US – DRAMS[1]

(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)[2], 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.

- Products at issue: DRAMS from Korea (Hyundai and LG Semicon).

2. SUMMARY OF KEY PANEL FINDINGS[3]

- ADA Art. 11.2 (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 (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 (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 (*de minimis* margin): 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.

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

2 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; ..."

3 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).

MEXICO – ANTI-DUMPING MEASURES ON RICE[1]

(DS295)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	*United States*	*ADA Arts. 3, 5.8, 6, 9, 11 12 and 17;*	Establishment of Panel	*7 November 2003*
			Circulation of Panel Report	*6 June 2005*
Respondent	*Mexico*		Circulation of AB Report	*29 November 2005*
			Adoption	*20 December 2005*

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Mexico's definitive anti-dumping duties; several provisions of Mexico's Foreign Trade Act; and the Federal Code of Civil Procedure.

- Product at issue: Long-grain white rice from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Injury determination (ADA Arts. 3.1, 3.2, 3.4 and 3.5)

- Period for the injury investigation: The Appellate Body upheld the Panel's finding that Mexico violated Art. 3.1, 3.2, 3.4 and 3.5, as it based its determination of injury on a period of investigation which ended more than 15 months before the initiation of the investigation, and thus it had failed to make an injury determination based on positive evidence, and involving an objective examination of the volume and price effects of the alleged dumped imports or the impact of the imports on domestic producers at the time measures were imposed under Art. 3.

- Use of data from part of the investigation period: The Appellate Body upheld the Panel's finding that the investigating authority's injury analysis was inconsistent with Art. 3.1 because it examined only part of the data from the investigation period and the choice of the limited period of investigation reflected the highest import penetration, which therefore was not the data of "an unbiased and objective" investigating authority.

- Evidence on price effects and volumes: Having agreed with the Panel that important assumptions relied upon by Mexico's investigating authority were "unsubstantiated" and hence not based on positive evidence, the Appellate Body upheld the Panel's finding that the investigating authority's injury analysis with regard to the volume and price effects of dumped imports was inconsistent with Art. 3.1 and 3.2.

Adverse facts available (ADA Art. 6.8 and Annex II(7))

- The Panel found that the Mexican investigating authority's reliance on facts available for the dumping margin determination was inconsistent with Art. 6.8, read in light of Annex II(7), as it found no basis to consider that the authority undertook the evaluative, comparative assessment that would have enabled it to gauge whether the information provided by the applicant was the best available or that it used the information with "special circumspection" as required by Annex II(7).

Notification (Art. 6.1 and 12.1)

- Having found that the notification requirements under Arts. 6.1 and 12.1 apply only to interested parties for which the investigating authority had *actual knowledge* (not those for which it could have obtained knowledge), the Appellate Body reversed the Panel finding that Mexico's authority violated Art. 6.1 and 12.1 by not notifying all interested parties of the investigation initiation and of the information required of them. However, the Appellate Body agreed with the Panel that, pursuant to ADA Art. 6.8 and Annex II, the dumping margin for an exporter could not be calculated on the basis of adverse facts available from the petition where that firm did not receive notice of the information required by the investigating authority.

Termination of investigation (Art. 5.8)

- Upholding the Panel's finding that the investigation in respect of the individual exporter for which a zero or de minimis dumping margin is found should be immediately terminated under Art. 5.8, second sentence, the Appellate Body concluded that Mexico violated Art. 5.8 "by not terminating the investigation in respect of two US exporters in such a situation".

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1 *Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice*