

FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
HYNIX SEMICONDUCTOR, INC., HYNIX SEMICONDUCTOR AMERICA, INC. V.
THE UNITED STATES AND MICRON TECHNOLOGY, INC.
Court No. 01-00988

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand from the Court of International Trade (the Court) in Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc. v. United States and Micron Technology, Inc., No. 01-00988, Slip Op. 03-13 (Ct. Int'l Trade January 31, 2003) (Hynix). The Court's holding addresses four issues from the final results of the administrative review of the antidumping duty order on dynamic random access memory semiconductors of one megabit and above (DRAMs) from the Republic of Korea (Korea), covering the period May 1, 1999 through December 31, 1999. The four issues covered are (1) the Department's decision to use sales completed during the period of review (POR) to calculate the dumping margin in the Final Results See Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 52097 (October 12, 2001) (Final Results); (2) the Department's treatment of Hynix Semiconductor, Inc., and Hynix Semiconductor America's, Inc. (Hynix) reported research and development (R&D) costs; (3) the Department's treatment of Hynix's accounting adjustments for the average useful lives (AULs) of Hynix's semiconductor equipment; and (4) the Department's rejection of Hynix's use of offsets to foreign currency exchange losses for the revaluation of Hynix's fixed assets. The Court sustained the Department's positions as stated in issues (1) and (4) by finding that the Department's actions are supported by substantial evidence or are otherwise in accordance with law. See Hynix at 10, 45. However, with regards to issues (2) and (3), the Court found that the Department's Final Results are unsupported by substantial evidence, or are otherwise not in accordance with law. See Hynix at 13, 40. Therefore, the Court remanded these two issues to the Department. Id.

In accordance with the Court's remand instructions, we have clarified our methodology regarding R&D costs and AULs for Hynix in this review period, and consistent with that clarification, have not recalculated Hynix's margin of dumping in this review period. Therefore, Hynix's margin of dumping is 2.92 percent for these remand results.

BACKGROUND

On October 12, 2001, the Department published a notice of final results of the antidumping duty administrative review on DRAMS from Korea in the Federal Register. See Final Results 66 FR 52097 (October 12, 2001). In these Final Results, regarding the issues remanded by the Court, the Department made the following statements: (1) "...as a result of the continually changing methodology

we found that the reduced R&D costs recognized by Hyundai and LG Semicon Co. Ltd.(LG), through the amortization and deferral of their R&D expenses, and resulting allocation of R&D expenses to merchandise, does not reasonably reflect the cost of producing the subject merchandise.” See Final Results and accompanying Decision Memorandum at Comment 2; (2) “...we have continued to allocate all semiconductor R&D expenses over the total semiconductor cost of goods sold (GOGS), a methodology which does not overstate costs, but which we believe reasonably and accurately identifies the R&D expenses attributable to subject merchandise.” See Final Results and accompanying Decision Memorandum at Comment 3; and (3) “[w]e also based depreciation...on the pre-1998 useful lives employed by Hyundai because...we believe that the useful lives adopted in 1999, and the resulting depreciation, are distortive.” See Final Results and accompanying Decision Memorandum at Comment 5. In Hynix, the Court ordered the Department to further explain its treatment of R&D and AULs, and to identify substantial evidence in the record to justify its conclusions.

The Department issued its Draft Results on May 12, 2003. On May 22, 2003, Hynix submitted comments. On May 28, 2003, Micron Technology, Inc., submitted rebuttal comments. As explained below in the Interested Party Comments section of this remand, the Department was not persuaded by Hynix’s comments to change the results of its analysis in the Draft Results. The following is the Department’s final determination after considering parties’ comments to the Draft Results.

DISCUSSION

R&D Costs

The Court remanded the following two aspects of the Department’s treatment of Hynix’s R&D costs in the Final Results: (1) whether the Department properly rejected Hynix’s reported amortized and deferred R&D costs; and (2) the appropriateness of the Department’s reallocation of total semiconductor R&D costs over all semiconductor production based on the application of its concept of the cross-fertilization of R&D. These two issues are addressed separately below.

Rejection of Hynix’s Reported Amortized and Deferred R&D Costs

A. Amortized R&D Costs

In the Final Results, the Department rejected Hynix’s reported amortized R&D costs as distortive, in favor of expensing Hynix’s R&D in the year incurred. In Hynix, the Court ordered the Department to “reconsider and further explain why the use of {Hynix’s} amortized R&D costs would not reasonably and accurately reflect {Hynix’s} actual R&D expenses for this POR, and to identify what distortions, if

any, would arise in the cost of production (COP) calculation if amortized R&D costs were used.” See Hynix at 24.

First, Hynix has a history of changing the accounting methodology it uses to record R&D costs in its normal books and records. Therefore, it is important to examine the history of Hynix’s revisions to its accounting practices, in its normal books and records and correspondingly the effect these changes have on the costs reported to the Department, throughout the course of this proceeding. In the less-than-fair value investigation, Hynix capitalized its R&D costs. See Hynix at 26. In other words, Hynix amortized its R&D costs over time and reported only the portion of the total amortized cost that was attributable to the period of investigation. Id. In the first, second, third and fourth review periods, Hynix did not capitalize the expenses incurred in those periods. Id. Rather it fully expensed its reported R&D costs in the year incurred. Id. In the fifth, sixth and seventh (the POR in question) review periods, Hynix reverted to capitalizing its R&D costs and including only an amortized portion of the total period R&D expenses in its reported cost. Id. Specifically, during the seventh review period, Hynix reported that it amortized a portion of its R&D costs over a five year period. See Final Results and accompanying Decision Memorandum at Comment 2. Furthermore, Hynix reported that it indefinitely deferred the remaining portion of its R&D costs. Id. It is Hynix’s constant changing of its accounting methodology for recording R&D costs that results in distortions to its reported COP.

Section 773(f)(1)(A) of the Tariff Act of 1930, as amended (the Act), directs the Department to rely “on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the GAAP of the exporting country (or the producing country where appropriate) and reasonably reflect the costs associated with production and sale of the merchandise.” This provision recognizes that even records kept in accordance with GAAP may not reasonably reflect the production costs associated with a particular product. We note that, on its face, Hynix’s decision to amortize R&D costs during the POR is neither unreasonable nor distortive. However, distortions do arise with Hynix’s continual change in the treatment of its reported R&D costs (i.e., recognizing the full expense in the year incurred for certain segments of this proceeding and capitalizing and amortizing costs for other segments). In Hynix, the Court states that the “...distortive impact of {Hynix’s} accounting changes prior to the Fifth Administrative Review on the actual COP of the subject merchandise for this POR does not seem to be as apparent as Defendant and Micron advance.” See Hynix at 26-27. In addition, the Court characterizes as conclusory the Department’s statement, in the Final Results, that changes in Hynix’s accounting practices “can lead to distortions for antidumping purposes because the fluctuating costs tend to overstate per unit amounts in one period and understate these amounts in other periods.” See Hynix at 27.

In order to grasp the distortive impact of Hynix’s continual revisions to its accounting practices, it is important to understand why a company may decide to capitalize and amortize R&D costs in one POR,

while deciding to expense the full amount of R&D incurred in another POR. By capitalizing and amortizing R&D, a company is able to spread the R&D costs incurred in any one year not only to that current year, but also to several future years. The idea behind amortization is that R&D will benefit future years and the sum of each previous year's amortized piece forms a whole. For example, assume that a company capitalizes and amortizes R&D starting in 1996 over a three year span. In the current year, 1998, the R&D recognized on the company's income statement would reflect 1/3 of the R&D incurred two years ago, 1996, plus 1/3 of the R&D incurred last year, 1997, plus 1/3 of the R&D incurred in 1998. Next year, 1999, the R&D recognized on the company's income statement would reflect 1/3 of the R&D incurred last year, 1997, plus 1/3 of the R&D incurred this year, 1998, plus 1/3 of the R&D incurred in 1999. This cycle would continue forward, in effect annually recognizing three thirds of R&D incurred in three different years.

Conversely, the theory behind expensing the full amount of R&D in the year incurred is that there is no certainty that the R&D performed in the current year will benefit future years; thus, being conservative, a company expenses the full amount of its R&D costs in the year incurred. Under this approach, the company recognizes a whole year's R&D, however, it reflects only one year's spending versus several years when capitalizing and amortizing. In theory, if a company incurs roughly the same amount of R&D from year to year, it would result in the same amount of R&D expense in any given year, regardless of whether one consistently capitalized and amortized, or consistently expensed in full in the year incurred.

However, when a company changes its methodology, from amortizing to expensing, and then back again to amortizing, as Hynix did, the result is a significant swing, both up and down, in the amount of expense recognized in any given year. Following the same set of facts in the above example, assume that after several years of capitalizing and amortizing R&D, a company decides to change its accounting method to expensing R&D in full in the year incurred. In the year of the change, not only would the company recognize the full amount of the current year's R&D expenditures, it would also have to recognize R&D capitalized in the previous two years which have yet to be amortized (i.e., 1/3 of the R&D incurred two years ago plus 2/3 of the R&D incurred last year). In effect, the company would recognize approximately twice the amount of R&D in the year of the accounting change. This distortion is precisely what the Court found fault with in Micron Technology, Inc. V. United States, 44 F. Supp. 2d 216 (June 16, 1999) (Micron II), where the Court found that the Department's methodology of taking "a fully inclusive set of current period costs and lumping on a set of prior costs...distorts...total R&D beyond what might be considered historically accurate for a given period of time and, does not remotely, much less reasonably, reflect the company's actual costs of production." See Micron II at 217. Taking the example further, assume that the following year, the company decides to switch back again to capitalizing and amortizing R&D. Upon switching back to capitalizing and amortizing R&D, as

Hynix did, the R&D costs will reflect only 1/3 of the total R&D expenses in the year of change, and only 2/3 of the total expenses in the following year (1/3 of that year's expenses plus 1/3 of the expenses in the year of the change). As a result, it will then take three years to normalize the R&D expense recognized in a given year (i.e., where three thirds of the R&D is recognized from three different years). The overstatement noted by the Court in Micron II (the unamortized 1/3 from two years prior to the year of change, and the 2/3 from the year prior) mirrors the understatement that occurs in the two years after a company, such as Hynix, changes back to capitalizing and amortizing R&D (understated by 2/3 of a whole in the year of change, and 1/3 of a whole in the year following the change). As can be seen from the example above, the overstatement of R&D cited by the Court in Micron II, and the subsequent understatement of Hynix's R&D in the current POR, both arose due to Hynix's failure to consistently apply its accounting practice regarding R&D expense. In particular, given Hynix's history of continually revising its accounting practices between amortizing and expensing in full in the year the R&D was incurred, and in light of the Court's decision in Micron II, we find that the Department's consistent practice of expensing Hynix's R&D costs in this proceeding ensure that all R&D costs are reasonably recognized for purposes of calculating Hynix's COP.

Although the Department recognizes that revisions to accounting practices are not inconsistent with Korean GAAP, Korean GAAP's accounting principles are concerned with the overall financial performance of the company as a whole, and not product-specific cost calculations for antidumping purposes. In the Final Results, the Department found that Hynix's accounting revisions resulted in R&D costs that did not reasonably reflect Hynix's cost of producing the subject merchandise. See Final Results and accompanying Decision Memorandum at Comment 2. Specifically, as the examples above demonstrate, Hynix's continual revisions to its accounting practices distort its production costs by enabling Hynix to recognize aberrationally high amounts of R&D in some years, and aberrationally low amounts of R&D expenses in other years. In this and prior proceedings, the Department has consistently expensed Hynix's full R&D amount in the year incurred in order to avoid creating, through changes in allocation methodologies, aberrationally high or low R&D costs in each proceeding segment and to ensure that the actual COP is "considered historically accurate for a given period of time."¹

Further, the Statement of Administrative Action (SAA), in discussing section 773(f)(1)(A) of the Act, holds that "[t]he exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs." See SAA at 834. Hynix's continual change in the treatment of its R&D costs is contrary to section 773(f)(1)(A) of the Act and the SAA.

¹ See Micron II, 44 F.Supp. at 2d 216.

We reiterate that, on its face, amortization of R&D costs is not unreasonable or distortive. It is the repeated change in the treatment of R&D costs, from expensing in a year to allocating R&D expenses over time, that results in distortions in the COP calculation in an antidumping analysis. In the example below, we demonstrate that if Hynix had capitalized its R&D costs historically and continued to capitalize and amortize its costs throughout the review period, then no distortions would have been created. In this example, as noted by Hynix in its brief, it historically amortized R&D costs prior to the initial investigation. Assume, for purposes of the example, that it amortized R&D beginning in 1990 and continued to capitalize and amortize its costs throughout the entire review period. Also, assume that Hynix capitalized \$150,000 of R&D costs each year and amortized those costs over a three year period.

