

WORLD TRADE ORGANIZATION

WT/DS336/18
10 September 2008

(08-4242)

Original: English

JAPAN – COUNTERVAILING DUTIES ON DYNAMIC RANDOM ACCESS MEMORIES FROM KOREA

Understanding between Japan and the Republic of Korea Regarding Procedures under Articles 21 and 22 of the DSU

The following communication, dated 9 September 2008, from the delegation of Japan and the delegation of Korea to the Chairman of the Dispute Settlement Body, is circulated at the request of these delegations.

Please find attached the Confirmed Procedures between Japan and the Republic of Korea under Articles 21 and 22 of the Dispute Settlement Understanding in the dispute *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea* (WT/DS336).

We kindly request you to circulate this communication to the Members of the DSB.

For the Republic of Korea

(signed)
Lee Sung-joo
Ambassador
Permanent Representative of Korea
to the World Trade Organization

For Japan

(signed)
Shinichi Kitajima
Ambassador
Permanent Representative of Japan
to the World Trade Organization

Confirmed Procedures between Japan and the Republic of Korea
under Articles 21 and 22 of the Dispute Settlement Understanding in the dispute
Japan – Countervailing Duties on Dynamic Random Access Memories from Korea
(WT/DS336)

On 17 December 2007, the *Dispute Settlement Body* ("DSB") adopted its recommendations and rulings in the dispute *Japan – Countervailing Duties on Dynamic Random Access Memories from Korea* (WT/DS336/R and WT/DS336/AB/R). At the DSB meeting of 15 January 2008, Japan announced its intention to comply with the recommendations and rulings of the DSB. Japan and Korea ("the Parties to the dispute") were not able to reach an agreement on the reasonable period of time, and on 25 February 2008, Korea requested that the reasonable period of time be determined through binding arbitration pursuant to Article 21.3(c) of the *Understanding on Rules and Procedures Governing the Settlement of Dispute* ("DSU"). The arbitrator determined that the reasonable period of time for Japan to comply with the recommendations and rulings of the DSB in this dispute would be eight months and two weeks from the date of the adoption of the Panel and Appellate Body reports, expiring on 1 September 2008. This arbitration report was circulated to WTO members on 5 May 2008 (WT/DS336/16).

On 29 August, 2008, Japan issued Cabinet Order No. 266 published in the Special Issue No. 189 of the Official Gazette, modifying the countervailing duties imposed on DRAMs from Korea in response to the recommendations and rulings of the DSB and reported to the DSB that it has complied with the recommendations and rulings of the DSB in a manner consistent with its WTO obligations. However, Korea does not consider that Japan has fully complied with the recommendations and rulings of the DSB within the reasonable period of time and wishes to reserve its right under Articles 21 and 22 of the DSU.

The Parties to the dispute have decided on the following procedures for the exclusive purposes of this dispute, which are designed to facilitate the resolution of the dispute, and are without prejudice to either Party's views on the correct interpretation of the relevant provisions of the DSU:

1. Should Korea decide to invoke Article 21.5 of the DSU, Korea may request the establishment of a panel pursuant to Article 21.5 of the DSU ("Article 21.5 panel") at any time on or after the date of signing of this Confirmed Procedures. For this purpose, the Parties to the dispute confirm that consultations pursuant to Article 4 of the DSU regarding that matter are not necessary for the establishment of the Article 21.5 panel.
2. At the first DSB meeting at which Korea's request for the establishment of an Article 21.5 panel appears on the agenda, Japan will accept the establishment of that panel.
3. The Parties to the dispute will cooperate to enable the Article 21.5 panel to circulate its report within 90 days of the panel's composition, excluding such time during which the panel's work may be suspended pursuant to Article 12.12 of the DSU.
4. Either Party to the dispute may request the DSB to adopt the report of the Article 21.5 panel at a DSB meeting held at least 20 days after the circulation of the report to the Members unless the other Party to the dispute appeals the report. If a Party to the dispute has notified its decision to appeal, the report by the Article 21.5 panel will not be considered for adoption by the DSB until after completion of the appeal.
5. In the event of an appeal against the Article 21.5 panel report, the Parties to the dispute will cooperate to enable the Appellate Body to circulate its report to the Members within the time period described in Article 17.5 of the DSU.

6. In the event of an appeal, either Party to the dispute may request the DSB to adopt the reports of the Appellate Body and the Article 21.5 panel (as modified by the Appellate Body report) at a DSB meeting held within 30 days of the circulation of the Appellate Body report to the Members.
7. Korea will not request authorization from the DSB to suspend concessions or other obligations pursuant to Article 22 of the DSU until the adoption by the DSB of the Article 21.5 panel report and, where relevant, the Appellate Body report.
8. If, as a result of the proceedings pursuant to Article 21.5, the DSB adopts recommendations and rulings which are based on the findings that measures taken by Japan to comply with the prior recommendations and rulings of the DSB do not exist or are inconsistent with a covered agreement, Korea has the right under Article 22.2 of the DSU to request negotiations with Japan with a view to developing mutually acceptable compensation, and to request authorization from the DSB to suspend concessions or other obligations pursuant to Article 22.2 and 22.6 of the DSU.
9. Subject to paragraphs 7 and 8, Korea has the right to request the DSB authorization referred to therein at any future date following the adoption by the DSB of the Article 21.5 panel report and, where relevant, the Appellate Body report. Japan will not assert that Korea is precluded from obtaining the DSB authorization because the request was made outside the 30-day time-period specified in Article 22.6 of the DSU.
10. Japan retains the right to object to the level of suspension proposed, or to claim that the principles and procedures set forth in Article 22.3 of the DSU have not been followed, and to have the matter referred to arbitration under Article 22.6 of the DSU ("Article 22.6 arbitration").
11. If the matter has been referred to the Article 22.6 arbitration, the Parties to the dispute will cooperate to enable the arbitrator under Article 22.6 arbitration to circulate its decision within 60 days of the referral to arbitration.
12. The Parties to the dispute will cooperate to facilitate the participation of the original panelists in the Article 21.5 panel and the Article 22.6 arbitration.
13. If any of the original panelists is not available for either the Article 21.5 panel or the Article 22.6 arbitration (or both), the Parties to the dispute will promptly consult on a replacement panelist, and either Party to the dispute may request the Director-General of the WTO to appoint, as soon as possible, a replacement for the proceeding or proceedings in which a replacement is required. If an original panelist is unavailable to serve in either of the proceedings, the Parties to the dispute will further request that, in making this appointment, the Director-General seek a person who will be available to act in both proceedings.
14. The Parties to the dispute will continue to cooperate in all matters related to this Confirmed Procedures and not to raise any procedural objection to any of the steps set out herein. If, during the application of these procedures, the Parties to the dispute consider that a procedural aspect has not been properly addressed in this Confirmed Procedures, they will endeavor to find a solution within the shortest time possible that will not affect the other aspects and steps confirmed herein.

15. In order to fully safeguard their respective rights under the DSU, the Parties to the dispute confirm to immediately notify this Confirmed Procedures to the DSB.

For the Republic of Korea

(signed)
Lee Sung-joo
Ambassador
Permanent Representative of Korea
to the World Trade Organization

For Japan

(signed)
Shinichi Kitajima
Ambassador
Permanent Representative of Japan
to the World Trade Organization

Geneva, 9 September 2008
