

Findings and Conclusions

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

- (a) as regards the Panel's review of the JIA's finding of "entrustment or direction" of the Four Creditors with respect to the December 2002 Restructuring:
 - (i) finds that the Panel erred, in paragraphs 7.250-7.254 of the Panel Report, in failing to examine the JIA's evidence in its totality, and that the Panel thereby failed to apply the proper standard of review in a manner consistent with its obligations under Article 11 of the DSU; and, consequently,
 - (ii) reverses the Panel's finding, in paragraphs 7.254 and 8.2(a) of the Panel Report, that the JIA's determination of "entrustment or direction" of the Four Creditors is inconsistent with Article 1.1(a)(1)(iv) of the *SCM Agreement*.
- (b) upholds the Panel's findings, in paragraphs 7.282 and 8.2(b) of the Panel Report, that the JIA acted inconsistently with Article 1.1(b) and Article 14 of the *SCM Agreement* by determining that the December 2002 Restructuring conferred a benefit on Hynix;
- (c) upholds, albeit for different reasons, the Panel's findings, in paragraphs 7.316 and 8.2(c) of the Panel Report, that the JIA calculated the amount of benefit conferred on Hynix by the October 2001 and December 2002 Restructurings inconsistently with Articles 1.1(b) and 14 of the *SCM Agreement*; and finds that the Panel did not fail to conduct an objective assessment of the matter before it, as required by Article 11 of the DSU;
- (d) reverses the Panel's finding, in paragraphs 7.334 and 8.2(d) of the Panel Report, that the methods used by Japan to calculate the amount of benefit conferred on Hynix were not provided for in Japan's national legislation or implementing regulations as required under the chapeau of Article 14 of the *SCM Agreement*;
- (e) upholds the Panel's finding, in paragraphs 7.361 and 8.2(e) of the Panel Report, that Japan acted inconsistently with Article 19.4 of the *SCM Agreement* by levying countervailing duties on imports which the JIA itself had found were not subsidized at the time of duty imposition; and finds that the Panel did not fail to conduct an objective assessment of the matter before it, as required by Article 11 of the DSU;

- (f) upholds the Panel's findings, in paragraphs 7.316 and 8.1(b) of the Panel Report, that the JIA's determination of the existence of benefit with respect to the October 2001 Restructuring was not inconsistent with Articles 1.1(b) and 14 of the *SCM Agreement*;
- (g) upholds the Panel's finding, in paragraphs 7.398 and 8.1(c) of the Panel Report, that the JIA did not act inconsistently with Article 12.7 and 12.9 of the *SCM Agreement* by including certain financial institutions as "interested parties" and by using "facts available" for those financial institutions that failed to provide information;
- (h) upholds the Panel's finding, in paragraphs 7.446 and 8.1(d) of the Panel Report, that the JIA could properly characterize the transactions at issue in the October 2001 and December 2002 Restructurings as "direct transfer[s] of funds" within the meaning of Article 1.1(a)(1)(i) of the *SCM Agreement*; and
- (i) upholds the Panel's finding, in paragraphs 7.425 and 8.1(g) of the Panel Report, that the JIA did not act inconsistently with Articles 15.5 and 19.1 of the *SCM Agreement* by not demonstrating separately that the allegedly subsidized imports were, "through the effects of subsidies", causing injury within the meaning of the *SCM Agreement*.

281. The Appellate Body recommends that the DSB request Japan to bring its measure, found in this Report, and in the Panel Report as modified by this Report, to be inconsistent with the *SCM Agreement*, into conformity with its obligations under that Agreement.

Signed in the original in Geneva this 9th day of November 2007 by:

David Unterhalter
Presiding Member

A.V. Ganesan

Member

Giorgio Sacerdoti

Member