<u>Year²</u>	<u>1992</u>	<u>1993</u>	<u>1994</u>	<u>1995</u>	<u>1996</u>	<u>1997</u>	<u>1998</u>	<u>1999</u>
R&D Capitalized	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000
Amortized R&D Costs								
Year 1990	\$50,000							
Year 1991	\$50,000	\$50,000						
Year 1992	\$50,000	\$50,000	\$50,000					
Year 1993		\$50,000	\$50,000	\$50,000				
Year 1994			\$50,000	\$50,000	\$50,000			
Year 1995				\$50,000	\$50,000	\$50,000		
Year 1996					\$50,000	\$50,000	\$50,000	
Year 1997						\$50,000	\$50,000	\$50,000
Year 1998							\$50,000	\$50,000
Year 1999								\$50,000
Hynix's fin. statements	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000	\$150,000

This example demonstrates that, if a company does not repeatedly change its accounting methodology for the treatment of R&D expense or other expenses, then each year's costs reasonably reflect the actual COP. In other words, each year gets assigned three thirds of R&D costs from three separate years. In addition, as can be seen from the above example, the R&D costs recognized in a single year are the same regardless of whether one capitalizes and amortizes or expenses in full in the year incurred. However, as the next example demonstrates, by continually changing R&D accounting methodologies, Hynix is manipulating the magnitude of the R&D expenses that they are recognizing, and reporting to the Department.

²Consistent numbers are used to avoid purposely introducing distortions into an example whose purpose is illustrative.

Specifically, for purposes of further demonstration, assume that Hynix incurred \$150,000 of R&D costs every year from 1999 through 2004. Further, assume that in 1999, Hynix chose to expense (E) its R&D costs; in 2000, Hynix chose to amortize (A) its R&D costs; in 2001, Hynix chose to expense its R&D costs; in 2002, Hynix chose to amortize its R&D costs; in 2003, Hynix chose to expense its R&D costs; and in 2004 Hynix chooses to amortize its R&D costs.

<u>Year</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>	<u>Year</u>
1999	2000	2001	2002	2003	2004
<u>COP</u>	<u>COP</u>	<u>COP</u>	<u>COP</u>	<u>COP</u>	<u>COP</u>
\$150,000(E)	\$50,000(A)	\$100,000(A) \$150,000(E)	\$50,000(A)	\$100,000(A) \$150,000(E)	\$50,000(A)
Total: \$150,000	\$50,000	\$250,000	\$50,000	\$250,000	\$50,000

This fact pattern demonstrates that, all other things being equal, Hynix’s changes to its accounting practices enables it to affect its COP regardless of the costs it actually incurred. As the fact pattern demonstrates, in any given year, depending on the accounting methodology selected, Hynix can elect to experience either low R&D costs or high R&D costs. This switching of methodologies can lead to distortions for antidumping purposes because the fluctuating costs tend to overstate per unit amounts in one period and understate these amounts in other periods. Therefore, because of Hynix’s continual changes to the treatment of its R&D expenses, the Department, over the course of this proceeding, has consistently expensed Hynix’s R&D. The Department has chosen this methodology throughout this proceeding because it ensures a clearer picture of R&D POR costs.

B. Deferred R&D Costs

In addition to amortizing a portion of its period R&D costs, Hynix indefinitely deferred a portion of its R&D costs for certain long term projects until it realizes revenue from the projects. See Final Results and accompanying Decision Memorandum at Comment 2. In the Final Results, the Department stated

that it was expensing the portion of Hynix's deferred R&D in the year incurred because "the methodology does not reasonably reflect the cost of producing the subject merchandise." *Id.* In *Hynix*, the Court instructed the Department to reconsider and further explain why deferral of certain R&D costs does not reasonably reflect the R&D costs related to the subject merchandise. *See Hynix* at 29.

As with its amortization methodology, Hynix switched from expensing its R&D costs in the year incurred, to indefinitely deferring a portion of these expenses. We find that expensing Hynix's R&D in the year incurred, as opposed to indefinite deferral, is a more reasonable reflection of Hynix's production costs for similar reasons as explained above with respect to amortization, *i.e.*, distortions resulting from continual change in accounting methodologies and historical utilization of allocations.³ In addition, Korean GAAP states that R&D expenditures may be treated as deferred charges if future economic benefits are reasonably expected to cover the expenditures. However, International Accounting Standard (IAS) 9 states that "the nature of research is such that there is insufficient certainty that future economic benefits will be realized as a result of specific research expenditures. Therefore, research costs are recognized as an expense in the period in which they are incurred." With respect to development costs of a project, IAS 9 states that, because of the nature of the expense, "[t]he enterprise can, in some instances, determine the probability of future economic benefits. Therefore, development costs are recognized as an asset when they meet certain criteria that indicate that it is probable that the costs will give rise to future economic benefits." In the instant proceeding, it stands to reason that, if Hynix is repeatedly changing its policy for recording R&D costs from POR to POR, then there is neither probable reason nor sufficient certainty that future economic benefits will be realized to warrant deferring the costs.

In *Hynix*, the Court states that the Department does not address Hynix's argument that deferring R&D costs most accurately matches future revenue to expenses. *See Hynix* at 28. The Court defines the matching principle as: "an expense should be recorded in the period in which the product makes its contribution to revenue with the intent to ensure that expenses and revenues are recorded in the proper period." *Id.* Although we agree with the Court's general description of the matching principle, we note the following:

Unfortunately, it is not possible to apply the matching principle objectively to every type of expenditure. Many expenditures offer at least some hope of producing revenue in future periods; however, there may be little or no objective evidence to support these hopes.

³Because the reasons are analogous to those explained above for amortization, we will not reiterate them here. Please refer to the section on amortization for further detail.

Accountants defer recognition of an expense to the future only when there is reasonable evidence that the expenditure will, in fact, benefit future operations. If this evidence is not available, or is not convincing, accountants do not attempt to apply the matching principle; rather they charge the expenditure immediately to expense.

See Robert F. Meigs & Walter B. Meigs, *Financial Accounting* 734 (7th ed. 1992). During the POR in question, Hynix provided no evidence to indicate that its deferred R&D would produce revenue in future periods. Similarly, by labeling its deferment of R&D costs as “indefinite,” Hynix de facto admits that it has no reasonable expectation or hope that its deferred R&D expenditures will benefit future operations. Therefore, according to established accounting principles, the Department finds that Hynix’s deferred R&D costs should be expensed in the period incurred because Hynix has offered no reasonable evidence to indicate that its deferred costs will benefit future periods.

