

# US – DRAMS<sup>1</sup>

(DS99)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	Korea	ADA Arts. 11, 2.2, 6.6 and 5.8	Establishment of Panel	16 January 1998
			Circulation of Panel Report	29 January 1999
Respondent	United States		Circulation of AB Report	NA
			Adoption	19 March 1999

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** United States Department of Commerce (USDOC) regulation (namely, the “three zeroes” rules)<sup>2</sup>, both as applied in the DRAMS third administrative review at issue and as such, and other aspects of the third administrative review conducted by the USDOC on DRAMS.
- **Product at issue:** DRAMS from Korea (Hyundai and LG Semicon).

## 2. SUMMARY OF KEY PANEL FINDINGS<sup>3</sup>

- **ADA Art. 11.2 (review of anti-dumping duties – the “likely” standard):** The Panel found for Korea and held that the “not likely” standard in the US regulation (as quoted in footnote 2 below), as such, is inconsistent with Art. 11.2 (“likely” standard) because a failure to find that an exporter is “not likely” to dump does not necessarily lead to the conclusion that this exporter is therefore “likely” to dump. The Panel considered that because there are situations where the not “not likely” standard is satisfied but the “likely” standard is not, the “not likely” criterion fails to provide a “demonstrable basis for consistently and reliably determining that the likelihood criterion is satisfied”. The Panel also found that because the final results of the third administrative review in the DRAMS case were based on a USDOC determination under that regulation, those results, as applied, were inconsistent with Art. 11.2 as well.
- **ADA Art. 2.2.1.1 (dumping determination – acceptance of data):** The Panel rejected Korea's claim that the USDOC violated Art. 2.2.1.1 by disregarding certain cost data submitted by the respondents during the third DRAMS administrative review proceedings. The Panel found that Korea failed to establish a prima facie case because it merely relied on its own conclusory arguments that the data should have been accepted without challenging the specific bases upon which the USDOC had rejected the submitted data.
- **ADA Art. 6.6 (evidence – accuracy of the information):** The Panel rejected Korea's claim that the USDOC accepted unverified data from a petitioner in reaching decisions regarding the respondents. The Panel found that Korea failed to establish a prima facie case because it had raised no specific challenges to the use of the data other than to argue that all information should be specifically verified. Instead, the Panel was of the view that Art. 6.6 did not require verification of all information upon which an authority relies. (The authority could rely on the reputation of the original source of the information.)
- **ADA Art. 5.8 (initiation of investigation – insufficient evidence):** The Panel rejected Korea's claim that the United States violated Art. 5.8 by setting the *de minimis* margin threshold for duty assessment procedures (under Art. 9.3) at 0.5 per cent, instead of the 2 per cent standard established in Art. 5.8. The Panel considered that the scope of Art. 5.8 (*de minimis* standard) is limited to applications for investigations and investigations (as set out in Art. 5.8) and does not encompass Art. 9.3 duty assessment procedure.

<sup>1</sup> United States – Anti-Dumping Duty on Dynamic Random Access Memory Semiconductors (DRAMS) of One Megabit or Above from Korea

<sup>2</sup> The relevant US regulation at issue here is CFR Part 19, Section 353.25(a)(2)(ii), which provides:

“The Secretary [of Commerce] may revoke an order in part if the Secretary concludes that:

... (ii) It is not likely that those persons will in the future sell the merchandise at less than foreign market value; ...”

<sup>3</sup> Other issues addressed in this case: general, alleged US failure to self-initiate an injury review (ADA Art. 11.2); specific recommendations (DSU Art. 19.1); and terms of reference (reviewability of pre-WTO measures).