

**UNITED STATES – ANTI-DUMPING DUTY ON DYNAMIC
RANDOM ACCESS MEMORY SEMICONDUCTORS (DRAMs)
OF ONE MEGABIT OR ABOVE FROM KOREA**

Recourse to Article 21.5 of the DSU by Korea

Report of the Panel

This report of the Panel is being circulated to all Members, pursuant to the DSU. The report is being circulated as an unrestricted document from 7 November 2000 pursuant to the procedures for the Circulation and Derestriction of WTO Documents (WT/L/160/Rev.1)

1. This dispute concerns the United States' implementation of the 19 March 1999 Dispute Settlement Body ("DSB") recommendation on *United States - Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above from Korea* (WT/DS99/R) ("*United States - DRAMs*"), whereby the United States was requested to bring section 353.25(a)(2)(ii) of the United States Department of Commerce ("DOC") regulations, and the *Final Results Third Review*, into conformity with its obligations under Article 11.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("AD Agreement").

2. The original panel found that section 353.25(a)(2)(ii) of the DOC regulations violated Article 11.2 of the AD Agreement, because the "not likely" criterion did not "provide[] any demonstrable basis on which to reliably conclude that the continued imposition of the duty is necessary to offset dumping".¹ The original panel also found that the *Final Results Third Review* was inconsistent with Article 11.2, "[s]ince the *Final Results Third Review* is itself based on and determined by section 353.25(a)(2)(ii)".²

3. On 17 January 2000, the United States submitted a status report to the DSB.³ In its status report, the United States informed the DSB that it had sought to implement the DSB recommendation in two stages. First, the DOC amended section 351.222(b) of its regulations, the provision which had replaced section 353.22(a)(ii). In short, the DOC deleted the "not likely" criterion, and replaced it with a requirement that the Secretary of Commerce consider "whether the continued application of the antidumping duty order is otherwise necessary to offset dumping". Second, the DOC issued a *Redetermination on DRAMs*, in which it applied the new "otherwise necessary" provision. In its *Redetermination on DRAMs*, the DOC found that "the continued application of the dumping order is necessary to offset dumping".⁴ Accordingly, the DOC determined not to revoke the anti-dumping duty order on DRAMs from Korea.

4. At the meeting of the DSB held on 25 April 2000, Korea asserted that the United States had failed to comply with the DSB's recommendations and rulings. First, instead of adopting a standard conforming to the Panel's findings and rulings, the United States had adopted a very general standard that could be, and in fact had been, misapplied. Second, in applying the modified standard for revocation, the United States had continued to apply the anti-dumping order to Korean DRAMs without demonstrating by substantial, positive evidence that the anti-dumping duty order needed to be maintained in order to offset dumping, as required by the Panel. Third, by failing to publish the *Final Results Third Review* in the Federal Register, the United States had failed to meet its obligations under Article X:1 of the GATT 1994 and Article 12.3 of the AD Agreement.

5. Following a request by Korea pursuant to Article 21.5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), the DSB referred the matter to the original panel. Accordingly, the Article 21.5 Panel was composed of:

Chairman: Mr. Crawford Falconer

Members: Mr. Meinhard Hilf

Ms. Marta Calmon Lemme

6. The Panel had standard terms of reference as follows:

¹ *United States - DRAMS*, para. 6.50.

² *United States - DRAMS*, para. 6.55.

³ See WT/DS99/6, para. 4.

⁴ *Redetermination on DRAMS*, page 13.

“To examine, in the light of the relevant provisions of the covered agreements cited by Korea in document WT/DS99/8, the matter referred to the DSB by Korea in that document and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.”

7. The European Communities reserved its rights as third party to the dispute.
 8. The Panel met with the parties on 2 July 2000. There was no third party session, since the European Communities declined to make any oral representations to the Panel.
 9. On 19 September 2000, Korea asked the Panel to suspend its work, in accordance with Article 12.12 of the DSU.
 10. On 20 October 2000, pursuant to Article 3.6 of the DSU, the parties notified the DSB of a mutually agreed solution to the matter under review by the Panel. The parties' notification was circulated as document WT/DS99/12.
 11. The Panel takes note of this mutually agreed solution between the parties to the dispute and of Article 12.7 of the DSU, which provides in relevant part that "where a settlement of the matter among the parties to the dispute has been found, the report of the panel shall be confined to a brief description of the case and to reporting that a solution has been reached". Accordingly, the Panel concludes its work by reporting that a mutually agreed solution to this dispute has been reached between the parties.
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