In Hynix, the Court also notes that “conservatism does not supersede the matching principle, but rather is incorporated into it as a general quality found in all information used in financial statements.” Given the Court’s view of the “matching principle” and “conservatism”, the Department finds the following to be persuasive:

For some expenditures...it is not possible to estimate objectively the number of accounting periods over which revenue is likely to be produced. In such cases, generally accepted accounting principles require that the expenditure be charged **immediately to expense**. This treatment is based upon the accounting principle of **objectivity** and the concept of **conservatism**. Accountants require **objective evidence** that an expenditure will produce revenue in future periods before they will view the expenditure as creating an asset. When this objective evidence does not exist, they follow the conservative practice of recording the expenditure as an expense. **Conservatism**, in this context, means applying the accounting treatment which results in the **lowest** (most conservative) estimate of net income for the current period.”

See Robert F. Meigs & Walter B. Meigs, *Financial Accounting* 108 (7th ed. 1992) (emphasis added). In this proceeding, it is not the Department’s position that “conservatism” supersedes the “matching principle.” However, based on established accounting principles, the “matching principle” cannot be applied if there is no objective evidence or reasonable expectation that deferred R&D costs will result in future benefits. In essence, by finding that “conservatism” is incorporated into the “matching principle,” one must also find that the “matching principle” is tempered by conservatism. As a result, it stands to reason that, if there is no objective evidence or reasonable expectation that future benefits will occur from deferred R&D, then the R&D should be expensed in the period incurred. In this instance,

Hynix has provided the Department with neither objective evidence nor evidence of a reasonable expectation that its deferred R&D costs will result in future benefits. Consequently, given these omissions, and based on the accounting principles discussed above, we find that Hynix's deferred R&D costs should be expensed in the period incurred.

Cross-Fertilization and R&D

There are numerous semiconductor products, each with different uses and purposes, but all based on the same general technology, *i.e.*, etching information onto a tiny piece of silicon, or rather, a computer chip. In the Final Results, the Department determined that the semiconductor research for any of these semiconductor products benefits semiconductor products in general, including DRAMs. This common benefit has been referred to as the cross-fertilization of the benefits of semiconductor R&D (cross-fertilization). See Final Results and accompanying Decision Memorandum at Comment 3. As a result of this finding of cross-fertilization, the Department allocated all semiconductor R&D over the total semiconductor costs of goods sold (COGS). *Id.* In the Court's Opinion, the Court ordered the Department to further explain its findings that R&D for the subject merchandise benefits from R&D activities for non-memory products and to point to substantial evidence in the record to justify such a conclusion. See Hynix at 35.

The Department has employed this concept of cross-fertilization since the first administrative review of this and other proceedings. For instance, see Notice of Final Determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from the Republic of Korea, 63 FR 8934, 8939-40 (February 23, 1998). Cross-fertilization is based upon the widely recognized notion in the semiconductor industry, that research in one area benefits research in other areas, *i.e.* memory research benefits non-memory research and vice versa. The reasons behind this concept are articulated in the memorandum by Dr. Murzban D. Jhabvala, the Chief Engineer of the Instrument Systems and Technology Center at the NASA Goddard Space Flight Center, which is cited in the Final Results. In particular, based on Dr. Jhabvala's findings, the Department stated:

The existence of cross-fertilization in semiconductor R&D is the central theme of Dr. Jhabvala's many statements to the Department. Dr. Jhabvala offers various examples in those statements to illustrate that, regardless of the accounting or laboratory arrangements, the research results or developments in the processes and technologies used in the production and development of one semiconductor family can be (and are) used in the production and development of other semiconductor families. Dr. Jhabvala goes so far as to state that it would be "unrealistic to expect researchers to work in complete technical isolation constantly reinventing technology

that might already exist.” See SRAMs from Korea, at Comment 3. Given these facts, we do not believe that the reported expenses for DRAM R&D projects reasonably reflect the appropriate cost of producing the subject merchandise. As a result, we have continued to allocate all semiconductor R&D expenses over the total semiconductor COGS, a methodology which does not overstate costs, but which we believe reasonably and accurately identifies the R&D expenses attributable to subject merchandise. Id.

In Hynix, the Court held that Hynix has the burden of creating the record to demonstrate that the R&D for its memory and non-memory products are not beneficiaries of each other. See Hynix at 35. To this end, the Court notes that Hynix provided the Department with R&D costs accounted for on a product-by-product basis. Id. In particular, Hynix argues that there is no cross-fertilization of R&D because it accounts for R&D costs on a product specific basis. See Hynix at 29.

We find that Hynix has not met the burden set by the Court because, upon an examination of the record evidence, it is clear that Hynix’s memory and non-memory semiconductors benefit from symbiotic R&D. We note that simply because Hynix accounts for R&D costs separately in its normal books and records, it does not necessarily follow that cross-fertilization does not occur. Nevertheless, Hynix’s own argument of a clear distinction between memory and non-memory research is not supported by the record evidence. In particular, in Exhibit 20 of the Department’s verification report, Hynix provided the Department with a list of R&D projects in its memory and non-memory labs. See Hynix’s Verification Report at Exhibit 20, dated May 31, 2001. In its non-memory lab, there are R&D projects listed for “[* * *],” “[* * *],” “[* * *],” “[* * *],” “[* * *],” “[* * *],” and “[* * *].” Id. On its face, it appears that the R&D at Hynix’s non-memory lab could provide benefits to the production of Hynix’s memory products, as these titles appear to reference memory products. As the Court notes in Hynix, Hynix has the burden of creating a record to establish that the R&D for its subject merchandise does not benefit from the R&D for its non-subject merchandise and vice versa. Alternately, Hynix must demonstrate that the inverse is not true. However, based on the evidence on the record, Hynix has not met either of these burdens. On the contrary, Hynix provided record evidence which demonstrates that the R&D at its non-memory labs benefits the R&D of its memory products; thereby demonstrating that cross-fertilization does occur in the semiconductor industry.

