

ARRANGEMENT BETWEEN THE GOVERNMENT OF JAPAN  
AND THE GOVERNMENT OF THE UNITED STATES OF AMERICA  
CONCERNING TRADE IN SEMICONDUCTOR PRODUCTS

I. Purpose

The purpose of this Arrangement is to enhance free trade in semiconductors on the basis of market principles and the competitive positions of the U.S. and Japanese industries and in accordance with established principles of the General Agreement on Tariffs and Trade (hereinafter referred to as "the GATT"). In this regard, the two Governments reaffirm the importance of the Arrangement between the Government of Japan and the Government of the United States of America concerning Trade in Semiconductor Products dated September 2, 1986 (hereinafter referred to as "the 1986 Arrangement") and emphasize their determination to build upon the progress made under the 1986 Arrangement.

II. Market Access

1. Over the duration of the 1986 Arrangement, the two Governments, the semiconductor industries of the two countries, and the Japanese users of semiconductors have made efforts at increasing market access opportunities in Japan for foreign capital-affiliated semiconductor companies. As a result, substantial progress in market access has been attained.

On the other hand, the two Governments recognize the need for further efforts and the need to further develop a framework which will provide for increased market access opportunities in Japan for foreign capital-affiliated semiconductor companies and for the promotion of cooperative buyer-seller relationships between Japanese semiconductor users and foreign capital-affiliated semiconductor suppliers. The Japanese users of semiconductors anticipate substantially increased supply by and usage of foreign-based semiconductors. The Government of the United States of America anticipates further increases in sales of foreign-based semiconductors in the Japanese market more reflective of the competitiveness of the foreign capital-affiliated semiconductor industries.

2. The two Governments agree that the expected improvement in access should be gradual and steady over the duration of this Arrangement. Sales are anticipated across a wide range of competitive products.

3. The Government of Japan will impress upon the Japanese users of semiconductors the need to make further efforts to increase market access opportunities in Japan for foreign capital-affiliated companies and the need to aggressively take advantage of such opportunities. The Government of Japan will provide

support for expanded sales of foreign-based semiconductors in Japan through promotion of long-term relationships between Japanese semiconductor purchasers and foreign capital-affiliated producers, including joint product development with Japanese customers, and other actions the two Governments consider appropriate.

4. The Government of the United States of America will impress upon the U.S. semiconductor producers the need to make further efforts to increase market access opportunities in Japan for foreign capital-affiliated companies and the need to aggressively pursue every sales opportunity in the Japanese market. The Government of the United States of America will provide support for expanded sales of foreign-based semiconductors in Japan through promotion of long-term relationships between Japanese semiconductor purchasers and foreign capital-affiliated producers, including joint product development with Japanese customers, and other actions the two Governments consider appropriate.

5. The two Governments welcome and support establishment and development of long-term cooperative relationships between Japanese and foreign capital-affiliated semiconductor producers which contribute to the market access objectives of this Arrangement.

6. The Government of Japan will encourage the International Semiconductor Cooperation Center, the User's Committee of Foreign Semiconductors of the Electronic Industries Association of Japan, and other related organizations to play a central role in organizing such activities as: seminars; exhibitions; study and research by joint committees and task forces; and trade missions. The Government of the United States of America will encourage the Semiconductor Industry Association and other related organizations to play a central role in organizing the above activities.

These activities should be aimed at (a) promoting increased information exchange and mutual understanding and (b) leading to increased market access opportunities for foreign capital-affiliated suppliers. The two Governments support these activities.

7. a. In making an overall assessment of progress achieved under this Arrangement, particular attention should be given to market share. The two Governments should also take into specific consideration other important quantitative and qualitative factors, including the development of foreign semiconductor design-ins and other long-term relationships between Japanese semiconductor purchasers and suppliers, and foreign capital-affiliated semiconductor suppliers.

b. The two Governments should also assess in a fair and concrete manner the factors on which improvement in foreign market share

depends, such as competitive factors, the efforts made by foreign capital-affiliated and Japanese companies encouraged under and in connection with this Arrangement, the efforts of the two Governments and other factors independent of the efforts of the relevant parties which have a significant impact on the market.

8. In reviewing the foreign market share in Japan, the two Governments agree to employ the statistical system outlined in Annex A.

9. The two Governments agree on the importance of carefully considering the views and expertise of the private sector in the assessments provided for in this Arrangement. To this end, a working group of experts from the semiconductor and user industries and both Governments is encouraged to meet periodically in order to analyze and evaluate the factors related to progress in improving market access opportunities and other market access issues pertinent to this Arrangement. A segment of the consultations provided for in paragraph IV.3. will be set aside for the presentation of the views of the working group and discussion with these experts on these issues.

10. The Government of Japan recognizes that the U.S. semiconductor industry expects that the foreign market share will grow to more than 20 percent of the Japanese market by the end of 1992 and considers that this can be realized. The Government of Japan welcomes the realization of this expectation. The two Governments agree that the above statements constitute neither a guarantee, a ceiling nor a floor on the foreign market share.

### III. Measures Concerning Injurious Dumping

1. Given the unique characteristics and history of the semiconductor industry, the two Governments recognize the need to avoid the problem of injurious dumping through effective and expeditious anti-dumping measures consistent with the provisions of the GATT and of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter referred to as "the GATT Anti-Dumping Code").

#### 2. Data Collection

a. The Government of Japan will ensure that Japanese semiconductor exporters that account for substantially all of the merchandise exported into the United States of America collect and maintain company and product-specific cost, home market price, and U.S. export price data on the products, specified in Annex B, exported from Japan to the U.S. market.

These products were identified by agreement of the two Governments from among those semiconductors which Japanese companies produce in substantial volume, which are exported in increasing numbers, and which meet either of the following criteria:

- (i) they are standard and general use semiconductors, or
- (ii) there is evidence of a threat of sales at less than normal value.

The list of products will be reviewed as necessary. Upon request of either Government, new products can be added when they meet the above criteria. Products can be deleted from the list by mutual consent of the two Governments.

b. The Government of Japan will ensure that the Japanese semiconductor exporters collect the data using the format and scope agreed to by the two Governments. The Japanese semiconductor exporters are advised to collect and maintain the data on the products specified pursuant to sub-paragraph a. above concerning the sales price from their related party in the United States of America to the first unrelated party in the United States of America.

c. The sole objective of the data collection and maintenance under this paragraph, using the format and scope mentioned in sub-paragraph b. above, is for the Japanese companies to utilize the data for their own use and for use in anti-dumping proceedings pursuant to the provisions of paragraphs 4. and 7.b. of this section, and in paragraph IV.2.c.

3. The Government of the United States of America, either by self-initiation or in response to petition, retains full rights to initiate anti-dumping cases based on any information available to it. In the event that the Government of the United States of America self-initiates an anti-dumping investigation for any product for which the Government of Japan is ensuring that the Japanese semiconductor exporters collect data, the two Governments will enter, prior to the initiation of the investigation, into emergency consultations set forth in paragraph IV.4.

4. If an anti-dumping action with respect to the U.S. market is initiated by the Government of the United States of America on any product for which the Government of Japan is ensuring that the Japanese semiconductor exporters collect data, the Government of Japan will encourage the affected Japanese semiconductor exporters to provide the U.S. Department of Commerce with the data they have collected under sub-paragraph 2.b. above within fourteen days after a questionnaire is presented. Additional data will be provided in accordance with normal U.S. anti-dumping procedures.

5. The two Governments reserve their right to take action against injurious dumping in a third country market in accordance with the relevant provisions of the GATT and the GATT Anti-Dumping Code.

6. The two Governments reaffirm the importance of cooperation with respect to actions taken under the provisions of Article 12 of the GATT Anti-Dumping Code and encourage their respective industries to support the principles embodied in these provisions.

