

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

Recourse by Korea to Article 21.5 of the DSU

The following communication, dated 6 April 2000, from the Permanent Mission of Korea to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 21.5 of the DSU.

On 19 March 1999 the Dispute Settlement Body adopted the report of the Panel on "United States - Anti-Dumping Duty on Drams From Korea " (WT/DS99/R). The Panel found that both the US regulation regarding revocation of anti-dumping orders and the US application of that regulation in the anti-dumping proceeding on DRAMS from Korea were inconsistent with Article 11 of the Anti-Dumping Agreement.

On 19 May 1999, pursuant to Article 21.3(b) of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Korea and the United States mutually agreed that the reasonable period of time for the United States to implement the recommendations and rulings of the DSB and to bring its measures into conformity with the Anti-Dumping Agreement should end on 19 November 1999.

As Korea has repeatedly stated before the DSB, the United States did not comply with the recommendations and rulings of the DSB by that date. Instead, in 2 September 1999 amendment of its regulation (section 351.222(b) of 19 C.F.R.; published at 64 FR 51,236; Attachment A<sup>1</sup>), the United States did not adopt a revocation standard conforming to the Panel's findings and rulings. In addition, the United States also failed to implement the Panel's findings in applying the altered, yet still flawed, standard in the DRAMS proceeding. In its "Final Results of Redetermination in the Third Administrative Review," issued on 4 November 1999, but never published in the Federal Register (Attachment B<sup>1</sup>), the United States continued to apply the anti-dumping order on DRAMS from Korea without the necessary demonstration by substantial, positive evidence that the order needs to be maintained in order to offset dumping.

More specifically, Korea submits that the measures taken by the United are not consistent with the Anti-Dumping Agreement for the following reasons:

First, instead of adopting a standard conforming to the Panel's findings and rulings, the United States adopted a very general standard that could be, and in fact was, misapplied. The amended regulation does not impose on the United States the burden to establish that continued

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<sup>1</sup> Attachments A and B in English only.

imposition of the anti-dumping duty is necessary. While not using the words "burden of proof," the Panel Report, in requiring a "demonstrable basis on which to reliably conclude that the continued imposition of the duty is necessary" (Panel Report at para. 6.50), clearly imposes the burden on the US administering authority. Rather than limiting the administering authority's discretion so as to conform US law to Article 11 of the Anti-Dumping Agreement, the amended regulation increases its discretion, in disregard of the Panel decision. In doing so, the United States perpetuated the WTO inconsistency of the original standard that the Panel had declared inconsistent with Article 11 of the Anti-Dumping Agreement. Also, the "standard" of the amended regulation that replaces the not likely criteria – "otherwise necessary to offset dumping" (*Id.*) – effectively is not a standard at all. This is inconsistent with the Panel Report, which requires the regulation to provide "a demonstrable basis for consistently and reliably determining" that maintaining the anti-dumping duty remains necessary to offset injurious dumping (Panel Report at paras. 6.47 and 6.50). Moreover, the amended regulation ignores the Panel's direction that the standard adopted ensure that the conclusions reached are based on "a foundation of positive evidence" and that circumstances demand maintaining the duty.

Second, in applying the altered, yet-still-flawed, standard for revocation, the United States continues to apply the antidumping order to Korean DRAMS without meeting the standard of Article 11 of the Anti-Dumping Agreement as interpreted by the Panel. The United States did not demonstrate by substantial, positive evidence that the anti-dumping duty order needs to be maintained in order to offset dumping. The US Department of Commerce failed to conduct any new analysis in its redetermination. The unpublished Final Results simply restate the analysis in the Department's earlier determination not to revoke the anti-dumping duty order. Indeed, the Results repeat verbatim much of the text of the original determination. Moreover, the Results are not based on "substantial, positive evidence" that the order is necessary to offset dumping (See attachment B at page 13<sup>1</sup>). Like the original results of the third administrative review, they are based merely on conjecture and supposition.

Third, by failing to publish the Final Results of Redetermination in the Federal Register, Korea believes the United States has failed to fulfill its obligations under Article X:1 of the GATT 1994 and Article 12.3 of the Anti-Dumping Agreement.

As a result of the standard contained in amended regulation section 351.222(b) and the actions taken by the United States in the "Final Results of Redetermination in the Third Administrative Review," there is a disagreement between the United States and Korea as to whether the United States has taken measures to comply with the 19 March 1999 recommendations and rulings of the DSB and whether the measures taken are consistent with the Anti-Dumping Agreement.

In view of the above, Korea hereby requests that this matter be referred to the original Panel pursuant to Article 21.5 of the DSU. Korea further requests that the Panel find that the United States has not taken measures to comply with the 19 March 1999 recommendations and rulings of the DSB. Finally, Korea wishes to invoke Article 19 of the DSU to ensure that the panel, in addition to issuing its rulings, suggest how the United States might implement its rulings.

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<sup>1</sup> Attachments A and B in English only.

## **ATTACHMENT A**

prohibited off-the-record communication.

(2) If a person knowingly makes or causes to be made a prohibited off-the-record communication, the Commission may disqualify and deny the person, temporarily or permanently, the privilege of practicing or appearing before it, in accordance with Rule 2102 (Suspension).

(3) Commission employees who are found to have knowingly violated this rule may be subject to the disciplinary actions prescribed by the agency's administrative directives.

(j) *Section not exclusive.* (1) The Commission may, by rule or order, modify any provision of this section as it applies to all or part of a proceeding, to the extent permitted by law.

(2) The provisions of this section are not intended to limit the authority of a decisional employee to decline to engage in permitted off-the-record communications, or where not required by any law, statute or regulation, to make a public disclosure of any exempted off-the-record communication.

8. The heading of § 385.2202 is revised to read as follows:

§ 385.2202 Separation of Functions (Rule 2202).

Note: This Appendix will not appear in the Code of Federal Regulations

#### Appendix A—List of Commenters

Adirondack Mountain Club  
Advisory Council on Historic Preservation (ACHP)  
American Gas Association (AGA)  
ANR Pipeline Company/Colorado Interstate Gas Company (ANR/CIG)  
Bonneville Power Administration (BPA)  
California Electric Oversight Board (Cal Board)  
Chevron Pipe Line Company (Chevron)  
Edison Electric Institute (EEI)  
Electric Power Supply Association (EPSA)  
Environmental Protection Agency (EPA)  
Executive Office of the President/Council on Environmental Quality (CEQ)  
Hydropower Reform Coalition (HRC)  
Indicated Shippers  
Interstate Natural Gas Association of America (INGAA)  
Louisiana Department of Wildlife And Fisheries (La W&F)  
National Association of Regulatory Utility Commissioners (NARUC)  
National Marine Fisheries Services (NMFS)  
National Hydropower Association (NHA)  
National Rural Electric Cooperative Association/American  
Public Power Supply Association (Joint Commenters)  
Natural Gas Supply Association (NGSA)  
Public Service Commission of New York (PSCNY)  
Public Utilities Commission of State of California (PUCAL)

Public Utilities Commission of State of California/Independent (Cal-ISO) System Operator  
Process Gas Consumers Group (Process Gas)  
Sacramento Municipal Utilities District (SMUD)  
Sempra Energy Companies (Sempra)  
Southern California Edison Company (SoCalEd)  
Southern Companies Services, Inc. (SCSI)  
Southern Natural Gas Company (SoNat)  
United States Department of the Interior (Interior)  
Williams Companies (Williams)  
Williston Basin Interstate Pipeline Company (Williston)  
Wisconsin Public Power, Inc. (WPPPI)  
[FR Doc. 99-24616 Filed 9-21-99; 8:45 am]  
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## DEPARTMENT OF COMMERCE

### International Trade Administration

#### 19 CFR Part 351

[Docket No. 990521142-9252-02]

RIN 0625-AA54

#### Amended Regulation Concerning the Revocation of Antidumping and Countervailing Duty Orders

AGENCY: Import Administration, International Trade Administration, Commerce.

ACTION: Final rule.

**SUMMARY:** The Department of Commerce (the "Department" or "DOC") is amending its regulation, which governs the revocation of antidumping and countervailing duty orders, in whole or in part, and the termination of suspended antidumping and countervailing duty investigations, based upon an absence of dumping or subsidization, respectively. The amended regulation conforms the existing regulation to the United States' obligations under Article 11 of the Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 ("Antidumping Agreement") and Article 21 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). The amended paragraph relating to revocation or termination based on absence of dumping provides that the Secretary, upon considering whether producers or exporters have sold subject merchandise at not less than normal value for at least three consecutive years, and whether the continued application of the antidumping duty order is otherwise necessary to offset dumping, will revoke an antidumping duty order if warranted. The amended paragraph relating to

revocation or termination based on absence of countervailable subsidy provides that the Secretary, upon considering whether the government of the affected country has eliminated all countervailable subsidy programs covering the subject merchandise for at least three consecutive years, or exporters or producers have not applied for or received countervailable subsidies for at least five consecutive years, and whether the continued application of the countervailing duty order is otherwise necessary to offset subsidization, will revoke a countervailing duty order if warranted. **EFFECTIVE DATE:** November 1, 1999.

**FOR FURTHER INFORMATION CONTACT:** Melissa G. Skinner, Office of Policy, Import Administration, U.S. Department of Commerce, at (202) 482-1560, or Myles S. Getlan, Office of the Chief Counsel for Import Administration, U.S. Department of Commerce, at (202) 482-5052.

#### SUPPLEMENTARY INFORMATION:

##### Background

On June 3, 1999, the Department published a Notice of Proposed Rulemaking which proposed to amend 19 CFR 351.222(b).<sup>1</sup> See 64 FR 29818 (the "Proposed Rule"). The Department explained that the process of amending this regulation arose from the findings of a dispute settlement panel convened under the auspices of the World Trade Organization ("WTO") that considered various aspects of the Department's final results of administrative review in Dynamic Random Access Memory Semiconductors (DRAMs) Of One Megabit Or Above From Korea (62 FR 39809, July 24, 1997) ("DRAMs From Korea").

On January 23, 1999, the Panel determined that the Department's standard for revoking an antidumping duty order contained in 19 CFR 351.222(a)(2) (the precursor to 19 CFR 351.222(b)) was inconsistent with the United States' obligations under Article 11.2 of the WTO Antidumping Agreement. See United States—Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMs) of One Megabit or Above From Korea, WT/DS99/R ("Panel Report"). Specifically, the Panel determined that requiring the Secretary

<sup>1</sup> This amendment does not affect the Department's regulations at 19 CFR 351.218, which implements the statutory provision at 19 U.S.C. 1675(c) and governs the Department's five-year sunset reviews, in which the Department determines whether revocation of an order "would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury."