annual reports, and notifications of domestic procedures.

(vi) **Special and Differential Treatment of Developing Country Members (Article 27)**

In light of the fact that subsidies may play an important role in the economic development of developing country members, the Subsidies Agreement contains preferential measures for developing countries, concerning red subsidies, remedies, dispute settlement, countervailing measures, and others (see Figure 6-2 concerning preferential measures of red subsidies).

(vii) **Transitional Arrangements (Article 28 and 29)**

Members must notify the Committee of any existing subsidies that are inconsistent with the Subsidies Agreement within ninety days after the date on which the Agreement takes effect for those members. Members shall bring those subsidies into conformity within three years of the date of entry into force of the WTO Agreement for such member. However, no member shall extend the scope of any inconsistent subsidies, nor shall such subsidies be renewed upon their expiry.

The Agreement also provides for special handling of subsidies enacted by members that are in a transformation from a centrally-planned economy into a market economy when those subsidies are necessary for the transformation. If notified to the committee, such members have up to seven years from the date of entry into force of the WTO Agreement to eliminate red-light subsidies (see Figure 6-2).

For the most part, the Subsidies Agreement has been implemented very well, despite the failure of many contracting parties to fulfil their notification obligations (for subsidies with specificity and for countervailing measures). Members will need to make greater efforts in order for the Agreement to be more effective.
The Subsidies Agreement also calls for re-examination of 1) serious prejudice (Article 6.1); 2) green-light subsidies (Article 8 and 9); and 3) export competitiveness of the developing countries (Article 27.6). These items are considered the built-in-agenda. The Committee was to reach a decision by the end of 1999 on extending application for the first two items (competitiveness questions were excluded from the discussion), but was unable to reach a consensus because of sharp divisions of opinion between the developing countries, which argue that extension should be allowed on the basis that development subsidies are covered by as green-light subsidies, and the developed countries, which argue that extension should be justified by further discussion.

<Figure 6-2> General Rules on Preferential Measures and Transitional Arrangements of Red-light Subsidies

<table>
<thead>
<tr>
<th>Least-Developed Country (LDC) Members</th>
<th>Export Subsidies</th>
<th>Subsidies Contingent upon the Use of Domestic over Imported Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not applied</td>
<td>not applied for a period of eight years from the date of entry into force of WTO Agreement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Developing Country Members described in Annex VII(b)</th>
<th>Export Subsidies</th>
<th>Subsidies Contingent upon the Use of Domestic over Imported Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not applied</td>
<td>not applied for a period of five years from the date of entry into force of WTO Agreement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Other Developing Country Members</th>
<th>Export Subsidies</th>
<th>Subsidies Contingent upon the Use of Domestic over Imported Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not applied for a period of eight years from the date of entry into force of WTO Agreement</td>
<td>not applied for a period of five years from the date of entry into force of WTO Agreement</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Developed Country Members</th>
<th>Export Subsidies</th>
<th>Subsidies Contingent upon the Use of Domestic over Imported Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not applied for a period of three years from the date of entry into force of WTO Agreement</td>
<td>not applied for a period of three years from the date of entry into force of WTO Agreement for the Member</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Members in the process of Transformation from a Centrally-planned Economy into a Market</th>
<th>Export Subsidies</th>
<th>Subsidies Contingent upon the Use of Domestic over Imported Goods</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td>not applied for a period of seven years from the date of entry into force of WTO Agreement</td>
<td>not applied for a period of seven years from the date of entry into force of WTO Agreement</td>
</tr>
</tbody>
</table>

<Agreement on Agriculture>

In the area of agriculture, treatment of subsidies on agricultural products will follow the disciplines laid out in the Agreement on Agriculture, even though such subsidies may appear to come under the provisions of the Subsidies Agreement.

(i) Domestic supports (Article 6 and 7)

(a) Domestic supports are divided into “yellow” (subject to elimination) and “green” (not subject to elimination) categories.

(b) The following policies are deemed “green” as long as certain conditions are met:
   - Research, promotion, education, inspection, and other general services.
   - Infrastructure services for agricultural areas and rural communities; creation of markets for agricultural products.
- Public stockholding for food security purposes.
- Domestic food aid.
- Decoupled income support. (i.e. that directly linked to production)
- Income insurance and safety-net programmes.
- Relief from natural disasters.
- Structural adjustment assistance provided through producer retirement, resource retirement, and investment aid programmes.
- Payments under environmental programmes.
- Payments under regional assistance programmes.

“Blue” categories include direct payments under production restriction plans as long as the following conditions are met.

- Payments are based on fixed area and yield (subsidy payments for idle fields under the EU Common Agriculture Program).