7.a. The two Governments recognize the importance for their respective semiconductor exporters to provide data upon request by the authorities concerned of a third country on an expedited basis if the third country initiates an anti-dumping proceeding pursuant to applications made under Article 12 of the GATT Anti-Dumping Code.

b. In this regard, the Government of Japan will encourage the affected Japanese semiconductor exporters to provide the data collected under sub-paragraph 2.b. above or, in the case of EPROMs, collected under the provisions of the revised Suspension Agreement referred to in paragraph IV.1. below upon such request by a third country.

#### IV. General Provisions

1. The two Governments agree that the terms of this Arrangement shall not be implemented until and unless the Suspension Agreement on EPROMs is superseded by the revised Suspension Agreement and that on 256K and above DRAMs is terminated and the U.S. Department of Commerce terminates the currently suspended anti-dumping investigation on 256K and above DRAMs.

2.a. In the event that the Government of the United States of America initiates an anti-dumping investigation with respect to the U.S. market by petition or by administering authority for any product for which the Government of Japan is ensuring that the Japanese semiconductor exporters collect data under paragraph III.2., the two Governments will enter into emergency consultations set forth in paragraph 4. below.

b. In the event that the Government of the United States of America receives a petition for application pursuant to Article 12 of the GATT Anti-Dumping Code alleging that dumping by Japanese semiconductor exporters in a third country market is causing injury to the U.S. semiconductor industry for any product for which the Government of Japan is ensuring that the Japanese semiconductor exporters collect data under paragraph III.2., the Government of the United States of America will request emergency consultations set forth in paragraph 4. below which will be held before such application is made.

c. In the consultations under sub-paragraph b. above, the two Governments will discuss the reliability and accuracy of the information available to the Government of the United States of America as well as information concerning the extent of injury to the U.S. semiconductor industry. In the event there is

disagreement between the two Governments as to whether or not Japanese exporters are dumping, the Government of Japan will advise the cooperation of the affected Japanese exporters to provide to the two Governments for use in the consultations company-specific information which is drawn from the data collected under sub-paragraph III.2.b. or, in the case of EPROMs, collected under the provisions of the revised Suspension Agreement referred to in paragraph 1. above and is compiled on a non-confidential basis according to an agreed format, under the condition that the information provided under this paragraph not be used by the Government of the United States of America for anti-dumping cases in the U.S. market.

d. In the event that the Government of Japan intends to make an application pursuant to Article 12 of the GATT Anti-Dumping Code against U.S. semiconductor exporters, emergency consultations will be held along the lines described in sub-paragraphs b. and c. above.

3. The two Governments agree that periodic consultations to measure and evaluate progress, and to deal with any problems or disputes that may arise, are necessary for the achievement of the objectives of this Arrangement. To this end, regular government-to-government semiconductor consultations will be held three times a year unless the two Governments otherwise agree.

4. Emergency consultations can be requested by either Government. Such consultations should begin not later than 14 days from the date of request unless the two Governments mutually agree to a later starting date.

5. Should the consultations in paragraph 3. or 4. identify any problems for foreign-based semiconductor sales in Japan, including deficiencies in efforts called for under this Arrangement, the problems should be resolved in a timely manner.

6. With the aim of facilitating the consultations in paragraph 3. above, relevant organizations of the two countries are encouraged to provide the two Governments with information and material necessary to measure and evaluate progress and deal with problems or disputes mentioned in paragraph 3. above.

7. Should the basis of this Arrangement significantly alter or if the objectives of this Arrangement are not being achieved, emergency consultations shall be held with a view to coping with such circumstances and to correcting such situations, including possible amendments of this Arrangement. Termination of the Suspension Agreement because of its violation by Japanese companies or because its coverage falls below 85 percent shall not constitute, in principle, a significant alteration of the basis of this Arrangement or the objectives of this Arrangement not being achieved. In case of anticipated termination of the Suspension Agreement, the Government of the United States of

America shall notify the Government of Japan of its intention and reason.

