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DEPARTMENT OF COMMERCE

International Trade Administration

[C-580-851]

Final Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea

AGENCY: Import Administration, International Trade Administration, Department of Commerce

ACTION: Notice of final affirmative countervailing duty determination.

SUMMARY: The Department of Commerce has made a final determination that countervailable subsidies are being provided to certain producers and exporters of dynamic random access memory semiconductors from the Republic of Korea. For information on the estimated countervailing duty rates, please see the "Suspension of Liquidation" section, below.

EFFECTIVE DATE: (Insert date of publication in the Federal Register).

FOR FURTHER INFORMATION CONTACT: Ryan Langan, Jesse Cortes, or Daniel J. Alexy, Office of Antidumping/Countervailing Duty Enforcement, Group 1, Import Administration, U.S. Department of Commerce, Room 3099, 14th Street and Constitution Avenue, N.W., Washington, D.C. 20230; telephone(202) 482-2613, (202) 482-3986, and (202) 482-1540, respectively.

Petitioner

The petitioner in this investigation is Micron Technology, Inc. ("the petitioner").

Period of Investigation

The period for which we are measuring subsidies, or period of investigation, is January 1, 2001 through June 30, 2002.

Case History

The following events have occurred since the publication of the preliminary determination in the Federal Register on April 7, 2003. See Preliminary Affirmative Countervailing Duty Determination: Dynamic Random Access Memory Semiconductors from the Republic of Korea (68 FR 16766) (“Preliminary Determination”).

On April 7, 2003, the petitioner submitted comments alleging that Samsung Electronics Co., Ltd., (“SEC”) was uncreditworthy during the period 1997 through 1999. SEC filed rebuttal information relating to this allegation on April 10 and 17, 2003. The Department of Commerce (“the Department”) initiated an investigation of SEC’s creditworthiness for 1998 only in an April 17, 2003 memorandum to Louis Apple entitled “Samsung Electronics Co., Ltd. Uncreditworthiness Allegation,” which is on file in the Department’s Central Records Unit in Room B-099 of the main Department building (“CRU”). SEC and the petitioner filed further comments on this creditworthiness investigation subsequent to its initiation.

On April 8, 2003, Hynix Semiconductor, Inc. (“Hynix”) submitted ministerial error allegations relating to the Preliminary Determination. The petitioner filed a response to these allegations on April 14, 2003. We addressed these ministerial error allegations in an April 16, 2003 memorandum to Louis Apple entitled “Ministerial Error Allegations for Preliminary Determination,” which is on file in the Department’s CRU.

We issued supplemental questionnaires to SEC, Hynix, and the Government of the Republic of Korea (“GOK”) on April 8, and May 5, 6, and 20, 2003. We received responses to these supplemental questionnaires on April 14 and 16, and May 13, 15, and 22, 2003. The respondents, the

petitioner, and interested parties also submitted factual information, comments, and arguments at numerous instances prior to the final determination based on various deadlines for submissions of factual and information and/or arguments established by the Department subsequent to the Preliminary Determination.

From April 21 to May 3, 2003, we conducted verification of the questionnaire responses submitted by the GOK, Hynix, and SEC.

On May 28, 2003, the Department issued a memorandum entitled “Preliminary Determination on New Subsidy Allegations and New Subsidies Discovered in the Course of Investigation” (“Supplemental Preliminary Determination Memo”) that addressed two new allegations raised by the petitioner just prior to the Preliminary Determination, as well as one new program discovered during verification.

We received case briefs from the GOK, SEC, Hynix, Infineon Technologies North America Corporation and Infineon Technologies Richmond, LP (a domestic producer and an interested party in this proceeding), and the petitioner on May 22, 2003. The parties submitted rebuttal briefs on May 30, 2003. On June 2, 2003, the petitioner and the GOK/SEC submitted supplemental case briefs on the issues addressed in the Department’s Supplemental Preliminary Determination Memo. These same parties submitted rebuttal briefs on these topics on June 4, 2003. We held a hearing in this investigation on June 6, 2003.

Scope of Investigation

The products covered by this investigation are dynamic random access memory semiconductors (“DRAMs”) from the Republic of Korea (“ROK”), whether assembled or

unassembled. Assembled DRAMS include all package types. Unassembled DRAMS include processed wafers, uncut die, and cut die. Processed wafers fabricated in the ROK, but assembled into finished semiconductors outside the ROK are also included in the scope. Processed wafers fabricated outside the ROK and assembled into finished semiconductors in the ROK are not included in the scope.