- Payments are made on 85% or less of base level of production (the deficient payment system under the US Agriculture Act of 1990 (abolished by the US Agriculture Act of 1996)).

- Livestock payments are made on a fixed number of head (incentives for the bovine sector under the EU Common Agriculture Program).

(c) All programmes not considered to be “green” are included in an “Aggregate Measurement of Support (AMS),” which is to be reduced by 20 percent over a period of 6 years. The AMS represents the amount of market price support, non-exempt direct payments, or any other subsidy not exempted from the reduction commitment provided by a given country. They are concluded using the fixed external reference price, based on the years 1986 to 1988. The AMS expresses the extent of protection given to agricultural products. Specific guidelines are set for individual basic items, with non-specific supports measured in aggregate monetary amounts. But it is not required to include product-specific domestic support, which does not exceed 5 percent of the total value of its domestic production, in the calculation of total AMS.

(ii) Export Competition (Articles 8 to 11)

(a) Over a period of 6 years, direct export subsidies are to be reduced by 36 percent and the volume of subsidized exports by 21 percent.
(b) Measurements are based on the period 1986-1990.
(c) Each Member undertakes not to provide export subsidies other than in conformity with this Agreement and with the commitments as specified in that Member's Schedule.

The uniform dispute settlement procedures of the WTO apply to consultations and dispute settlements under this Agreement.

(3) Recent Trends

Subsidies and countervailing measures are not a subject with which people in Japan are very familiar. Japan has only conducted one subsidy investigation in its history and it has

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6 Japan did initiate an investigation into imports of cotton thread from Pakistan in April 1983 but did not impose a countervailing duty because Pakistan eliminated the subsidy in February 1984. An application was also filed
never been subject to an investigation by another country. But elsewhere in the world, countervailing duties are almost as widely used as anti-dumping duties (see Figure 6-3). The United States, the most frequent imposer of countervailing duties, initiated 235 subsidy investigations between 1985 and June 1999, and had 53 countervailing duties in place at the end of June 1999.

<Figure 6-3> Number of Countervailing Duty Investigations and Outstanding Countervailing Measures in Selected Countries

1. Number of Investigations

<table>
<thead>
<tr>
<th></th>
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<th></th>
<th></th>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>US</td>
<td>201(22)</td>
<td>5(2)</td>
<td>4(2)</td>
<td>4(0)</td>
<td>6(0)</td>
<td>15(2)</td>
</tr>
<tr>
<td>Australia</td>
<td>27(19)</td>
<td>1(0)</td>
<td>0(0)</td>
<td>1(0)</td>
<td>1(0)</td>
<td>0(0)</td>
</tr>
<tr>
<td>Chile</td>
<td>24(6)</td>
<td>1(1)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
</tr>
<tr>
<td>Canada</td>
<td>12(3)</td>
<td>2(2)</td>
<td>1(1)</td>
<td>0(1)</td>
<td>0(0)</td>
<td>1(0)</td>
</tr>
<tr>
<td>NZ</td>
<td>7(4)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>2(2)</td>
<td>1(1)</td>
<td>0(0)</td>
</tr>
<tr>
<td>Brazil</td>
<td>5(2)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
</tr>
<tr>
<td>EU</td>
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<td>0(0)</td>
<td>1(1)</td>
<td>8(2)</td>
<td>17(0)</td>
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<tr>
<td>Japan</td>
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<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
<td>0(0)</td>
</tr>
</tbody>
</table>

2. Number of Outstanding Measures as of the end of June 1999

<table>
<thead>
<tr>
<th>US</th>
<th>Australia</th>
<th>Chile</th>
<th>Canada</th>
<th>NZ</th>
<th>Brazil</th>
<th>EU</th>
</tr>
</thead>
<tbody>
<tr>
<td>53</td>
<td>5</td>
<td>0</td>
<td>5</td>
<td>2</td>
<td>6</td>
<td>7</td>
</tr>
</tbody>
</table>

(Source: GATT/WTO Documents)

[Note] 1. Figures in parentheses indicate number of cases for agricultural products.
2. There have not been any investigations in Japan.

Subsidies and countervailing measures have triggered many disputes. One reason for the frequency of subsidy complaints under the GATT was the ambiguity of the GATT’s rules on subsidies. Countries interpreted differently the procedural rules for invoking countervailing duties. Underlying this disagreement was a basic conflict between the various contracting parties as to how to view government assistance designed to protect and nurture domestic industry.

