

Stupp Corporation et al. v. United States,
Consol. Court No. 15-00334, Slip Op. 19-134 (CIT October 21, 2019)

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO SECOND COURT REMAND**

Summary

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the second remand order of the U.S. Court of International Trade (the Court), issued on October 21, 2019.¹ This action arises from the final determination in the less-than-fair-value (LTFV) investigation of welded line pipe from the Republic of Korea (Korea).² The Court previously remanded to Commerce to: (1) explain or reconsider its decision regarding respondent Hyundai HYSCO Co. Ltd.’s (Hyundai HYSCO’s) home market “local sales” (*i.e.*, certain sales that it made to customers in Korea that are likely to export the merchandise, either subsequent to further manufacturing or “as-is”); and (2) place on the administrative record all or part of a supplemental case brief filed by the petitioner, Maverick Tube Corporation (Maverick), which Commerce rejected in the LTFV investigation.³ Although

¹ See *Stupp Corporation et al. v. United States*, Consol. Court No. 15-00334, Slip Op. 19-134, dated October 21, 2019 (*Stupp II*).

² See *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Final Determination*), and accompanying Issues and Decision Memorandum (IDM); see also *Welded Line Pipe from the Republic of Korea: Amended Final Determination of Sales at Less Than Fair Value*, 80 FR 69637 (November 10, 2015).

³ See *Stupp Corporation et al. v. United States*, 359 F. Supp. 3d 1293 (CIT 2019) (*Stupp I*).

the Court sustained Commerce's *First Remand Results*⁴ with respect to these issues, it remanded to Commerce for further explanation or reconsideration the agency's refusal to reconsider Hyundai HYSCO's home market viability.⁵ Upon reconsideration of the record evidence and the Court's remand order, Commerce determines that, under the specific circumstances of this proceeding, the quantity of Hyundai HYSCO's remaining home market sales provides a sufficient basis for comparison to its U.S. sales.

Background

Commerce published the *Final Determination* on October 13, 2015.⁶ As discussed in the *Final Determination*, Commerce accepted Hyundai HYSCO's claim that, for virtually all of Hyundai HYSCO's local sales, at the time of sale, Hyundai HYSCO did not have knowledge of the final destination of this merchandise, or whether the merchandise in these specific sales would be further processed prior to export. Thus, Commerce concluded that these sales were properly considered to be home market sales.⁷

In *Stupp I*, the Court remanded the *Final Determination* to Commerce, concluding that the inclusion of certain "local sales" in Hyundai HYSCO's home market sales database was not in accordance with law and not supported by substantial evidence.⁸ Pursuant to this remand, Commerce determined that Hyundai HYSCO knew, or should have known, that certain sales it reported as home market "local sales" were exported without further manufacturing.⁹ Accordingly, Commerce reclassified these sales and excluded them from the calculation of

⁴ See Final Results of Redetermination Pursuant to Court Remand, Consol. Court No. 15-00334, dated May 2, 2019 (*First Remand Results*).

⁵ See *Stupp II*, at 3, and 7-13.

⁶ See *Final Determination*.

⁷ *Id.*; see also IDM at Comment 6.

⁸ See *Stupp I*, at 26.

⁹ See *First Remand Results* at 1-2, and 4-7.

normal value (NV), which resulted in a recalculated weighted-average dumping margin of 6.22 percent for Hyundai HYSCO.¹⁰ Consistent with its practice to determine home market viability early in a proceeding, Commerce did not reconsider Hyundai HYSCO's home market viability.¹¹ In *Stupp II*, the Court held that by refusing to reassess the viability of HYSCO's home market, "Commerce failed to comply with its statutory and regulatory mandate to ensure the sufficiency of the home market as a basis for normal value."¹² On that basis, the Court remanded to Commerce to further explain or reconsider Hyundai HYSCO's home market viability.¹³

Analysis

Consistent with *Stupp II*, we reconsidered whether, given Commerce's *First Remand Results*, the remaining quantity of Hyundai HYSCO's home market sales is sufficient for calculating NV to make a proper comparison to Hyundai HYSCO's U.S. sales.

