

EC – COUNTERVAILING MEASURES ON DRAM CHIPS¹ (DS299)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Korea	ASCM Arts. 1, 2, 12, 14 and 15	Establishment of Panel	23 January 2004
			Circulation of Panel Report	17 July 2005
Respondent	European Communities		Circulation of AB Report	NA
			Adoption	3 August 2005

1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** EC definitive countervailing duties.
- **Product at issue:** Dynamic Random Access Memory (DRAM) Chips from Hynix of Korea.

2. SUMMARY OF KEY PANEL FINDINGS²

- **ASCM Art. 1.1(a)(1)(iv) (definition of a subsidy – financial contribution):** The Panel held that the European Communities' "financial contribution" finding with respect to one of Korea's five alleged subsidy programmes³ was inconsistent with Art. 1.1(a)(1)(iv), as it considered that the evidence before the EC investigating authority (i.e. government official's presence at Hynix's Creditor Council meeting) was insufficient for it to reasonably conclude that the Korean government entrusted or directed the private banks to purchase Hynix convertible bonds. The Panel held that the European Communities' finding on the other four programmes was consistent with Art. 1.1(a).
- **ASCM Arts. 1.1(b) and 14 (definition of a subsidy – benefit):** The Panel found that the European Communities failed to establish the "existence" of a "benefit" from the financial contribution provided under one of the programmes (i.e. Syndicated Loan) within the meaning of Art. 1.1(b), as it had ignored the loans provided by some of the banks relevant to the programme. It held that the European Communities' findings with respect to the other programmes were consistent with Art. 1.1(b). The Panel also found that the calculation of the "amount" of "benefit" conferred was inconsistent with Arts. 1.1(b) and 14 because the European Communities' grant methodology treated loans, loan guarantees, and debt-to-equity swap similarly to grants even though they could not reasonably have conferred the same benefit.
- **ASCM Arts. 1.2 and 2.1(c) (definition of a subsidy – specificity):** The Panel found that the European Communities did not act inconsistently with Arts. 1.2 and 2.1(c) in its specificity determinations for both (i) the KDB debenture programme, as it had reasons to conclude that the subsidy was *de facto* specific in the sense of Art. 2.1(c) (e.g. predominant use by certain enterprises) and (ii) the May and October 2001 Restructuring Programmes, as these restructuring programmes were specifically undertaken for Hynix.
- **ASCM Art. 12.7 (evidence – facts available):** The Panel found that the European Communities did not act inconsistently with Art. 12.7 in relying on "facts available", including secondary sources such as press reports, as part of its subsidy determination, since it was not unreasonable under the circumstances for the European Communities to conclude that necessary information had been requested but not provided by Korea.
- **ASCM Art. 15.4 (injury determination – relevant economic factors):** The Panel found that the European Communities acted inconsistently with Art. 15.4 by not evaluating the "wages" factor in its evaluation of all relevant economic factors.
- **ASCM Art. 15.1 and 15.5 (injury determination – causation):** The Panel found that the European Communities acted inconsistently with its obligation to not attribute to subsidized imports injuries caused by the "economic downturn in the market", "overcapacity", and "other (non-subsidized) imports", as it failed to provide a satisfactory explanation of the nature and extent of the injurious effects of these other factors causing injury. However, it rejected non-attribution and causation claims related to the "inventory burn" factor.

¹ EC – Countervailing Measures on DRAM Chips

² Other issues addressed: ASCM Art. 15.1 (general); ASCM Arts. 15.1 and 15.2 (imports volume; price effects).

³ European Communities' finding on the "May 2001 Restructuring Programme" was found inconsistent. The other four programmes at issue were "Syndicated Loan", "KEIC Guarantee", "KDB Debenture Programme" and "October 2001 Restructuring Programme".