It is important to note that the Department’s reallocation of R&D in the Final Results does not result in an inequitable distribution of total semiconductor R&D costs to DRAMS. Rather, the reallocation results in a proportionate distribution of total semiconductor R&D across total semiconductor COGS. We find that it is reasonable to allocate R&D in this manner because, as explained above, Hynix has not demonstrated that the R&D for its subject merchandise and non-subject merchandise do not enjoy a mutually beneficial relationship. Therefore, we find that the reallocation of R&D provides a

reasonable reflection of Hynix's COP. It is equally important to note that the Department's reallocation of Hynix's R&D costs is relative, not punitive, *i.e.*, dependent on the COGS and R&D conducted for any given year, the R&D ratio fluctuates accordingly. For example, if a company's total R&D expenses for all products is \$150,000 and the COGS is \$900,000, the R&D ratio would be 16.67 percent, which, based on our methodology, is applied to each unit cost. However, if the COGS for DRAMs is only \$650,000 of the \$900,000, we would not apply all the R&D for all products to that DRAMs COGS, *i.e.*, \$150,000/\$650,000 or 23.08 percent. Instead, to eliminate arguments as to which R&D benefits which product, we calculated a relative ratio for all R&D and all products. Therefore, given the record evidence in this case, the Department finds that Hynix's R&D costs should be based on an allocation of total semiconductor R&D costs over total semiconductor COGS.

AULs

In the Final Results, the Department rejected Hynix's reported revision of the AULs of its fixed assets. See Final Results and accompanying Decision Memorandum at Comment 5. Instead, the Department used Hynix's pre-1998 AULS to determine Hynix's depreciation expenses. *Id.* In its Opinion, the Court remanded this issue to the Department for it to explain how the revised AULs provided by an independent appraiser are not standard industry practice and how and where in the record many of the AULs were overstated. See Opinion at 40. In addition, the Court instructed the Department to explain how use of the reported AULs would not reasonably reflect Hynix's COP. *Id.*

The Department's provisions which govern the calculation of COP state that the Department will only rely upon reported depreciation and amortization costs where such costs reasonably reflect the COP. Specifically, the SAA provides:

Consistent with existing practice, new section 773(f)(1)(A) provides that Commerce normally will calculate costs on the basis of records kept by the exporter or producer of the merchandise, provided such records are kept in accordance with generally accepted accounting principles of the exporting (or producing) country and **reasonably reflect the costs associated with the production and sale of the merchandise.** Commerce will consider all available evidence submitted by the exporter or producer on a timely basis regarding the proper allocation of costs. **The exporter or producer will be expected to demonstrate that it has historically utilized such allocations, particularly with regard to the establishment of appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.**

In determining whether a company's records reasonably reflect costs, Commerce will consider U.S. generally accepted accounting principles employed by the industry in question. For example, a company's records might not fairly allocate the cost of an asset if a firm's financial statements reflect an extremely large amount of depreciation for the first year of an asset's life, or if there is no depreciation expense reflected for assets that have been idle. In such a situation, it would be appropriate for Commerce to adjust depreciation expenses. Costs shall be allocated using a method that reasonably reflects and accurately captures all of the actual costs incurred in producing and selling the product under investigation or review. In determining whether to accept the cost allocation methods proposed by a specific producer, Commerce will consider the production cost information available to the producer and whether such information could reasonably be used to compute a representative measure of the materials, labor and other costs, including financing costs, incurred to produce the subject merchandise, or the foreign like product. **Commerce also will consider whether the producer historically used its submitted cost allocation methods to compute the cost of the subject merchandise prior to the investigation or review and in the normal course of its business operation.** Also, if Commerce determines that costs, including financing costs, have been shifted away from production of the subject merchandise, or the foreign like product, it will adjust costs appropriately, to ensure they are not artificially reduced.

See SAA at 834-835 (emphasis added). Upon an examination of the record evidence, we find that Hynix's revisions to its AULs neither reasonably reflect its COP, nor its historical allocation of depreciation costs, as is required by the statute and the SAA. Specifically, with respect to industry standards, Hynix reported that it revised its AULs based on the recommendation of a board of independent appraisers. See Final Results and accompanying Decision Memorandum at Comment 5. Given this recommendation, Hynix asserted that the Department should accept the revision to its depreciation costs. As the Court notes, Hynix has the burden of establishing the record. See Hynix at 35. In particular, in this instance, Hynix has the burden of establishing the record to demonstrate that the revisions to its depreciation costs are warranted. We note that Hynix's adjustment to its depreciation cost is based solely upon the information contained in the appraisers' report. Hynix stated that it provided a copy of the appraisers' report in Exhibit SS-11 of its March 5, 2001, supplemental response. However, rather than providing the Department with a copy of the full report, Hynix simply provided a portion of the report. In addition, despite instructions to provide fully translated copies of all documents submitted to the Department, Hynix simply submitted a partial translation of the portion of the report that it did provide. Further, Hynix provided no information to establish the authority or

expertise of the independent appraisers. Given these omissions, we find that Hynix has failed to meet the standard noted by the Court. Specifically, based on the lack of information on the record, the Department is unable to adequately evaluate the appraisers' findings. As a result, the Department is unable to determine if the appraisers' report is consistent with the industry's standards. Consequently, the Department is not able to determine if Hynix's revisions to depreciation costs are warranted. Therefore, the Department finds that Hynix's revisions to its AULs do not "reasonably reflect the costs associated with the production and sale of the merchandise."

As noted above, the Court in Micron II found that the Department must consider how a respondent has historically treated its production costs in determining COP. Specifically, the Department "will consider whether the producer historically used its submitted cost allocation methods to compute the cost of the subject merchandise prior to the investigation or review and in the normal course of its business operation." See SAA at 843-835. Throughout the course of this proceeding, Hynix has historically depreciated its machinery and equipment in a two-to-three-to-five-year band. See Final Results and accompanying Decision Memorandum at Comment 5. In 1996, Hynix revised its AULs to five years and the Department accepted this revision. See Dynamic Random Access Memory Semiconductors of One Megabit and Above: Final Results of Antidumping Duty Administrative, Partial Rescission of Administrative Review and notice of Determination Not to Revoke Order, 63 FR 50867, 50871 (September 23, 1998). In 1998, based on a report by independent appraisers, Hynix once again revised its AULs to seven years. We note that Hynix's changes to its AULs occurred over a relatively short period of time. The following example, using accounting methods which represent the actual changes made year to year by Hynix, illustrates the Department's reasons for rejecting Hynix's reported AULs and makes clear its concerns that Hynix's accounting revisions distorts its production costs during the POR in question:

Assume that in 1999 Hynix valued a piece of machinery at \$100 and employed a three year straight line depreciation. Assume that in 2000, for the same piece of machinery, Hynix changed its methodology and employed a five year straight line depreciation. Further, assume that in 2001, for the same piece of machinery, Hynix once again changed its methodology and employed a seven year straight line depreciation.