Exporting countries frequently initiated GATT disputes involving subsidies. The exporting countries generally claimed that countervailing duties had been imposed unfairly on the basis of arbitrary determinations of subsidies, injury or causation. Other disputes concerned domestic subsidies which nullify the benefits gained through tariff reductions by effectively excluding exports from the domestic market. While there has been a decline in the number of cases brought before panels since the WTO Agreement went into force, it is notable that prohibited subsidy disputes that have reached a panel have recently increased. (See Figure 6-4 and 6-5)

for a countervailing duty against Brazilian ferro-silicon in March 1984 but was withdrawn in June of that year so no investigation was ever initiated.
### <Figure 6-4>  Number of Panel Cases Concerning Subsidies

<table>
<thead>
<tr>
<th></th>
<th></th>
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<th></th>
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<tbody>
<tr>
<td>CVD Measures</td>
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<td>3</td>
<td>2</td>
<td>1</td>
<td>2</td>
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<td>0</td>
<td>0</td>
<td>0</td>
<td>0</td>
<td>1</td>
</tr>
<tr>
<td>Other Measures</td>
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<td>0</td>
<td>0</td>
<td>0</td>
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<td>Total</td>
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<td>1</td>
<td>0</td>
<td>0</td>
<td>1</td>
<td>7</td>
<td>3</td>
</tr>
</tbody>
</table>

[Note] CVD indicates Countervailing Duties

(Source: GATT/WTO Documents)

### <Figure 6-5>  Panels in Connection with CVD Measures since 1991

<table>
<thead>
<tr>
<th>Date of Establishment</th>
<th>Claimant</th>
<th>Respondent</th>
<th>Subject</th>
</tr>
</thead>
<tbody>
<tr>
<td>7/91</td>
<td>United States</td>
<td>Canada</td>
<td>Canada-Imposition of Countervailing Duties on Grain Corn from the United States (Panel adopted in March 1992)</td>
</tr>
<tr>
<td>11/92</td>
<td>EU</td>
<td>Australia</td>
<td>Australia-Imposition of Countervailing Duties on Glace Cherries from France and Italy (Cancelled by Australia in October 1993)</td>
</tr>
<tr>
<td>1/93</td>
<td>EU</td>
<td>Brazil</td>
<td>Brazil-Imposition of Countervailing Duties on Milk Powder from EU (Panel adopted in April 1994)</td>
</tr>
<tr>
<td>6/93</td>
<td>EU</td>
<td>United States</td>
<td>United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from EU (Report presented in November 1994, but not adopted)</td>
</tr>
<tr>
<td>4/94</td>
<td>EU</td>
<td>United States</td>
<td>United States-Imposition of Countervailing Duties on Certain Carbon Steel Flat Products from EU (Proceeding termination in February 1995)</td>
</tr>
<tr>
<td>3/96</td>
<td>Philippines</td>
<td>Brazil</td>
<td>Brazil-Imposition of Countervailing Duties on Desiccated Coconut from the Philippines (Appellate adopted in March 1997)</td>
</tr>
<tr>
<td>2/99</td>
<td>EU</td>
<td>United States</td>
<td>United States – Imposition of Countervailing Duties on Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from United-Kingdom (Report presented in December 1999)</td>
</tr>
</tbody>
</table>

(Source: GATT/WTO Documents)

### (4) Economic Implications

Government subsidization may have far-reaching implications. When a government subsidizes projects, such as research projects in advanced technology, the benefits may extend well beyond the industry directly concerned. This is true because the results of projects spill over into a wide range of fields. Government assistance for research activities can contribute not only to domestic economic development, but to the development of the world economy as a whole.

Subsidies may also be used to encourage less competitive industries to reduce excess capacity or to withdraw from unprofitable fields. They may, therefore, smooth the way for
structural adjustment and shifts in employment. Such subsidies therefore promote the appropriate allocation of resources and encourage imports of competitive goods.

On the other hand, subsidies can also distort trade when they are used to protect a domestic industry regardless of its competitiveness. Governments have often used subsidies to needlessly prolong the natural adjustment process in certain industries. Over the short term, such subsidies may place a domestic product in a better competitive position. They may maintain or increase the profitability of the products and keep employment in that industry stable. Over the longer term, however, the disadvantages of the subsidies become clear. They impede the productivity gains that come from intensely competitive environments and undermine companies’ efforts to rationalize. Thus from a medium- and long-term perspective, subsidies may obstruct an industry’s development or impede the rational allocation of domestic resources.

For example, subsidies tend to impede the efforts of companies struggling to improve productivity and rationalize operations in an extremely competitive environment. Over time, therefore, subsidies actually obstruct the development of domestic industry and the appropriate allocation of domestic resources. On a global economic level, distortions in the allocation of resources and the international division of labour become serious problems as well. And even when subsidies are used to make up for short-term market failures, there is still potential for their purposes and terms to be subverted.

