

WORLD TRADE ORGANIZATION

WT/DS99/6
17 January 2000

(00-0220)

Original: English

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

Status Report by the United States

The following communication, dated 14 January 2000, from the Permanent Mission of the United States to the Dispute Settlement Body, is circulated pursuant to Article 21.6 of the DSU.

Status Report Regarding Implementation of the Recommendations and Rulings in the Dispute regarding United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above.

1. Pursuant to Article 21.6 of the DSU, the United States submits this status report in writing of its progress in the implementation of the recommendations or rulings of the DSB made in United States – Anti-Dumping Duty on DRAMS of One Megabit or Above from Korea, WT/DS99/R, Report of the Panel adopted 19 March 1999 (DRAMS Report).
2. The DRAMS Report involved a challenge by Korea to the decision of the US Department of Commerce (Commerce) not to revoke the anti-dumping duty order on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea. This decision was made in the context of Commerce's third administrative review of the DRAMS order (Final Results Third Review). Although the Panel rejected most of Korea's claims, it did find that the standard for revoking an anti-dumping duty order contained in section 353.25(a)(2) of Commerce's regulations (the precursor to section 351.222(b) of Commerce's existing regulations) was inconsistent with US obligations under Article 11.2 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (AD Agreement). Specifically, the Panel found that the regulatory requirement that the Secretary of Commerce find that "it is not likely" that the person requesting revocation will dump merchandise subject to the order in the future if the order were revoked did not properly implement the requirement in Article 11.2 that investigating authorities consider whether "the continued imposition of [an antidumping] duty is necessary to offset dumping." In addition, because Commerce had relied on a regulatory standard that was found to be inconsistent with Article 11.2, the Panel also found that the Commerce determination in the third administrative review not to revoke the anti-dumping order also was inconsistent with Article 11.2.
3. Accordingly, in paragraph 7.2 of its report, the Panel recommended that the DSB "request the United States to bring section 353.25(a)(2)(ii) of the [Commerce] regulations, and the Final Results Third Review, into conformity with its obligations under Article 11.2 of the AD Agreement." However, the Panel expressly rejected a request by Korea that the Panel suggest that the United States revoke the DRAMS order. In paragraph 7.4 of its report, the Panel stated that "in light of the range of possible ways in which we believe the United States could appropriately implement our recommendation, we decline to make any suggestion in the present case."
4. On 19 May 1999, the United States and Korea reached an agreement that the reasonable period of time for implementing the DSB's recommendations and rulings would be eight months, a period ending on 19 November 1999.

5. The United States implemented the DSB's recommendations and rulings in two stages. First, Commerce amended section 351.222(b) of its regulations, the provision which had replaced section 353.22(a)(2)(ii). In accordance with the transparency requirements of US domestic law, on 3 June 1999, Commerce published a Notice of Proposed Rulemaking proposing revisions to section 351.222(b) and inviting comments from the public. 64 Fed. Reg. 29,818 (Attachment A¹). After receiving and analyzing the comments it received – which included comments from the Government of Korea and the Korean exporters of DRAMS – Commerce published a Notice Final Rule on 2 September 1999. 64 Fed. Reg. 51,236 (Attachment B¹). In Section 351.222(b)(2)(i)(C) of the new regulation, Commerce deleted the "not likely" standard and replaced it with a requirement that the Secretary of Commerce consider "whether the continued application of the antidumping duty order is necessary to offset dumping." In other words, Commerce incorporated the "necessary" standard of Article 11.2 directly into its regulations.

6. In addition, while not required to do so by the DSB's recommendations and rulings, Commerce made a corresponding revision to section 351.222(c), which deals with the revocation of countervailing duty orders. Because existing section 351.222(c) contained the same "not likely" standard that the Panel had found objectionable, and because Article 21.2 of the Agreement on Subsidies and Countervailing Measures also uses a "necessary" standard, Commerce concluded that a conforming amendment to its countervailing duty regulation would eliminate the possibility of future disagreements on this issue.

7. Once Commerce had amended its regulation, it then began the second step of its implementation process, which was to issue a revised, and WTO-consistent, Final Results Third Review. This process was conducted pursuant to section 129 of the Uruguay Round Agreements Act.

8. On 2 August 1999, the United States Trade Representative made a written request to the Secretary of Commerce to issue a determination under section 129(b) that would render the Department's Final Results Third Review not inconsistent with the findings of the DRAMS Report. On 15 October 1999, Commerce released to the parties a Draft Final Results of Redetermination in the Third Administrative Review (Attachment C¹), which contained a new determination on the revocation issue based on a reevaluation of the second evidence in light of the new, WTO-consistent standard contained in Commerce's amended regulations. In this regard, Commerce did not take into account the results of its fourth administrative review of the DRAMS order, in which it had been determined that the Korean exporters of DRAMS had resumed dumping.

9. Commerce received comments on the draft from the Government of Korea, Micron Technology, Inc. (the US petitioner), and two Korean DRAMS exporters, LG Semicon, Ltd., and Hyundai Electronics Industries Co., Ltd.

10. After viewing the comments, Commerce issued a Final Results of Redetermination in the Third Administrative Review on 4 November 1999 (Attachment D¹). Commerce's analysis is explained in detail in the attachment, but essentially Commerce concluded that because, based on the facts before it, a resumption of dumping was likely, it was necessary to leave the anti-dumping order in place.

11. In the view of the United States, by the actions described above, the United States has implemented the recommendations and rulings of the DSB in this dispute.

¹ Attachments A, B, C, D in English only.