Had Hynix maintained a three year straight line depreciation and not changed its accounting practice from year to year, the piece of machinery would have fully depreciated over the course of three years:

<u>Year</u>	<u>Value of Machinery</u>	<u>Depreciation Rate</u>	<u>COP</u>
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1999	\$100	3 years	33.3
2000	\$66.7	3 years	33.3
2001	\$33.4	3 years	33.3
2002	\$0	3 years	0

However, if, as explained above, Hynix changes its depreciation methodology from a three year straight line depreciation, to a five year straight line depreciation to seven year straight line depreciation, Hynix is able to extend the useful lives of its fixed assets for no other reason than an arbitrary change in its accounting practices and, as evidenced below, the affect on production costs is significant:

<u>Year</u>	<u>Value of Machinery</u>	<u>Depreciation Rate</u>	<u>COP</u>
1999	\$100	3 years	33.3
2000	\$66.7	5 years	13.3
2001	\$53.4	7 years	7.62
2002	\$45.78	7 years	7.62
2003	\$38.16	7 years	7.62
2004	\$30.54	7 years	7.62
2005	\$22.92	7 years	7.62
2006	\$15.3	7 years	7.62
2007	\$7.68	7 years	7.62
2008	\$0	7 years	0

This simple example demonstrates that the change in methodology, as reported by Hynix in the POR in

question, would have enabled it to reduce the cost of a piece of machinery throughout the course of this proceeding by up to 23 percent. While these types of changes may be acceptable for financial reporting purposes under Korean GAAP, these types of changes in depreciation methodology, especially given the short period of time for Hynix's changes, can lead to distortions for antidumping purposes because it causes arbitrary fluctuations in a respondent's reported costs that are unrelated to the actual costs incurred by the respondent. In addition, we find that such a revision to Hynix's AULs would be inconsistent with its historical treatment of depreciation. Therefore, in order to remain consistent with Hynix's historical portrayal of its COP, we find that Hynix's 1998 revisions to its AULs are inconsistent with its historical allocation of depreciation costs and we have continued to base Hynix's depreciation on its pre-1998 AULs.

INTERESTED PARTY COMMENTS

Comment 1: Amortization of R&D Costs

Hynix's Argument: According to Hynix, the Department still has not justified why amortization and deferral of Hynix's R&D costs do not reasonably reflect its actual expenses for the current POR. Hynix claims that the Department, instead of pointing to actual record evidence to demonstrate whether Hynix's accounting methodology distorted costs in the seventh administrative review, as desired by the Court, relied upon a hypothetical example. Hynix states that this hypothetical example is based upon the incorrect premise that Hynix switched each year between expensing and amortizing costs, which, Hynix claims, is completely different from what actually occurred. Further, Hynix claims that the Department's example assumes that R&D costs remain identical from year-to-year. In addition, Hynix argues that the example was not reflective of record evidence and it did not address the Court's order to identify any distortion of costs in the seventh POR.

Hynix claims that it did not continuously change accounting methodology yearly as the Department's example shows. Rather, Hynix states that it expensed its R&D costs during the first through the fourth POR, and began capitalizing its R&D costs yearly from the fifth through the seventh. Because of this, Hynix argues that the accounting change in the fifth POR occurred with a "clean slate" - all prior R&D expenses had already been accounted for. Therefore, Hynix continues, the amortization of R&D expenses in the seventh review was not affected by expenses occurring prior to the fifth review.

Hynix further claims that the Department's attempt to explain the lingering effects from the change is flawed because the Department assumes, in its hypothetical example, that all R&D costs are the same for year-to-year. Hynix states that its total amount of R&D costs from year-to-year was never exactly

the same, even when it was expensing the costs. Moreover, Hynix states that the total amount of R&D costs realized in a POR is only relevant to the extent that all the costs incurred for that POR are accounted for. Hynix claims that by amortizing R&D costs, Hynix has properly accounted for all its R&D costs incurred for the seventh POR.

Micron's Argument: Micron states that the Department properly found that Hynix's switch in accounting methodologies distorted and understated its reported costs with respect to R&D. Micron claims that the Department correctly finds, in accordance with the decision of the Court of International Trade in Micron II, that even a one-time switch between expensing and amortizing of R&D expenditures can distort, for antidumping purposes, the expenses included in the COP calculation. In addition, Micron notes that the Department properly found that Hynix's further indefinite deferral of some R&D expenses also distorted its reported COP. According to Micron, if the respondent's accounting practices, particularly its treatment of capitalized costs, are distortive, the Department must reject the reported costs.

Micron notes that this case concerns two competing methodologies for accounting for R&D expenditures: expensing and amortization. In order to accurately reflect a company's actual cost of production, according to Micron, a methodology must be used consistently. Micron states that the expensing methodology, used for many years by Hynix, treats all current year R&D expenditures as supporting current year production, which is the methodology preferred under United States GAAP. Micron notes that Hynix, when it switched to amortization in 1997, adopted the presumption that current R&D benefits five years of production, and therefore amortized R&D expenditures over five years. Micron argues that the necessary corollary to this approach is that the current year's production has been made possible and supported by R&D incurred in prior years. Micron asserts that, under this methodology, calculation of "actual" cost of production for the current year requires inclusion of an allocable part of R&D for the current year and four prior years.

Micron argues that Hynix is mistaken in its premise when it claims that it had a "clean slate" of deferred R&D costs when it switched from expensing R&D in 1996 to amortizing it in 1997. Micron claims that the only way to "reasonably and accurately" reflect a company's COP for the current year is to apply that methodology consistently. Hynix's reported R&D, according to Micron, included amortized amounts from only two prior years, and was therefore distortive.

Micron claims that Hynix's criticism that the Department's explanation for using hypothetical numbers for its examples is without merit. Notably, according to Micron, Hynix is unable to provide any counter-example, using either hypothetical numbers or its actual data, to show any error in the Department's example. First, as the Court held in Micron II and the Department has explained, the

very fact that a company switches accounting methodologies creates a hybrid methodology in the transition years that distorts the cost calculation for antidumping purposes. Micron argues that an examination of Hynix's actual R&D numbers shows the distortion that is caused by switching accounting methodologies. Micron claims that because the reported R&D expenses did not include a proportional allocation of R&D expenditures from a full five years, it is necessarily distortive and not reflective of the actual cost of producing semiconductors in 1999.