Subsidies that are used as part of a “beggar-thy-neighbour” policy ultimately may induce retaliatory subsidies, leading to “subsidy wars.” Subsidy policies will then be to blame not only for preventing a product from achieving its proper competitive position, but for needlessly draining the treasuries of the countries involved. The result is a larger burden for tax payers. In no way, therefore, do such policies improve the economic welfare of anyone concerned.

Countervailing duties should be used properly or not at all. When improperly imposed, countervailing duties seriously affect the trade of the product concerned and distort the flow of world trade. (For Countervailing duties improperly imposed, see “United States: Imposition of Countervailing Duties on hot-rolled lead and bismuth carbon steel products” below.)

2. PROBLEMS OF TRADE POLICIES AND MEASURES IN INDIVIDUAL COUNTRIES

<Industries Other than Agriculture>

At present, the following measures are called into question regarding their conformity with the Subsidies Agreement. For these measures, further information should be gathered and improvements should be monitored. When problems are found and no improvement seen, these issues should be raised at the WTO and appropriate resolution under the Subsidies Agreement should be sought when necessity.

(1) United States

(i) Imposition of Countervailing Duties on Hot-rolled Lead and Bismuth Carbon Steel Products

In January 1993, the United States imposed countervailing duties on certain hot-rolled lead and bismuth carbon steel products from France, Germany and United Kingdom.
The European Union maintained that in calculating the amount of the subsidy, the United States used arbitrary methods and argued that the US method was inconsistent with Article 4.2 of the Subsidies Code, which states: “No countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.”

In June 1993, a panel was established at the request of the EU to examine countervailing duties on hot-rolled lead and bismuth carbon steel products. The panel reviewing the case published its report in November 1994, but the report was not adopted. Japan participated in this case as an interested third party, and submitted an opinion paper in October 1993 in agreement with the EU position.

The US Department of Commerce reviewed the countervailing duty rate on imports entering the United States from 1995 to 1997, retaining a countervailing duty on imports of hot-rolled lead and bismuth carbon steel products from Great Britain even though companies that had received subsidies sold their assets at market prices. The US claims that the benefit of the subsidy was nonetheless transferred to the selling companies. The EU argues that this measure violates Article 10 (“Application of Article VI of GATT 1994”) and Article 19.4 (“no countervailing duty shall be levied on any imported product in excess of the amount of the subsidy found to exist”) of the Subsidies Agreement. In February 1999, a panel was established at the request of the EU, and its report was issued in December 1999. The report found the 1995-1997 review to have violated the Article 10 stipulation to “take all necessary steps” because it failed to follow the provisions of Article 19.1, 19.2 and 21.1 of the Subsidies Agreement and Article VI.3 of the GATT. The US appealed this report in January 2000.

(iii) **Tax Treatment for “Foreign Sales Corporations”**

The United States allows foreign sales corporations (FSCs) domiciled within its tax havens or outside of its borders engaged in commercial activities to exempt a portion of their export income from their income taxes if exports contain a certain level or greater of US products. Parent companies can also deduct dividends paid to them by these FSCs from their income taxes. The system is employed mainly by US parent companies exporting their products through foreign subsidiaries. The programme was instituted in 1985 to take the place of the Domestic International Sales Corporation (DISC) scheme that had earlier been found to be a GATT violation (export subsidy) in an earlier panel requested by the EU.

In November 1997, the EU requested consultations with the US, claiming that the system represented an export subsidy and subsidy contingent upon the use of domestic goods over imported goods which are prohibited under the agreement. Consultations in the case were held three times between United States and EU, but they were unable to reach a consultation. In September 1998, a panel was established. Japan participated in the panel as a third country and noticed that this program was also a potential violation of the agreement.

The panel report was issued in October 1999 and found that the tax exemptions granted under the FSC program constitute export subsidies in violation of the Subsidies Agreement. The report recommended the US to eliminate the system by October 2000. It did not, however, find it to be a subsidy contingent upon the use of domestic goods over imported goods. The US has appealed the "export subsidy" ruling, while the EU has appealed the failure to find the program a "subsidy contingent upon the use of domestic goods over imported goods". Japan
participated again as a third party and the Appellate Body supported the panel’s conclusion that the measures constituted an export subsidy.

(iv) **Debt guarantees for the steel industry**

In 1999, the United States began a program to provide a total of $1 billion (up to $250 million per company) in debt guarantees for steel makers meeting certain lay-off and production-cut criteria after January 1998. These guarantees have the potential to seriously impair imports of steel products into the US market, and could have an adverse impact on the Japanese steel industry as specified in Article 6 of the Subsidies Agreement. Japan should continue to monitor the effects of the program.