The scope of this investigation additionally includes memory modules containing DRAMS from the ROK. A memory module is a collection of DRAMS, the sole function of which is memory. Memory modules include single in-line processing modules, single in-line memory modules, dual in-line memory modules, small outline dual in-line memory modules, Rambus in-line memory modules, and memory cards or other collections of DRAMS, whether unmounted or mounted on a circuit board. Modules that contain other parts that are needed to support the function of memory are covered. Only those modules that contain additional items which alter the function of the module to something other than memory, such as video graphics adapter boards and cards, are not included in the scope. This investigation also covers future DRAMS module types.

The scope of this investigation additionally includes, but is not limited to, video random access memory and synchronous graphics random access memory, as well as various types of DRAMS, including fast page-mode, extended data-out, burst extended data-out, synchronous dynamic RAM, Rambus DRAM, and Double Data Rate DRAM. The scope also includes any future density, packaging, or assembling of DRAMS. Also included in the scope of this investigation are removable memory modules placed on motherboards, with or without a central processing unit, unless the importer of the motherboards certifies with the U.S. Bureau of Customs and Border Protection (“Customs”) that

neither it, nor a party related to it or under contract to it, will remove the modules from the motherboards after importation. The scope of this investigation does not include DRAMS or memory modules that are re-imported for repair or replacement.

The DRAMS subject to this investigation are currently classifiable under subheadings 8542.21.8005 and 8542.21.8021 through 8542.21.8029 of the Harmonized Tariff Schedule of the United States (“HTSUS”). The memory modules containing DRAMS from the ROK, described above, are currently classifiable under subheadings 8473.30.10.40 or 8473.30.10.80 of the HTSUS. Although the HTSUS subheadings are provided for convenience and customs purposes, the Department’s written description of the scope of this investigation remains dispositive.

Injury Test

Because the ROK is a “Subsidies Agreement Country” within the meaning of section 701(b) of the Tariff Act of 1930, as amended by the Uruguay Round Agreements Act effective January 1, 1995 (“the Act”), the International Trade Commission (“ITC”) is required to determine whether imports of the subject merchandise from the ROK materially injure, or threaten material injury to, a U.S. industry. On December 13, 2002, the ITC made its preliminary determination that there is a reasonable indication that an industry in the United States is being materially injured by reason of imports from the ROK of the subject merchandise. See Drams and Dram Modules from Korea, 67 FR 79148 (December 27, 2002).

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this investigation are addressed in the “Issues and Decision Memorandum” from Jeffrey May, Deputy Assistant Secretary, Import

Administration, to Joseph A. Spetrini, Acting Assistant Secretary, Import Administration, dated June 16, 2003 (“Decision Memorandum”), which is hereby adopted by this notice. Attached to this notice as an Appendix is a list of the issues which parties have raised and to which we have responded in the Decision Memorandum. Parties can find a complete discussion of all issues raised in this investigation and the corresponding recommendations in this public memorandum which is on file in the CRU. In addition, a complete version of the Decision Memorandum can be accessed directly on the Internet at <http://ia.ita.doc.gov/fm/> under the heading “Korea.” The paper copy and electronic version of the Decision Memorandum are identical in content.

Suspension of Liquidation

As a result of our Preliminary Determination, we instructed Customs to suspend liquidation of all entries of DRAMS from the ROK which were entered or withdrawn from warehouse, for consumption on or after April 7, 2003, the date of the publication of the Preliminary Determination in the Federal Register (with the exception of entries from SEC as we preliminarily determined SEC’s rate to be de minimis).

In accordance with section 705(c)(1)(C) of the Act, we are directing Customs to continue to suspend liquidation of all imports of the subject merchandise from the ROK that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the Federal Register, with the exception of entries for SEC, for whom we have determined the net subsidy rate to be de minimis. These suspension of liquidation instructions will remain in effect until further notice.

We determine the total estimated net subsidy rate for each company to be the following:

Producer/Exporter	Net Subsidy Rate
Samsung Electronics Co., Ltd.	0.04 percent (<u>de minimis</u>)
Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd.)	44.71 percent
All Others	44.71 percent

In accordance with sections 777A(e)(2)(B) and 705(c)(5)(A) of the Act, we have set the “all others” rate as Hynix’ rate because the rate for SEC, the only other investigated company, is de minimis.