Section 773(a) of the Act sets forth the means by which Commerce will make a fair comparison between export price and NV in an antidumping duty proceeding. Specifically, the statute instructs Commerce to rely on home market sales when "the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States."¹⁴ However, as the Statement of Administrative Action (SAA) provides, Commerce may rely on the home market for NV *even if* the aggregate quantity in that market falls below five percent of the U.S. sales quantity:

¹⁰ *Id.*

¹¹ *Id.* at 13; *see also* sections 773(a)(1)(B) and (C) of the Tariff Act of 1930, as amended (the Act).

¹² *See Stupp II*, at 9 and 8-13.

¹³ *Id.*, at 12-13.

¹⁴ *See* section 773(a)(1)(B)(ii)(II) of the Act.

{S}ales in the home market “normally” will be considered of sufficient quantity to render the home market viable if they are five percent or more of sales to the United States.... In unusual situations, however, home market sales constituting less than five percent of sales to the United States could be considered viable....¹⁵

Indeed, Commerce’s regulations elaborate that, for purposes of establishing a viable comparison market, a “sufficient quantity” of sales “normally means that the aggregate quantity...of the foreign like product sold by an exporter or producer in a country is 5 percent or more of the aggregate quantity (or value) of its subject merchandise to the United States.”¹⁶ Consistent with this statutory and regulatory framework, the Court in *Stupp II* explained that “{t}he use of the word ‘normally’ indicates there may be times when Commerce may find home market sales sufficient, even if they are not 5 percent of the aggregate sales,” and that “{i}n such cases, Commerce may base sufficiency on some other measure, or it may accept less than 5 percent, if doing so would be reasonable under the circumstances.”¹⁷

In its *First Remand Results*, Commerce determined that Hyundai HYSCO knew, or should have known, that certain sales it reported as home market “local sales” were exported without further manufacturing. Thus, Commerce reclassified these sales and excluded them from the calculation of NV.¹⁸ As a result, Hyundai HYSCO’s home market sales quantity totaled less than five percent of its U.S. sales quantity.¹⁹ However, Commerce did not revisit its determination regarding the company’s home market viability.

¹⁵ See Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol 1 (1994) at 821 (SAA).

¹⁶ See 19 CFR 351.404(b)(2).

¹⁷ See *Stupp II*, at 11-12 (citing *Antidumping Duties; Countervailing Duties; Final Rule*, 62 FR 27295, 27358 (May 19, 1997)).

¹⁸ See *First Remand Results* at 1-2, and 4-7.

¹⁹ *Id.* at 13; see also Memorandum, “Calculations for Hyundai HYSCO and All-Others Rate Pursuant to Draft Results of Redetermination,” dated March 12, 2019 (First Remand Calculation Memorandum); and Maverick’s Letter, “Welded Line Pipe from the Republic of Korea: Comments on Draft Results of Redetermination Pursuant to Court Remand, *Stupp Corp. v. United States*, Consol. Ct. No. 15-00334, Slip Op. 19-2 (Ct. Int’l Trade Jan. 8,

In *Stupp II*, the Court acknowledged that Commerce may determine that a comparison market sales volume of less than five percent is reasonable under certain circumstances, and that the timing of the home market viability determination is one such circumstance.²⁰ Commerce requires certain information in order to establish which comparison market data to use for NV, or whether to rely solely on constructed value (CV). As noted in the SAA, “Commerce must determine whether the home market is viable at an early stage in each proceeding to inform exporters which sales to report.”²¹ The need to identify the appropriate basis for NV is evident because:

{i}t would be extremely difficult for the Department to conduct the investigation within the statutory time limits if it waited until after all decisions have been made concerning affiliation and the arm’s length test, cost and the sales-below-cost test, before determining whether the home market is viable.²²