(iv) **Problems with the Uruguay Round Implementation Legislation**

As in anti-dumping, there are any number of problems with US subsidy and countervailing duty measures, including the existence of anti-circumvention regulations, and the practice of “cross-cumulation” in assessing injury from dumping exports and subsidized exports. We provide a discussion of these issues in the anti-dumping chapter of this report.

(2) **European Union**

(i) **Export-related Measures**

The United States requested bilateral consultations with several EU countries in May 1998 claiming that measures in their income tax systems constituted prohibited subsidies. Consultations were held with France, Greece, Ireland, Netherlands, and Belgium. Below are the US allegations for each.

- **France:** 1) Income tax law provides for the start-up costs of overseas businesses conditional upon the inclusion of French products through a tax-deductible reserve accounts. 2) Allowance of 10 percent of the receivables accounts to be held in a special account for medium and long-term credit risks related to export sales.

- **Netherlands:** Income tax law allows small and medium-sized businesses to establish special export reserves.

- **Greece:** Income tax law allows domestic exporters to claim special tax exemptions depending on the percentage of their revenues coming from exports.

- **Ireland:** Income tax law includes a “Special Trading House” (STH) system under which special tax rates are levied for revenues from export sales of Irish products.

- **Belgium:** Income tax allows certain tax exemptions for recruiting personnel with export-related functions.

The United States claims that these measures constitute export subsidies or subsidies contingent upon the use of domestic goods over imported goods, both of which are prohibited subsidies under the Subsidies Agreement. Japan should fully monitor the nature of these programmes and their consistency with the Agreement.

(ii) **Problems with the Uruguay Round Implementation Legislation**
The application of anti-circumvention measures needs to be monitored carefully.

(3) Malaysia

(i) Local Content Requirement Attached to Incentives

Malaysia has offered a preferential tax system subject to a local content requirement in manufacturing sectors since 1991. This local content requirement attached to incentives fits the definition of "subsidies contingent upon the use of domestic over imported goods" that are expressly prohibited in the Subsidies Agreement.

It is not, however, currently a violation of the Agreement because Malaysia, as a developing country, is allowed a five-year transition period from the time the WTO Agreement takes effect for the elimination of existing subsidies. Still, we must express our hope that Malaysia will terminate the requirement within the proper time schedule.

(4) Australia

“Passenger Motor Vehicle Export Facilitation Scheme” and “Textile, Clothing & Footwear Import Credit Scheme”

Australia has signed a grant contract with its only manufacturer of leather products for automobiles, under which it provides the company with a total of A$30 million in three payments contingent upon the company meeting set performance goals for the April 1, 1997 to December 31, 2000 period. It has also signed a loan contract under which it has lent the company A$25 million for fifteen years at the preferential tax rate. The US requested consultations in November 1997, claiming that this was an export subsidy prohibited under the Subsidies Agreement. Consultations on the case was held in December 1997, but were unable to reach a conclusion.

In January 1998, a panel was established at the request of the US, but the US subsequently withdrew its request, so the panel was never actually composed. In May 1998, the US again requested consultations with the government of Australia on the case. The issues involved in the consultations were the same as in January 1998, but Australia pointed out that the evidence provided by the US at the time the panel was requested had not been sufficient, so the “request for consultation” documents contained several items on evidence. The second round of consultations also failed to reach a conclusion, and in June 1998 a panel was established at the request of the US. The panel issued its report on the case in May 1999 (adopted in June).

The panel found that for the manufacturer receiving the subsidy to be able to expand its sales so as to meet the targets in the grant contract, it would necessarily have to maintain and increase its exports. Certain levels of export performance were therefore one of the conditions for the subsidy being granted, and the subsidy was in fact tied to the actual or anticipated exports and export income of the company. The panel found this arrangement to be an export subsidy as defined in the Subsidies Agreement. On the other hand, there was no clear relationship between the loan contract and sales performance, so the loan contact did not constitute an export subsidy according to the panel. Based on the panel's report, the US subsequently requested the establishment of a panel under DSB 21.5, claiming: 1) the manufacturer receiving the subsidy had not sufficiently returned the subsidy that was deemed to be an export subsidy, and 2) Australia signed a new loan contract with the parent
company of the company receiving the subsidy. The report for this panel was issued in January 2000. It found: 1) that the subsidy found to be an export subsidy had not been repaid in full, and 2) that Australia had made a new loan to replace the subsidy. Australia had therefore failed to adhere to the panel recommendation of eliminating the subsidy within ninety days. The report was adopted by the DSB in February 2000.

