

Original: English

**JAPAN – COUNTERVAILING DUTIES ON
DYNAMIC RANDOM ACCESS MEMORIES FROM KOREA**

Request for Consultations by Korea

The following communication, dated 14 March 2006, from the delegation of Korea to the delegation of Japan and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Japan ("Japan") pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes ("DSU"), Article 30 of the Agreement on Subsidies and Countervailing Measures ("SCM Agreement"), and Article XXII of the General Agreement on Tariffs and Trade 1994 ("GATT 1994"), with regard to the imposition of countervailing duties by the Government of Japan on imports of certain Dynamic Random Access Memories ("DRAMs") from Korea, notice of which was provided by Japan in Cabinet Order No. 13 and Ministry of Finance Notice No. 35, published respectively in Issue No. 4264 and Special Issue No. 17 of the Official Gazette dated 27 January 2006, and certain aspects of the investigation and determinations that led to the imposition of such duties.

The Government of Korea considers these determinations by the Government of Japan to be inconsistent with its obligations under the relevant provisions of the GATT 1994 and the SCM Agreement, including, but not limited to:

1. Article 1 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate the existence of a financial contribution by the Government of Korea within the meaning of Article 1 of the SCM Agreement.
2. Articles 1 and 2 of the SCM Agreement because, *inter alia*, Japan imposed and applied an improper burden of proof on respondents and, in turn, Japan did not base its decisions on affirmative, objective and verifiable evidence.
3. Articles 1 and 14 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate that a benefit was conferred on respondent Hynix Semiconductor Inc. ("Hynix").
4. Articles 1 and 14 of the SCM Agreement because, *inter alia*, the analyses of the "commercial rationality" of loans and other investments in Hynix, and the other analyses related to the determination of the financial contribution and benefit to respondent Hynix, that were undertaken by Japan are inconsistent with Japan's obligations under the SCM Agreement.

5. Article 2 of the SCM Agreement because, *inter alia*, Japan failed to demonstrate that the alleged subsidies were specific to respondent Hynix on the basis of positive evidence.
6. Article 12 of the SCM Agreement because, *inter alia*, Japan improperly treated entities that had no interest in the investigation as "interested parties", improperly applied "facts available" instead of considering the information on the record, and improperly made adverse inferences against the interests of respondent Hynix due to allegedly inadequate cooperation by other interested parties or by other entities that were not under Hynix's control and that were not obligated to participate in the investigation.
7. Article 14 of the SCM Agreement because, *inter alia*, Japan utilized methods for calculating the benefit to the alleged recipient of the alleged financial contributions that were not specified in Japan's national legislation or implementing regulations and that were not applied in a manner that was transparent and adequately explained.
8. Article 15 of the SCM Agreement because, *inter alia*, Japan improperly found material injury caused by the alleged subsidized imports without proper evidentiary or legal foundations.
9. Article 15.5 and Article 19.1 of the SCM Agreement because, *inter alia*, Japan's determination failed to demonstrate that the allegedly subsidized imports were, through the effect of the alleged subsidies, causing injury within the meaning of the SCM Agreement.
10. Articles 10, 14, 19 and 21 of the SCM Agreement because, *inter alia*, Japan imposed and maintained countervailing duties without determining whether a benefit continued to exist following changes in the ownership of respondent Hynix.
11. Articles 19 and 21 of the SCM Agreement because, *inter alia*, Japan improperly levied a countervailing duty on imports when there was no longer a benefit from the alleged past subsidies, and the duty was not necessary to counteract alleged subsidization.
12. Articles 10, 11, 12, 14, 15, 22 and 32.1 of the SCM Agreement and Articles VI:3 and X:3 of the GATT 1994 because, *inter alia*, Japan failed to conduct a thorough and complete investigation, and failed to conduct its investigation and make determinations in accordance with fundamental substantive and procedural requirements.
13. Article 22 of the SCM Agreement because, *inter alia*, Japan failed to provide all relevant information on the matters of fact and law and reasons for its determinations.

The Government of Korea reserves its rights to raise additional factual and legal issues during the course of the consultations and in any request for the establishment of a panel.

We look forward to the response of the Government of Japan to this request so that we can schedule a mutually convenient date to begin consultations.
