

VIII. Findings and Conclusions

209. For the reasons set out in this Report, the Appellate Body:

- (a) upholds the Panel's finding, in paragraph 7.415 of the Panel Report, that Korea's request for consultations did not fail to indicate the legal basis for the complaint in relation to the USDOC's CVD order, as required by Article 4.4 of the DSU;
- (b) as regards the USDOC's finding of entrustment or direction:
 - (i) with respect to the Panel's interpretation of Article 1.1(a)(1)(iv) of the *SCM Agreement*:
 - (A) modifies the Panel's interpretation of Article 1.1(a)(1)(iv), set out in paragraph 7.31 of the Panel Report, to the extent that it may be understood as limiting the terms "entrusts" and "directs" to acts of "delegation" and "command"; and
 - (B) upholds the Panel's finding, in paragraph 7.117 of the Panel Report, that the evidence was "sufficient for an objective and impartial investigating authority to properly find government entrustment or direction in respect of KFB";
 - (ii) with respect to the Panel's review of the USDOC's finding of entrustment or direction under Article 1.1(a)(1)(iv) of the *SCM Agreement*:
 - (A) finds that the Panel did not err in finding, in paragraphs 7.35 and 7.46 of the Panel Report, that the evidence underlying the USDOC's finding of entrustment or direction must be "probative and compelling", to the extent the Panel understood these terms to require only that the evidence demonstrate entrustment or direction;
 - (B) finds that the Panel erred in failing to examine the USDOC's evidence in its totality, and requiring, instead, that individual pieces of evidence, in and of themselves, establish entrustment or direction by the GOK of Hynix's creditors;

- (C) finds that the Panel erred, in paragraphs 7.88, 7.102, 7.116, 7.121, and 7.141 of the Panel Report, in declining to consider certain evidence on the record of the underlying investigation but not cited by the USDOC in its published determination;
- (D) finds that the Panel failed to comply with its obligations under Article 11 of the DSU by finding, in paragraph 7.85 of the Panel Report, that "the mediation provisions [of the CRPA] had actually been invoked by three creditors in respect of the October 2001 restructuring", in the absence of supporting evidence on the record of the underlying investigation; and
- (E) finds that the Panel failed to apply the proper standard of review and, therefore, failed to comply with its obligations under Article 11 of the DSU; and, consequently,
 - (iii) reverses the Panel's findings, in paragraphs 7.178, 7.209, and 8.1 of the Panel Report, that the USDOC's determination of GOK entrustment or direction of Hynix's Group B and C creditors is inconsistent with Article 1.1(a)(1)(iv) of the *SCM Agreement*;
 - (c) reverses the Panel's findings, in paragraphs 7.190, 7.209, and 8.1 of the Panel Report, that the USDOC's benefit determination is inconsistent with Article 1.1(b) of the *SCM Agreement*; and
 - (d) reverses the Panel's findings, in paragraphs 7.208-7.209, and 8.1 of the Panel Report, that the USDOC's finding of specificity, insofar as it relates to subsidies provided by virtue of GOK entrustment or direction of Hynix's Group B and C creditors, is inconsistent with Article 2 of the *SCM Agreement*.

210. Based on these findings, the Appellate Body makes no recommendation to the Dispute Settlement Body pursuant to Article 19.1 of the DSU.

Signed in the original in Geneva this 9th day of June 2005 by:

Georges Abi-Saab
Presiding Member

Merit E. Janow
Member

Yasuhei Taniguchi
Member