(5) Canada

(i) Export of civil aircraft

Brazil requested consultations with Canada in March 1997 over measures taken by Canada and its provincial governments to promote the export of civil aircraft. According to Brazil, an export development company (EDC) provided investments, loans and guarantees, while the Canadian Government Accounts (CA) provided support (loans for export transactions and other support.), and Technical Partnership Canada (TPC) and its predecessor programs provided cash subsidies to the civil aircraft industry. Brazil claimed the programs to be export subsidies prohibited under the Subsidies Agreement. Consultations were held in April, but failed to produce a satisfactory resolution, prompting Brazil to request a panel, which was established in July 1998. The panel report of March 1999 rejected Brazil's claims against EDC support because Brazil failed to prove that they constituted a subsidy as defined in Article 1. It did, however, find the CA loans and TPC support to be export subsidies, and recommended Canada to eliminate them. Canada appealed the ruling, but the Appellate Body upheld the panel findings in their entirety, including the criteria used to judge export conditions in TPC supports. Likewise, the Appellate Body rejected Brazil's appeal of the ruling on EDC support.

This case touched directly on one of the points of dispute in the Uruguay Round, whether to use "beneficiary interests" to determine "benefits" in the definition of a subsidy. The panel adopted the "beneficiary interests" approach. It also gave an explicit statement of a "but for" test for "export conditions: "whether it can be provided from the facts that the subsidy would not have been granted but for exports meeting expectations." In that, the case constitutes a valuable precedent.

(ii) Auto Pact

Japan requested that a panel be established, alleging that tax measures taken by the Government of Canada on the basis of the Auto Pact constitute export subsidies and subsidies contingent upon use of domestic goods over imported goods as defined in the Subsidies Agreement. The panel found them to constitute export subsidies, but not subsidies contingent upon use of domestic goods over imported goods because it was possible to receive tax waivers even without using domestic products. Canada has appealed the decision, and we will need to continue to monitor development in the Appellate Body. (For details, see the section on Canadian automotive industry measures in Chapter 1 "Most-Favoured-Nation Status.")

(6) Brazil

Civil aircraft exports

Brazil's "Proex" program provides public export financing for exports of civil aircraft for short-distance land transportation produced by designated manufacturers within the country. Under the program the Government of Brazil subsidizes the interest on commercial-rate loans for the purchase of the aircraft when the loans are made by Brazilian commercial
banks. Canada requested bilateral consultations in June 1996, arguing that the program was an export subsidy under the Subsidies Agreement. The consultations ended unsatisfactorily, and a panel was requested in July 1998. The panel report of March 1999 found the program to be an export subsidy as defined in the Subsidies Agreement. Brazil argued that, as a developing country, the disciplines prohibiting export subsidies did not apply to it, but the panel found that Brazil had raised export subsidy levels in violation of Article 27.4. It recommended Brazil to eliminate the program without delay.

Brazil appealed the decision in May 1999. The Appellate Body released its findings in August, upholding the panel in finding that Brazil had increased its export subsidies level in violation of Article 27.4. It also criticized the panel for inappropriately reaching a judgement on export subsidies under Article 3.1(a) prior to judging the applicability of Article 27.4, but nonetheless supported the panel's conclusion that the measure was indeed an export subsidy.

**Agriculture**

The Agriculture Agreement in principle provides for reductions in trade-distorting policies and measures in this area. Japan should monitor implementation of this Agreement closely.

(1) United States

(i) Export promotion of agricultural products

In the 1980's, the European Union, faced with a serious glut of agricultural products, increased its subsidized exports. During this period, the United States saw its share of export markets rapidly diminish, its competitiveness sapped by the strong dollar and domestic price supports. To counter the export slump and revive prices, the United States has developed the following export promotion programmes. The Agriculture Act of 1996 (enacted in April) maintains these export policies, though it brings them into conformance with the WTO Agreement.

(a) Export Enhancement Plan (EEP)

The EEP specifies markets and pays exporters bonuses equivalent to the discounts they provide their customers. The major items eligible for EEP bonuses are wheat, wheat flour, and barley.

(b) Dairy Export Incentive Programme (DEIP)

The DEIP is an export subsidy system similar to EEP, and its application is limited to such dairy products as dry whole milk, non-fat dry milk, butter, and cheese.

(c) Marketing Loans

Marketing Loans provisions provide a repayment rate for short-term CCC loans repaid by farmers who have sold their crop during the term of the loan at prices below the loan rate. The system increases the government contribution, but it also holds down prices for US agricultural products, thereby increasing their export competitiveness. The marketing loans apply to products such as rice, upland cotton, soybean, wheat, and feed grain.

(d) Export Credit Guarantee Programme

The Export Credit Guarantee Programme seeks to promote exports of US agricultural
products by having the CCC provide debt guarantees to banks issuing letters of credit for borrowing used to finance imports of US agricultural products imported on a commercial basis by developing countries. The Agriculture Act of 1996 provides for: a short term credit guarantee programme (GSM-102) for short-term export credits involving loans of 90 days to three years; a medium-term credit guarantee programme (GSM-103) for medium-term export credits involving loans of three to ten years; and a suppliers export credit guarantee programme (SCGP) that guarantees a part of account receivables by exporters of US agricultural products from importers. GSM-102 and GSM-103 apply both to 100 percent US agricultural products and value-added products with at least 90 percent US content (by weight). Emphasis in the SCGP is on high value-added products and promising future markets, and it defines specific products covered. The OECD is currently studying disciplines on public export credits for agricultural products.

For export subsidies like the EEP and DEIP, the Uruguay Round Agriculture Agreement allows arbitrary subsidization of exports to specific countries as long as countries fulfill agreements to cut the total amount and volume provided. These subsidies still, however, have an impact on international prices for agricultural products and they still distort trade.

In the US, agricultural products can also make use of export credit guarantee programs that give them a competitive advantage compared to products from other exporters, and this too distorts trade. The program instructs the CCC to collect debts should they not be repaid, but by nature this program is extraordinarily similar to a circumvention of export subsidies.

(ii) Export management system

Under its "International Emergency Economic Powers Act," the United States can restrict exports: 1) for security reasons, 2) for foreign policy reasons, and 3) to cover domestic shortages. These powers were invoked in 1973 to ban or restrict exports of soybeans and soybean products after short supplies within the United States caused prices to soar. The move had serious implications for Japan and the EC. When global wheat supplies were tight and prices soaring in 1974 and 1975, the Act was used to restrict exports to the Soviet Union and Poland.

Trade in primary products like agricultural goods is different from the trade in other forms of goods in that international demand is not elastic and for most items there is a large number of importers but only a few specific exporters. There is always the risk, therefore, these actions taken by exporters will result in major swings in international prices.

The US system allows the exporter to unilaterally restrict exports of agricultural products for foreign policy reasons or to cover domestic shortages. This not only distorts trade, but also prevents importing countries from importing stable supplies of food and therefore raises food security concerns.

(iii) Farm support package under the Omnibus Spending Act of 1999

US producers have incurred significant economic losses both from the sharp declines in grain prices since 1998 and from drought and other natural disasters. The Omnibus Spending Act of 1999, which was passed at the end of October 1998, contains a farm rescue package that allocates a total of $6.0 billion to a variety of programs. On October 22, 1999, the US
passed the Omnibus Spending Act of 2000, which contains a total of about $8.7 billion in farm rescue programs, including about $5.5 billion in market loss payments because of the failure of grain prices to improve.

Parts of the package are noticed as "green" though they will need to be studied in detail to confirm that they really are. Even were they "yellow" one could not necessarily conclude that they were inconsistent with obligations under the WTO Agreement as long as they were within the scope of promised AMS cuts. Still, the introduction of direct payments is hardly in line with the Agriculture Act of 1996 and its orientation towards market-driven agriculture.

(2) European Union

(i) Export subsidies for processed cheese

The EU has an internal processing regime "IPR" that enables producers to import raw materials for processing without tax within the community and export processed products to other areas. In February 1997, it modified this system: (a) to add to the list of IPR-eligible items cheese processed within the EU and exported; and (b) to provide export subsidies for processed cheese in proportion to the percentage of the contents of EU non-fat dry milk and butter used as raw materials (conditional upon at least 5 percent imported content in the final product).

During the Uruguay Round, the EU committed to limit and reduce the quantity and budgetary outlay of export subsidies for four items: cheese, butter, non-fat dry milk, and miscellaneous dairy products. This system tries to use allowance for butter and non-fat dry milk to subsidize processed cheese, and many countries suspect that it is an attempt to circumvent the commitments made for export subsidies.

In October 1997, the United States requested consultations under GATT Article XXII, arguing that the EU measure violated Articles 8, 9, 10, and 11 of the Agriculture Agreement and Article 3 of the Subsidies Agreement. Japan is participating as a third party since, as the largest export market for EU processed cheese, it has a substantial trade interest in the case. It will be necessary to monitor developments in the Article XXII consultations.

<Box> Common Agricultural Policy (CAP)

In the past, the EU imposed import levies on agricultural products as a cross-border measure and paid the difference between prices within the Union and international market prices as subsidies when exporting EU agricultural products to third countries. All of the import levies were changed into tariffs and the export subsidies will be reduced in accordance with the Uruguay Round Agreement.

