

JAPAN - UNITED STATESARRANGEMENT CONCERNING TRADE IN SEMICONDUCTOR PRODUCTS
JAPANESE NOTE - 1.9.86*

Sir,

I have the honor to refer to the recent discussions held between the representatives of the Government of Japan and the Government of the United States of America concerning trade in semiconductor products between Japan and the United States of America and to confirm, on behalf of the Government of Japan, the understanding reached between the two Governments that the Government of Japan will implement the measures provided for in the Arrangement attached hereto (hereinafter called "the Arrangement").

I have further the honor to request you to confirm on behalf of the Government of the United States of America that it will implement its measures provided for in the Arrangement and to confirm that the present Note and your reply shall be regarded as constituting an agreement between the two Governments, which will enter into force on the date of your reply.

I avail myself of this opportunity to renew to you, Sir, the assurances of my highest consideration.

*[The text of this Note and the following Arrangement were provided by Mr. K. Kanasugi, Second Secretary, Embassy of Japan, Canberra].

Arrangement between the Government of Japan
and the Government of the United States
of America concerning Trade in
Semiconductor Products

I. Market Access

1. The Governments of Japan and the United States of America are desirous of enhancing free trade in semiconductors on the basis of market principles and the competitive positions of their respective industries. Both Governments have exchanged views regarding the future size and shape of the global semiconductor market, including, *inter alia*, the present and prospective situation in their respective domestic markets. These exchanges have been based upon detailed analysis of the economics of various markets, competitiveness of their respective industries, and independent, non-governmental forecasts of anticipated growth in these markets. Their semiconductor industries anticipate substantial market growth both domestically and internationally, and the two Governments strongly support and encourage expanded trade in these products. The Japanese producers and users of semiconductors anticipate substantially increased supply by and usage of foreign-based semiconductors. The United States of America anticipates substantially improved opportunities for foreign semiconductor sales in the Japanese market more reflective of the competitiveness of the U.S. industry.

Based upon such recognitions, the Government of Japan will impress upon the Japanese producers and users of semiconductors the need to aggressively take advantage of increased market access opportunities in Japan for foreign-based firms which wish to improve their actual sales performance and position. In turn, the Government of the United States of America will impress upon the U.S. semiconductor producers the need to aggressively pursue every sales opportunity in the Japanese market.

2. Both Governments agree that the expected improvement in access should be gradual and steady over the period of this Arrangement.

3. (1) The Government of Japan will provide further support for expanded sales of foreign-produced semiconductors in Japan through:

- a. establishment of an organization which will provide sales assistance for foreign semiconductor producers as they attempt to penetrate the Japanese market. This organization will also make quality assessments of foreign semiconductor products, upon request, and will organize a research fellowship program, seminars, exhibitions, etc., for foreign firms; and
- b. promotion of long-term relationships between Japanese semiconductor purchasers and foreign producers, including joint product development with Japanese customers

(2) The Government of the United States of America will also provide support for the above activities, to the extent possible.

4. The Government of Japan and the Government of the United States of America reaffirm their determination that there should be full and equitable access for foreign companies to patents resulting from government-sponsored research and development in this area, and both Governments have every intention to refrain from policies or programs which stimulate inordinate increases in semiconductor production capacity.

II. Prevention of Dumping

1. Suspension of Antidumping Cases

Present antidumping cases on EPROMs and 256k and above DRAMs will be suspended upon mutually agreed completion of the Suspension Agreements contracted between the Department of Commerce of the United States of America (hereinafter called "DOC") and the Japanese companies concerned (hereinafter called "the Suspension Agreements") on those products.

2. Monitoring (U.S. Market)

(1) Both Governments recognize the need to prevent dumping in accordance with relevant provisions of the General Agreement on Tariffs and Trade (hereinafter called "the GATT").

(2) In order to prevent dumping, the Government of Japan will monitor costs and prices on the products exported from Japan to the United States of America.

(3) The initial products to be monitored are specified in the Annex. These products were identified by agreement of the two Governments from among those semiconductors which Japanese companies produce in substantial volume, are increasingly exported, and meet either of the following criteria: 1) they are standard and general use semiconductors, or 2) there is evidence of a threat of sales at less than fair 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 monitoring list by mutual consent of both Governments.

(4) Company and product-specific cost and export price data on monitored products will be submitted by Japanese semiconductor exporters to the Ministry of International Trade and Industry of Japan (hereinafter called "MITI") in accordance with procedure established by MITI. The format and scope of the data report will be mutually agreed to by the two Governments. The Japanese semiconductor exporters are advised to provide MITI with the data 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.

(5) If the Government of the United States of America believes that exports or sales of any monitored product are being made by one or more Japanese firms in the U.S. market at prices less than company-specific fair value

and the Government of the United States of America provides the Government of Japan with information to support that belief, immediate consultations may be requested. Consultations shall have a maximum 14 day limit, unless both Governments mutually agree to a longer period.

(6) Based upon monitoring and/or consultation, the Government of Japan will take appropriate actions available under laws and regulations in Japan to prevent exports at prices less than company-specific fair value.

(7) Based upon consultation and with concurrence of the Government of the United States of America, the Government of Japan will take appropriate action through Japanese semiconductor exporters so that their related party in the United States of America will not sell to the first unrelated party in the United States of America at prices less than company-specific fair value.

(8) The Government of the United States of America, either by self-initiation or in response to petition, retains full rights to initiate antidumping cases based on any information available to it. Prior consultation shall be made in the case of self-initiation.

(9) If an antidumping action is initiated on any monitored product, the Government of Japan shall encourage the affected Japanese semiconductor exporters to provide DOC with the data submitted to MITI under paragraph II. 2. (4) within 14 days after a questionnaire is presented. Additional data will be provided in

accordance with the normal antidumping procedures.

3. Monitoring (Third Country Markets)

(1) Both Governments recognize the need to prevent dumping in accordance with relevant provisions of the GATT and will encourage respective industries to conform with the above principles.

(2) In order to prevent dumping, the Government of Japan will monitor, as appropriate, costs and export prices on the products exported by Japanese semiconductor firms from Japan.

III. General Provisions

1. Both Governments agree that the terms of this Arrangement shall not be implemented until and unless mutually satisfactory Suspension Agreements on EPROMs and 256k and above DRAMs are worked out on the existing antidumping investigations.

2. In the event that the Government of the United States of America initiates an antidumping investigation by petition or by administering authority for a monitored product, the two Governments will enter into emergency consultations set forth in paragraph III. 4.

3. The two Governments agree that periodic consultations to measure and evaluate progress, and to deal with any problems or disputes which

may arise, are necessary for the achievement of the objectives of this Arrangement. To this end, the two Governments agree to consult not less frequently than three times a year for the first two years of this Arrangement, and at least twice a year thereafter.

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

5. Should these consultations identify any problems for foreign-based semiconductor sales in Japan, the problems should be resolved in a timely manner.

6. 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.

7. No provision in this Arrangement is intended to undermine the interest of third countries.

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

9. 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 a Suspension Agreement because of its violation

by Japanese companies or because its coverage falls below 85% shall not constitute, in principle, a significant alteration of the basis of this Arrangement or objective of this Arrangement not being achieved. In case of anticipated termination of a Suspension Agreement, the Government of the United States of America shall notify the Government of Japan of its intention and reason.

10. Should the two Governments fail to reach agreement during such emergency consultations under paragraph III. 9., either Government may terminate, in whole or in part, the provisions of this Arrangement by giving sixty days' written notice to the other Government.

11. With respect to the collection of data for the purpose of monitoring defined under paragraphs II. 2. (2) and II. 3. (2) of this Arrangement, it is confirmed that MITI will classify, as necessary, business proprietary data as "confidential" and that strict measures for the protection of such data will be taken, including limited access thereto, in accordance with relevant laws and regulations in Japan. Should any problems arise in relation to the safeguarding of business proprietary data mentioned above, both Governments shall immediately enter into consultations with a view to solving them.

12. The Government of Japan, having in mind paragraphs 4 and 7 of Part 2B of the Recommendations of the U.S.-Japan Work Group on High Technology Industries of February 1983, confirms that research and development programs

which it sponsors in whole or in part will be open to foreign capital-affiliated semiconductor companies established in Japan on a full national treatment basis. The Government of Japan further confirms that plans calling for the development of the semiconductor industry, or any segment thereof, are drawn so that such foreign capital-affiliated semiconductor companies are treated equally with Japanese capital-affiliated companies in terms of the opportunity for inclusion. National treatment will also be given in access to investment promotion programs, concessionary lending, and related assistance programs.

It is understood by the Government of Japan that should the U.S. capital-affiliated semiconductor companies established in Japan believe they are not being accorded national treatment, the Government of the United States of America will request immediate consultations with the Government of Japan. Such consultations will be held within 14 days of the request.

13. The duration of this Arrangement will be five years, ending on July 31, 1991.

ANNEX

- 1) Memory Devices
MOS SRAM
ECL RAM
- 2) Microprocessors
8 bit configuration
16 bit configuration
- 3) Microcontrollers
8 bit configuration
- 4) ASICS
GATE ARRAYS
STANDARD CELLS
- 5) ECL LOGIC

(Draft)

(U.S. Note)

Excellency,

I have the honor to acknowledge the receipt of Your Excellency's Note of today's date, enclosing the Arrangement attached thereto (hereinafter called "the Arrangement") concerning trade in semiconductor products between the United States of America and Japan, which reads as follows:

"(Japanese Note)"

I have further the honor to confirm on behalf of the Government of the United States of America that it will implement its measures provided for in the Arrangement and to agree that Your Excellency's Note and this reply shall be regarded as constituting an agreement between the two Governments, which will enter into force on the date of this reply.

I avail myself of this opportunity to renew to Your Excellency the assurance of my highest consideration.