8. Should the two Governments fail to reach agreement during such emergency consultations under paragraph 7. above, either Government may terminate, in whole or in part, the provisions of this Arrangement by giving sixty days written notice to the other Government.

9. The provisions of this Arrangement will be implemented or enforced by the two Governments in accordance with the laws and regulations in force in their respective countries. It is confirmed that nothing in the provisions of this Arrangement creates any exception to the national antimonopoly/antitrust laws of either country.

10. This Arrangement, as well as cooperation between the relevant parties of the two countries under this Arrangement, are not intended to undermine the interests of third countries. Each Government is ready to consult with any interested third country upon request.

11. The two Governments recognize that their rights and obligations under the GATT are not affected by this Arrangement.

12. The duration of this Arrangement will be five years, beginning on August 1, 1991. At the end of the third year of this Arrangement, the Government of Japan and the Government of the United States of America will review and jointly decide whether it is appropriate to terminate the Arrangement before July 31, 1996.

## Annex A: Statistical System

### 1. Formulae

The two Governments agree to the following two calculations:

Formula 1:

$$\text{DCP (participants) + Discretes + U.S. Non-participant Estimates + Other Foreign (including other foreign non-participant estimates) + Foreign Sales Through U.S. Exporters + In-house - Re-exports}$$

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MITI-MOF (adjusted to the extent necessary)\* - Captives

(Foreign-based semiconductors are identified by "final assembly".)

Formula 2:

$$\text{DCP (participants) + Discretes + U.S. Non-participant Estimates + Other Foreign (including other foreign non-participant estimates) + Foreign Sales Through U.S. Exporters + In-house + Captives - Re-exports}$$

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MITI-MOF (adjusted to the extent necessary)\*

(Foreign-based semiconductors are identified by "brand".)

### 2. Definitions

Definitions are as follows:

- A. DCP = Foreign capital-affiliated companies' sales (determined by DCP definition) to the Japanese market as reported to the U.S.-Japan Data Collection Program.

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\* There will be consistent treatment of product valuations in both the numerator and the denominator. How to adjust is to be discussed after the DCP manual is developed by the Government of the United States of America.

- B. Other Foreign = Non-Japanese and non-U.S. semiconductor companies' sales to the Japanese market. Ideally there will be direct reporting under DCP procedures by European, Korean, Taiwanese and other semiconductor suppliers. Non-participant estimates will also cover other foreign suppliers.
- C. Foreign Sales Through U.S. Exporters = Foreign capital-affiliated companies' sales to the Japanese market after being sold to an exporter in the U.S.
- D. In-house = Semiconductors manufactured and used internally by a company that also sells semiconductors on the merchant market.
- E. Re-exports = Foreign semiconductor products reported to DCP as shipments to Japan and then exported from Japan still as semiconductors.
- F. MITI-MOF = The official statistics of the Government of Japan on the size of the Japanese semiconductor market. Calculated as production in Japan - exports + imports - inventory change.
- G. Captives = "Pure Captives"; semiconductors manufactured and used internally by a company that does not sell semiconductors on the merchant market.

Note: The Verification Committee referred to in paragraph 4.B. will develop methodologies for identifying "Foreign Sales Through U.S. Exporters" and "Re-exports".

### 3. Participation

The DCP should provide for as broad a coverage as possible. To achieve maximum direct reporting, the U.S. side will expand the number of U.S. companies reporting to the DCP to as many as possible. Furthermore, the two Governments will, in an appropriate manner, encourage other foreign (non-U.S.) companies to participate in the DCP.

#### 4. Verification

- A. Accuracy and reliability are key tenets for the statistical system. The two Governments will establish procedures transparent enough to confirm accuracy and reliability of the data.
- B. A Verification Committee will be established to ensure the accuracy and reliability of the market share data. This Committee will consist of members from the two Governments. The Committee will review the market share statistics every three months.