The tightening of the world market in cereals has caused international prices for some products - for example, wheat - to exceed EU prices since the summer of 1995. In order to stabilize the international market for cereals, the EU suspended export subsidies on wheat in July 1995 and amended EC regulations so as to impose export taxes on common wheat in November 1995 and barley in December 1995. In September 1996, the imposition of export taxes was suspended and the grant of export subsidies was resumed because of the reduction of international prices for cereals. In response to a drought in May and June of 1997, which raised the potential of tight supplies and the depreciation of German-mark against the dollar in August, the EU imposed export taxes again on ordinary wheat and other products.

Developments in this regard need to be monitored closely because of the EU’s position in world cereals trade. Accounting for about 20 percent of the world’s wheat exports and
about 40 percent of the world’s barley exports in recent years, the imposition of export taxes by the EU could have significant influence on the world market in cereals. As already noted (see “United States; Export promotion of agricultural products”), export subsidies have a strongly distortive effect on trade. The CAP reforms in "Agenda 2000," which articulates the EU expansion into Central and Eastern Europe and policies for fiscal spending restraint and other issues, provide for the use of export taxes only in extremely limited, exceptional cases, for instance, extremely tight domestic markets. However, as long as the priority is on assuring supplies and stabilizing prices within the EU, these programs call into question the balance of rights and obligations between exporters and importers.

(3) Australia

Centralized management of wheat exports by the government trade companies

Australia does not have any specific regulations on the export of agricultural products, but its public corporations and boards continue to have sole management of wheat, rice, and sugar exports. These government export companies tend not to disclose information in an adequate manner, ostensibly "for commercial reasons." The Australia Wheat Board (AWB), which had central control of all wheat exports, was privatized in July 1999 as "AWB Ltd.," but it continues to enjoy a federally-granted monopoly on wheat exports, so functionally it is no different from a government export company. Their monopolistic position enables government export companies to manipulate export prices and volumes, impose unfair burdens on importers, and compete unfairly with other countries. They are therefore by nature trade-distortive. While it cannot be necessarily concluded that these companies are inconsistent with the WTO Agreement, they do function essentially as a disguised export subsidy and call into question the balance of rights and obligations between exporters and importers.

(4) Canada

(i) Export subsidy programs

In the Uruguay Round Agreement on Agriculture, Canada provided concessions on the amount and volume of export subsidies for specific items. In actual practice, the country paid a small subsidy for butter and non-fat dry milk during fiscal 1996/1997, and no export subsidies during fiscal 1997/1998. Canadian export subsidies, like those of the US and the EU, have the potential to influence international prices for agricultural products and distort world trade.

(ii) Measures similar to export subsidies for dairy products

An agreement between the Canadian federal and provincial governments resulted in the “National Marketing Plan,” under which the country regulates the supply of raw milk. The purpose of the programme is to use market sharing quotas (MSQs) to balance the supply and demand for milk to be used in processing. The system allocates quotas to individual dairy farms and provincial producers groups in response to domestic demand.

However, Canada has an excessive supply of milk products (in particular, non-fat dry milk) because of demand and supply imbalances. For this reason, prior to the Uruguay Round
negotiations, producers whose shipments exceeded their quotas were subject to stiff levies, and these levies in turn funded subsidies to exporters, thereby encouraging the surplus to be exported. As a result of the Uruguay Round, these levies were defined as export subsidies by the WTO and were therefore abolished by Canada in August 1995. At that time, however, Canada overhauled its price classifications for "milk for processing" and established a "Special Milk Class." Prices for the Special Milk Class are set with reference to US market prices, but at levels lower than the domestic consumer price. This enables processors to export dairy products at prices below those of the domestic market.

Sales from the Special Milk Class program are pooled with all other milk sales, and producers are paid an average price from out of this money. This system essentially uses the price of dairy products consumed in the home market to cover the losses from exported dairy products, and was therefore referred to the WTO by the United States and New Zealand as an export subsidy and a measure to circumvent the prohibition on export subsidies. Japan participated as a third party. In its May 1999 report, the panel found that subsidies under the program constituted export subsidies as defined in Article 9 of the Agreement on Agriculture and were inconsistent with Article 10 of that Agreement. Canada appealed the decision, but the report of the Appellate Body in October 1999 did not overturn the final conclusions reached by the panel. During a meeting of the Disputes Settlement Body that month, both the panel and the appellate reports were adopted. Japan should continue monitoring the Canadian response to this decision.

(iii) Grain exports by the Canadian Wheat Board

The Canadian Wheat Board (CWB) has a monopoly on shipment and export of the wheat and barley produced in the western plains provinces. The CWB shares the same problems as other government export companies (see "Australia; Centralized management of wheat exports by the government trade companies" above.)