

**JAPAN – COUNTERVAILING DUTIES ON
DYNAMIC RANDOM ACCESS MEMORIES FROM KOREA**

Request for the Establishment of a Panel by Korea

The following communication, dated 18 May 2006, from the delegation of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 27 January 2006, the Government of Japan ("Japan") imposed countervailing duties on imports of Dynamic Random Access Memories ("DRAMs") from Korea, as announced in Cabinet Order No. 13 and Ministry of Finance Notice No. 35, published respectively in Issue No. 4264 and Special Issue No. 17 of the Official Gazette dated 27 January 2006.

The Government of Korea ("Korea") considers the countervailing duties imposed by Japan against DRAMS from Korea to be inconsistent with Japan's obligations under the relevant provisions of the GATT 1994, and the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"). As a result, Korea requested consultations with Japan regarding these measures pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article 30 of the SCM Agreement, and Article XXII of the GATT 1994. Consultations were requested on 14 March 2006 concerning the countervailing measures of Japan. The consultations were held with Japan in Geneva on 25 April 2006. These consultations failed to resolve the dispute between the parties.

As a result of the failure to resolve the dispute, Korea requests the establishment of a panel pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994, and Article 30 of the SCM Agreement regarding Japan's countervailing measures against DRAMS from Korea. Korea requests that the panel make findings that Japan has acted inconsistently with its obligations under Articles 1, 2, 10, 11, 12, 14, 15, 19, 21, 22 and 32 of the SCM Agreement, as well as Articles VI:3 and X:3 of the GATT 1994. Specifically, Korea makes claims under the following:

1. Article 1.1 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate the existence of a financial contribution by Korea with respect to each distinct financial transaction at issue in its anti-subsidy investigation.
2. Article 1.1 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate that every private financial institution involved in its subsidy investigation was under the direction or entrustment of Korea.
3. Articles 1.1 and 14 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate that a benefit was conferred upon the respondent Hynix Semiconductor, Inc., ("Hynix"), given available market benchmarks and the circumstances of financial restructuring.

4. Articles 1.1 and 14 of the SCM Agreement because, *inter alia*, the analyses of the "commercial rationality" of loans and other investments in Hynix, and the other analyses related to the determination of the financial contribution and benefit to Hynix, that were undertaken by Japan are inconsistent with Japan's obligations under the SCM Agreement.
5. Article 2 of the SCM Agreement because, *inter alia*, Japan did not properly establish that all of the alleged subsidies were specific to Hynix on the basis of positive evidence.
6. Articles 1 and 2 of the SCM Agreement because, *inter alia*, Japan imposed an improper burden of proof on Hynix and Korea; reached conclusions without adequate evidentiary basis, and thereby failed to base its decisions on affirmative, objective, and verifiable evidence.
7. Article 12 of the SCM Agreement because, *inter alia*, Japan improperly treated entities that had no interest in the investigation as "interested parties," improperly applied "facts available" instead of considering the information on the record, and improperly made adverse inferences against the interests of Hynix due to allegedly inadequate cooperation by other interested parties or by other entities that were not under Hynix's control and that were not obligated to participate in the investigation.
8. Article 14 of the SCM Agreement because, *inter alia*, Japan utilized methods for calculating the benefit to the alleged recipient of the alleged financial contributions that were not specified in Japan's national legislation or implementing regulations and that were not applied in a manner that was transparent and adequately explained.
9. Articles 14 and 19.4 of the SCM Agreement and Article VI:3 of the GATT 1994 because, *inter alia*, Japan failed to properly measure the benefit in accordance with the principles of the SCM Agreement, which resulted in countervailing duties levied in excess of the amount allowed under the SCM Agreement and the GATT 1994.
10. Article 15 of the SCM Agreement because, *inter alia*, Japan improperly found material injury caused by the allegedly subsidized imports without proper evidentiary or legal foundations.
11. Article 15.5 and 19.1 of the SCM Agreement because, *inter alia*, Japan's determination failed to demonstrate that the allegedly subsidized imports were, through the effect of the alleged subsidies, causing injury within the meaning of the SCM Agreement.
12. Articles 10 and 32.1 of the SCM Agreement because, *inter alia*, the countervailing duties imposed by Japan against DRAMS originating in Korea were not in accordance with the relevant provisions of the SCM Agreement or the relevant provisions of GATT 1994.
13. Articles 10, 14, 19, and 21 of the SCM Agreement because, *inter alia*, Japan imposed and maintained countervailing duties without determining whether a benefit continued to exist following changes in the ownership of Hynix.
14. Articles 19 and 21 of the SCM Agreement because, *inter alia*, Japan improperly levied a countervailing duty on imports when there was no longer a benefit from the alleged subsidies, and the duty was not necessary to counteract subsidization.
15. Articles 10, 11, 12, 14, 15, 22, and 32.1 of the SCM Agreement and Articles VI:3 and X:3 of the GATT 1994 because Japan, *inter alia*, failed to conduct a thorough and complete

investigation, and failed to conduct its investigation and make determinations in accordance with fundamental substantive and procedural requirements.

The Government of Korea requests that the panel be established with the standard terms of reference set forth in Article 7 of the DSU.

The Government of Korea further requests that this request be placed on the agenda for the special meeting of the Dispute Settlement Body on 30 May 2006.

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