Data exchange procedures for confirming accuracy and reliability of the DCP data are as follows:

- (i) The Government of the United States of America will provide the Government of Japan quarterly with the data on aggregate sales by the U.S. DCP participant companies to each Japanese user. In cases where the U.S. semiconductors are not directly shipped to Japanese users, the Government of the United States of America will provide the Government of Japan with the same kind of information as far as possible.
- (ii) The Government of Japan will provide the Government of the United States of America quarterly with the data on aggregate purchases by the Japanese MITI users' survey participant companies from each U.S. DCP participant company.
- (iii) In order to assure the confidentiality of business proprietary information, the two Governments will designate appropriate government officials to implement the procedures described above and will maintain the absolute confidentiality of the data.
- (iv) Should a major discrepancy be found, each Government will seek the consent and cooperation of the individual company (companies) involved (the Government of the United States of America with U.S. companies and the Government of Japan with Japanese companies) to review its (their) individual data, and, upon receiving such consent, will review the individual company's (companies') data. Each Government will continue to identify causes of the discrepancy until they are fully understood and take corrective steps as appropriate.

- C. Recognizing the necessity of smoothly exchanging information on the shipment and sales of semiconductors between the U.S. suppliers and the Japanese users for the sake of securing transparency and reliability of the statistical system, the two Governments will request the individual U.S. manufacturers and the individual Japanese users to respond adequately to inquiries from each other about their data reporting. This will principally allow the users to know how the semiconductors they buy will be reported in the DCP and cases in which semiconductors with foreign labels are not reported as foreign-based semiconductors in the DCP (Formula 1) but reported as foreign-based semiconductors in the DCP (Formula 2). In addition, this exchange will allow foreign manufacturers to know how their customers will report the transaction to the MITI users' survey. In the same vein, the two Governments will provide Japanese users and foreign suppliers with a detailed explanation of the statistical system to the extent possible so that the users and the suppliers can know the way in which individual sales will be reported.
- D. The above verification procedures may be amended by agreement of the two Governments.

## 5. Estimation

- A. The two Governments will establish an Estimation Committee for making estimates on sales to the Japanese market by non-participants and non-reporting participants. The Committee will consist of members from the staff of the User's Committee of Foreign Semiconductors of the Electronic Industries Association of Japan, the staff of the Semiconductor Industry Association, the Government of Japan (Ministry of International Trade and Industry (MITI)), and the Government of the United States of America.
- B. The members of the Estimation Committee will assure the confidentiality of all business proprietary information. The procedures and methods employed in the estimation are as follows:
- (i) The estimation will be based on an overall assessment of the following sources:
- o annual reports and other company financial material audited by an accounting firm and reports filed with the Securities and Exchange Commission;

- o direct responses by non-participant companies judged by the Committee to be credible;
- o the MITI users' survey data on purchases from DCP non-participants. The MITI users' survey will be conducted by a neutral accounting firm (The use of a neutral accounting firm to conduct the survey is contingent on agreement by the Estimation Committee on the formula referred to in subparagraph (ii) below by October 1, 1991.); and
- o other relevant sources judged by the Committee as necessary.

(ii) Because the MITI users' survey mentioned in subparagraph (i) above will not have 100 percent coverage of foreign-based semiconductor sales to the total Japanese market, in cases in which this survey is used, an adjustment factor will be applied to estimate the total shipments by each non-participant and each non-reporting participant to the Japanese market. The initial formula for this purpose will be determined by October 1, 1991.

#### 6. Miscellaneous

- A. The two Governments may commission a part of their authorities to neutral accounting firms as competent entities with reliability including observance of data confidentiality.
- B. The two Governments will consider other data sources to review the market trends regarding the foreign market share. Other data sources will be the MITI users' survey and the World Semiconductor Trade Statistics program.

ANNEX B

MOS DRAM/VRAM

MOS SRAM

Microprocessors

Microcontrollers

ASICs

ECL Logic