WORLD TRADE ORGANIZATION

WT/DS99/2
7 November 1997

(97-4915)

Original: English

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

Request for the Establishment of a Panel by Korea

The following communication, dated 6 November 1997, from the Permanent Mission of Korea to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 14 August 1997, the Republic of Korea (Korea) requested consultations with the United States pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII:1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (the AD Agreement) regarding the 16 July 1997 final decision of the United States Department of Commerce (DOC) not to revoke the anti-dumping duty on dynamic Random Access Memory semiconductors (DRAMs) of one megabyte or above originating in the Republic of Korea. This request was circulated to the Members of the WTO on 15 August 1997 (WT/DS99/1).

Pursuant to the request, Korea consulted with the United States in Geneva on 9 October 1997, in an attempt to reach a mutually satisfactory solution. Unfortunately, the consultations have failed to settle the matter and there are no indications to suggest that further consultations are likely to be productive.

Korea therefore respectfully requests that a Panel be established at the next meeting of the Dispute Settlement Body pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994 and Article 17.5 of the AD Agreement.

The Measures at Issue

The principal United States measures at issue in this request include:

- the 16 July 1997 Final Determination of the United States DOC not to revoke the anti-dumping duty (published as Notice of Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke Order in Part: Dynamic Random Access Memory Semiconductors of One Megabyte or Above From the Republic of Korea, 62 Fed. Reg. 39809-24 (24 July 1997)); and

- the United States Tariff Act of 1930, as amended (19 U.S.C. § 1673 *et seq.*), and the relevant DOC regulations (19 CFR Part 353 (1997)), both as applied in the Final Determination and on their face.

The Legal Basis for the Complaint

Korea believes that the measures referred to above are inconsistent with several agreements of the World Trade Organization, including, but not limited to, the following:

(a) DOC's Final Determination not to revoke the anti-dumping duty, after DOC, in three consecutive annual reviews, found no or *de minimis* dumping margins and respondent companies certified that they would not dump in the future and agreed to immediate reinstatement of the order in the event respondents were to dump the merchandise in the future, is inconsistent with Article 11 of the AD Agreement and Article VI of GATT 1994;

(b) The "not likely" criterion under DOC regulations gives DOC wide discretion in deciding on revocation, and allows DOC to maintain an anti-dumping order in an arbitrary and unjustifiable manner despite an absence of dumping for several years, respondents' certification not to dump in the future, and their agreement to immediate reinstatement of the order in the event they dump DRAMs in the future. Thus, this criterion both as applied in the Final Determination and on its face, is inconsistent with Article 11 of the AD Agreement and Article VI of GATT 1994 and exceeds the scope of those agreements;

(c) The negative standard of the "not likely" criterion and DOC's practice as applied in the Final Determination shifted the burden of proof from the United States to the respondents in contradiction to Article 11 of the AD Agreement;

(d) The United States has failed to publish promptly, and in such a manner as to enable governments and traders to become acquainted with them, objective and specific factors regarding the "not likely" criterion and DOC impermissibly accepted and rejected data in a biased fashion inconsistent with Article X of GATT 1994 and Articles 11 and 17 of the AD Agreement;

(e) The United States maintenance of the anti-dumping duty order on DRAMs without considering whether the injury to the United States industry would be likely to continue or recur if the duty were removed is inconsistent with Article 11 of the AD Agreement;

(f) DOC's decision regarding the products subject to the order is inconsistent with Articles 2 and 3 of the AD Agreement because it included products that were never found to have been dumped or to have caused injury and it arbitrarily excluded products that were like products to those investigated;

(g) DOC's Final Determination not to revoke the anti-dumping duty based on unverified information from the petitioning company and mere conjecture without any substantial data, while failing to give adequate consideration to information submitted by the Korean respondents in the administrative review, is inconsistent with Articles 2, 6 and 17.6(i) of the AD Agreement and Article VI of GATT 1994;

(h) DOC's selection of the period of review for the "not likely" criterion was improper and not objective, and therefore inconsistent with Article 17.6(i) of the AD Agreement and Article X of GATT 1994;

(i) DOC's Final Determination is inconsistent with Article I of GATT 1994 in that it denied to the Korean respondents the revocation of the anti-dumping order after three consecutive annual reviews finding no or *de minimis* dumping margins, and after those respondents certified that they would not dump in the future, and after they agreed to the reimposition of the order if dumping occurred, even though DOC revoked anti-dumping orders in the same circumstances involving other Members;

(j) DOC's standard for determining whether to revoke anti-dumping duties is impossible to meet in proceedings involving cyclical industries such as the DRAM industry, and therefore, both on its face and as applied in the Final Determination, is inconsistent with Article 11 of the AD Agreement;

(k) The margin of dumping established by the United States to be *de minimis* in administrative review proceedings is inconsistent with Article 5.8 of the AD Agreement; and

(l) The refusal by the United States to revoke the anti-dumping duty in light of Korea's data collection proposal is inconsistent with Article 1 of GATT 1994, given the United States' acceptance of such proposals and consequent revocation of anti-dumping duties in similar cases involving other Members.

The above summary is designed to briefly describe the legal basis of the complaint sufficient to present the problem clearly, but is not to be taken as restricting the arguments which Korea may develop before the Panel.

Korea requests the establishment of a Panel to examine these matters and find that:

(i) the US Final Determination not to revoke the anti-dumping duty order on DRAMs from Korea and the relevant US statutory and regulatory provisions, both on their face and as applied, are inconsistent with the provisions of the WTO Agreements as set forth above, and

(ii) the US Final Determination not to revoke the order and the relevant US statutory and regulatory provisions, both on their face and as applied, nullify or impair benefits accruing directly or indirectly to Korea under the cited agreements.

Korea further requests that the Panel recommend that the Dispute Settlement Body request that the United States revoke the anti-dumping duty on DRAMS of one megabyte or above from Korea.

Korea asks that this request be placed on the agenda for the next meeting of the Dispute Settlement Body scheduled for 18 November 1997 and that the Panel be established with standard terms of reference as set out in Article 7 of the DSU.