We will issue a countervailing duty order if the ITC issues a final affirmative injury determination and we will instruct Customs to require a cash deposit of estimated countervailing duties for such entries of merchandise in the amounts indicated above. If the ITC determines that material injury, or threat of material injury, does not exist, this proceeding will be terminated and all estimated duties deposited or securities posted as a result of the suspension of liquidation will be refunded or canceled.

ITC Notification

In accordance with section 705(d) of the Act, we will notify the ITC of our determination. In addition, we are making available to the ITC all non-privileged and non-proprietary information related to this investigation. We will allow the ITC access to all privileged and business proprietary information in our files, provided the ITC confirms that it will not disclose such information, either publicly or under an Administrative Protective Order (“APO”), without the written consent of the Assistant Secretary for Import Administration.

Return or Destruction of Proprietary Information

In the event that the ITC issues a final negative injury determination, this notice will serve as the only reminder to parties subject to an APO of their responsibility concerning the destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3). Failure to comply is a violation of the APO.

This determination is published pursuant to sections 703(f) and 777(i) of the Act.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date

APPENDIX

List of Comments and Issues in the Decision Memorandum

- Comment 1: Direction of Credit
- Comment 2: Specificity Relating to Direction of Credit
- Comment 3: Application of Commercial Benchmarks to Determine the Amount of Benefits to Hynix Semiconductor Inc. (formerly, Hyundai Electronics Industries Co., Ltd. (“HEI”)) (“Hynix”)
- Comment 4: Direction of Credit Through the Government of the Republic of Korea’s (“GOK”) Control of the Bond Market
- Comment 5: Hynix Creditworthiness
- Comment 6: Korea Development Bank (“KDB”) Fast Track Program
- Comment 7: Hynix October 2001 Debt-to-Equity Conversion
- Comment 8: Hynix October 2001 Debt Forgiveness
- Comment 9: Hynix Five-Year Interest-Free Loan Stemming from October 2001 Restructuring
- Comment 10: Hynix October 2001 Retroactive Reduction of Accrued Interest as Part of Debt-Equity Swap
- Comment 11: Hynix Benefit from Convertible Bonds (“CB”) Arising Between Issuance and Conversion Stemming from October 2001 Restructuring
- Comment 12: Treating Loans to Hynix in Excess of Banking Act Exposure Limitations and Documents Against Acceptance (“D/A”) Financing as Grants
- Comment 13: D/A Interest Rates
- Comment 14: Hynix Sales
- Comment 15: Hynix Short-Term Financing
- Comment 16: Ministerial Errors In Certain Hynix Preliminary Determination Calculations
- Comment 17: Use of LG Semiconductor, Inc. (“LG Semicon”) Bonds as Hynix Benchmarks
- Comment 18: Calculation of Uncreditworthy Benchmarks
- Comment 19: Other General Benchmark Issues
- Comment 20: Samsung Electronics Co., Ltd. (“SEC”) Creditworthiness
- Comment 21: Facts Available for SEC’s Unreported Short- and Long-Term Financing
- Comment 22: Treatment of Certain SEC Interest Payments
- Comment 23: SEC Sales
- Comment 24: Energy Savings Fund (“ESF”) Program
- Comment 25: De Facto Specificity of Certain Tax Programs Under the Tax Reduction and Exemption Control Act (“TERCL”) and/or the Restriction of Special Taxation Act (“RSTA”)
- Comment 26: RSTA Article 26 and Import Substitution
- Comment 27: 21st Century Frontier Research and Development (“R&D”) Program
- Comment 28: Other R&D Programs
- Comment 29: Export Insurance Program
- Comment 30: Electricity Discounts Under the Requested Load Adjustment (“RLA”) Program

- Comment 31: Duty Drawback on Non-Physically Incorporated Items and Excessive Loss Rates, and on Domestic Sales of Finished Products Manufactured from Imported Raw Materials
- Comment 32: Import Duty Reduction for Cutting Edge Products
- Comment 33: Permission for Hynix and SEC to Build in Restricted Area
- Comment 34: Exemption of Value-Added Tax (“VAT”) on Imports Used for Bonded Factories Under Construction