In the underlying LTFV investigation, we did not obtain detailed information challenging the viability of Hyundai HYSCO’s home market until shortly before Commerce’s May 14, 2015, fully-extended preliminary determination.²³ At that late stage of the LTFV investigation, Commerce would have needed to solicit and analyze additional information regarding Hyundai HYSCO’s potential third country markets, as well as data to use for CV selling expenses and profit (in the event we found that Hyundai HYSCO’s sales to third country markets were insufficient for analysis). Thus, even assuming, *arguendo*, that we determined, at that time, that Hyundai HYSCO’s home market was not viable, we would have had insufficient time to analyze and consider alternate NV sources prior to the preliminary determination.

2019),” dated March 19, 2019, at Exhibit 1 (providing a calculation of Hyundai HYSCO’s home market sales as a percentage of its U.S. sales, based on the calculations in the First Remand Calculation Memorandum).

²⁰ See *Stupp II*, at 12.

²¹ See SAA at 821.

²² See *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014), and accompanying IDM at Comment 2.

²³ See Hyundai HYSCO’s April 29, 2015, Home Market Viability supplemental questionnaire response.

Further, we find that the remaining quantity of Hyundai HYSCO's home market sales following the *First Remand Results* is large enough to serve as a robust pool of sales for calculating NV for comparison to U.S. sales. Specifically, as the calculations for Commerce's *First Remand Results* show, the pool of above-cost home market sales was sufficient to provide identical or similar matches to all of Hyundai HYSCO's U.S. sales, without resorting to CV.²⁴

Thus, we continue to rely on Hyundai HYSCO's home market as the basis of NV for this proceeding.

Interested Party Comments

On November 19, 2019, Commerce released the draft results of redetermination to all interested parties and invited parties to comment.²⁵ On November 25, 2019, we received comments from Hyundai Steel Company²⁶ (Hyundai Steel).²⁷ No other interested party commented on Commerce's draft results of redetermination.

Hyundai Steel agrees with Commerce's draft results of redetermination. In addition, Hyundai Steel commented on the methodology Commerce should use to determine CV profit if Commerce were not to rely on Hyundai HYSCO's home market sales for NV in these final results of redetermination.²⁸ However, as we continue to rely on Hyundai HYSCO's home market sales for NV, Hyundai Steel's arguments concerning CV profit are moot.

²⁴ See Remand Calculation Memorandum at Attachment 1, SAS output at 50, and Attachment 2, SAS log at 42.

²⁵ See Draft Results of Redetermination Pursuant to Second Court Remand, Consol. Court No. 15-00334, dated November 19, 2019.

²⁶ Hyundai HYSCO merged with Hyundai Steel prior to the LTFV investigation, and Hyundai HYSCO no longer exists. See *Final Determination*, and accompanying IDM at 1.

²⁷ See Hyundai Steel's Letter, "Welded Line Pipe from Korea: Comments on the Department's 2nd Draft Remand Redetermination," dated November 25, 2019.

²⁸ *Id.* at 9-19.

Final Results of Redetermination

For the foregoing reasons, and consistent with the Court's remand order, we find that Hyundai HYSCO's home market sales quantity is sufficient to permit Commerce to make a proper comparison between export price and NV, consistent with its statutory and regulatory mandates. Accordingly, we made no changes to the revised estimated weighted-average dumping margin calculated for Hyundai HYSCO in the *First Remand Results* (i.e., 6.22 percent) for these final results.²⁹ Because Hyundai HYSCO's recalculated estimated weighted-average dumping margin is different from the estimated weighted-average dumping margin in the *Amended Final Determination*, we intend to issue a *Timken* Notice with an amended final determination, should the Court sustain these results.

1/14/2020

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Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

²⁹ As noted in the *First Remand Results*, this change to Hyundai HYSCO's margin did not affect the calculation of the all-others rate. See *First Remand Results* at 13.