Micron also notes that Hynix's criticism that the Department's example highlights the effect of constant switching of methodologies is equally without merit. Micron states that a one-time switch in accounting methodologies causes costs to be distorted in the transition years. Micron adds that the record shows that Hynix itself frequently switched its accounting methodologies. Micron states, as the Court noted, Hyundai first amortized R&D from 1992 to 1995, switched to expensing R&D in 1996, and then switched back to amortizing R&D in 1997. Micron explains that as long as the prior year R&D expenditures were above zero, a consistent application of the amortization methodology requires that one-fifth of R&D incurred in each prior year (1995-1998) be included in the 1999 cost calculation.

Department's Position: The Department disagrees with Hynix and maintains that the use of illustrative examples and hypothetical figures in the Draft Results meet the burden set by the Court, as they identify and demonstrate why Hynix's continual change in its treatment of its R&D costs over the course of this proceeding caused distortions in Hynix's reported COP during the seventh administrative review of this proceeding. First, while Hynix cites to Micron II to argue that the Department must focus solely on Hynix's costs from the seventh POR, irrespective of Hynix's past treatment of expenses, it is important to note that a single POR is simply one segment of an entire proceeding. See Hynix's Comments at 5. It is often imperative that the Department analyze an issue in the context of an entire proceeding, in order to accurately determine the effect that it will have in one particular POR. For example, for the instant POR, Hynix argues that the Department should accept the amortization of its R&D costs. However, the nature of amortization requires that the Department consider the treatment of these expenses in past proceedings when determining the COP for a specific review. In particular, regarding Hynix's amortization of R&D costs in the seventh POR, the Department would have to analyze data from prior review periods of this proceeding in order to substantiate Hynix's amortization methodology. It therefore follows that the Department cannot simply ignore the historical treatment of Hynix's R&D costs when determining the appropriateness of its R&D costs for the seventh POR of this proceeding.

Consequently, in examining Hynix's historical treatment of its R&D costs, the Department, as explained in the section on Amortized R&D Costs above, notes that Hynix has continually changed its treatment of R&D costs from amortizing to expensing and back to amortizing over the course of this proceeding.

Had Hynix either expensed or amortized its R&D costs on a consistent basis, the full and accurate amount of Hynix's R&D costs would have been reasonably recognized, for production purposes, over the course of this proceeding. However, as demonstrated by the examples above, due the continual changes Hynix made in its treatment of R&D costs, the full and accurate amount of Hynix's R&D cannot be recognized in the seventh POR of this proceeding using the amortized methodology of accounting. As Hynix itself recognizes, the Court in Micron II stated that the objective of the COP exercise is to capture those expenses that accurately reflect a respondent's actual production costs for a POR. See Hynix's Comments at 5. Accordingly, as a result of Hynix's continual change in its R&D methodology, the Department, as explained above in the Amortized R&D Costs section, determined that it would be distortive to now allow Hynix to change its accounting methodology for reporting R&D costs to the Department. The Department has consistently used the "expensed in the year incurred" methodology in determining Hynix's R&D costs for each review segment of this proceeding, even though Hynix changed to amortizing R&D costs in its normal books and records during the fifth and sixth PORs. See Dynamic Access Memory Semiconductors of One Megabit and Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, 66 FR 68976 (November 15, 2000) and accompanying Decision memorandum at Comment 9. In the face of Hynix's continual revisions to its accounting practices, the Department determined that expensing ensured a clearer picture of Hynix's R&D costs. Had the Department not adopted this consistent practice of expensing Hynix's R&D costs, as evidenced by the Department's examples above, distortions would have been introduced to Hynix's COP at the transition stages of expensing to amortizing and the subsequent PORs (including the seventh POR), because such changes in allocation methodologies would have enabled Hynix to experience aberrationally high or low R&D costs in any given review segment.

Further, Hynix also faults the Department's decision to use an example with identical amounts of R&D costs from year-to-year and its decision to use an example where the methodology switched between amortizing and expensing from year-to-year. Hynix argues that these examples are inaccurate because the R&D amounts are not the same from year to year and annual changes of accounting methodologies are not reflective of Hynix's actual practices. However, the Department maintains that even if the Department uses figures reflective of Hynix's changes to its R&D allocation methodology over the course of this proceeding, the result is the same as shown in the Department's above example: Hynix is able to manipulate its reported COP for any given review segment simply by changing its accounting practices. Therefore, in order to avoid introducing distortions to Hynix's COP, we find it appropriate to continue with the accounting methodology used consistently by the Department over the course of this proceeding and, therefore, have continued to expense Hynix's R&D costs in the year incurred for the seventh POR of this proceeding.

Comment 2: Deferral of R&D Costs

Hynix's Argument: Hynix claims that the Department's argument that the deferral of certain R&D expenses does not reasonably reflect the costs related to the subject merchandise is based on pure speculation and has no basis in the record evidence. It also argues that the Department's analysis twists the Court's reasoning and places the burden on Hynix to prove the negative (that the deferral of R&D costs is not distortive and can be "matched to future economic benefits"). Hynix stated that it provided its costs in accordance with Korean GAAP and showed that those methodologies reasonably reflect the costs incurred, as required by law and the Department's questionnaire, and that the Department verified this evidence. According to Hynix, the Department has admitted that amortization and deferral is in accordance with Korean GAAP and the Court agrees that the burden is now on the Department to demonstrate why those costs are not reasonable. Therefore, Hynix states that the Department, as directed by the Court, must explain, with record evidence, why Hynix's reported R&D costs do not reasonably reflect the actual R&D expenses incurred in the current POR.

Micron's Argument: Micron states that the Department has fully and adequately explained how Hynix's indefinite deferral of certain R&D expenses is distortive. Micron notes that, although Hynix criticizes the Department's redetermination to reject the indefinite deferral of certain R&D as unsupported by the record, it has nothing to say about the Department's discussion of the textbook principles of accounting that support the Department's redetermination.

Department's Position: The Department disagrees with Hynix. In its comments, Hynix states that its reported deferral of R&D costs is in accordance with Korean GAAP. See Hynix's Comments at 6. Hynix further notes that the Court, in Hynix, directed the Department to explain why Hynix's deferral of R&D costs is not reasonable. Id. The Department disputes neither of these facts and finds that it followed the Court's directive in its Draft Results.

As noted above, in the Deferred R&D Costs section, the Department states that Korean GAAP requires that R&D expenditures may be treated as deferred charges if future economic benefits are reasonably expected to cover the expenditures. However, Hynix, aside from simply noting that Korean GAAP allows the deferral of R&D costs, failed to provide any record evidence to demonstrate that its deferral of R&D costs would yield future economic benefits. Rather, by continually changing its treatment of R&D costs, Hynix has, in effect, provided record evidence to demonstrate that its deferral of R&D costs is distortive and not in accordance with Korean GAAP, as there is no probable certainty that "future economic benefits are reasonably expected to cover the expenditures." Moreover, Hynix expensed its R&D costs throughout the first four review segments of this proceeding. As noted above,

established accounting principles dictate that an expenditure should be expensed if “it is not possible to estimate objectively the number of accounting periods over which revenue is likely to be produced.” See Robert F. Meigs & Walter B. Meigs, *Financial Accounting* 108 (7th ed. 1992). The fact that Hynix expensed its R&D costs in its own books and records throughout four review segments of this proceeding indicates that it, in fact, was uncertain that future economic benefits would cover its R&D expenditures. For the seventh POR, Hynix has provided no evidence to demonstrate that certainty now exists with respect to the future economic benefits of these expenditures.

The Department also notes that it provided a detailed explanation above, in the Deferred R&D Costs section, based on established accounting principles, to explain further why Hynix’s deferral of R&D costs is not reasonable. The Department notes that, in its Comments, Hynix neither disputes nor faults the Department’s explanation of how established accounting principles dictate that Hynix’s deferred R&D costs should, in fact, be expensed in the period incurred. Therefore, consistent with its practice of expensing Hynix’s R&D costs throughout the course of this proceeding, the Department finds that it is appropriate to expense Hynix’s deferred R&D costs in the seventh POR.

Comment 3: Cross-Fertilization

Hynix’s Argument: Hynix claims that the Department is unable to justify its rejection of Hynix’s product-specific R&D costs. According to Hynix, the Court found that the Department’s reallocation of all R&D costs across total semiconductor COGS based on the cross-fertilization theory was not supported by substantial evidence. Hynix further argues that the only difference between Micron I, in which the CIT rejected the Department’s cross-fertilization theory, and this case is the Department’s reliance on the Dr. Jhabvala report. However, Hynix claims that the Court found that, in this case, “Dr. Jhabvala’s report does not provide substantial evidence to support the existence of cross-fertilization of R&D for the subject merchandise.” Hynix states that the Court remanded the issue to the Department “to further explain its conclusion that R&D for the subject merchandise benefits from R&D activities for non-memory products and further point to substantial evidence to justify such a conclusion.” Hynix alleges that the Department reversed the burden of proof and misconstrued the Court’s instructions and, according to the Department, Hynix must prove that cross-fertilization does not exist. Hynix argues that this is in direct violation of the Court’s instructions.

According to Hynix, while the Department points to seven different types of projects listed under the non-memory portion of the chart in Exhibit 20 of the verification report as supported for its cross-fertilization theory, it completely misreads the evidence provided in the exhibit. Hynix claims that the projects in the Exhibit, like other non-memory projects, are related to circuit design for specific customer applications. However, Hynix notes that memory R&D expenses focus on developing

smaller die shrinks and, as a result, development of non-memory projects lags behind the development of memory projects. Hynix argues that the Department cannot point to any record evidence that contradicts this fact.

Micron's Argument: Micron states that the Department properly found that semiconductor R&D generally benefits all semiconductor production and should be allocated across all semiconductor product lines. Micron argues that Hynix incorrectly asserts that the CIT has unequivocally rejected the Department's use of the cross-fertilization approach, mischaracterizes the content of record evidence, and asserts that the Department should accept Hynix's cost allocation scheme by default.

Micron claims that, contrary to Hynix's assertion, the CIT recognizes the validity of the cross-fertilization theory, under the proper circumstances, in both the current case and in Micron I. Micron notes that it is clear from the Department's Draft Remand Results that substantial record evidence supports the Department's finding of cross-fertilization in semiconductor R&D.

Department's Position: The Department disagrees with Hynix. Specifically, in its Draft Results, the Department found that there is record evidence to demonstrate that non-memory lab projects may provide benefits to memory products. As a result, the Department found that Hynix had not met its burden of reflecting record evidence to show that cross-fertilization between memory and non-memory products does not exist. Moreover, in its comments, Hynix asserts that the Department has reversed the burden of proof and misconstrued the Court's instructions. See Hynix's Comments at 8. The Department disagrees with this assertion by Hynix. Specifically, the Court held that Hynix has the burden of creating the record to demonstrate that the R&D for its memory and non-memory products are not beneficiaries of each other. See Hynix at 35. As explained above, Hynix failed to meet this burden.

In its Draft Results, the Department listed examples of seven projects in Hynix's non-memory lab that, by their titles, appear to benefit the production of its memory products. See Cross-Fertilization and R&D discussion above. In its comments, Hynix states that the Department has misread the evidence related to these projects. Moreover, Hynix states that the projects cited by the Department are related to "circuit design for specific customer applications and that, in contrast, the development of nonmemory products lags behind the development of memory projects because memory projects focus on smaller die shrinks." See Hynix's Comments at 9. Further, Hynix notes that the Department cannot point to any record evidence to contradict this statement. The Department notes that Hynix's explanation regarding these projects is the first time such an explanation has been offered. In addition, outside of this "new" statement regarding its memory and non-memory labs, Hynix has pointed to no

record evidence to substantiate its explanation. Therefore, Hynix has not demonstrated that the R&D for its memory and non-memory products do not benefit each other, in light of the record evidence regarding cross-fertilization as discussed above. In fact, based upon information submitted on the record by Hynix, as evidenced by the “memory” projects in its non-memory lab, it appears that Hynix has established that the R&D for its memory and non-memory products are beneficiaries of each other. See Hynix’s Verification Report at Exhibit 20, dated May 31, 2001. Consequently, based on the evidence on the record, the Department finds that Hynix’s total R&D costs should be reallocated across its total semiconductor COGS⁴.

Comment 4: Average Useful Lives

Hynix’s Argument: Hynix states that the Department has failed to follow the Court’s instructions regarding its analysis of Hynix’s revised AULs. Hynix notes that the Court explained that the Department must articulate a reasoned analysis for rejecting Hynix’s AULs when those AULS were consistent with Korean GAAP. In addition, Hynix claims that the Court directed the Department to show “where in the record many of the AULs were overstated” and explain “how the use of the reported AULs would not reasonably reflect Hynix’s cost of production.

Hynix states that the Court directed the Department to fully consider the new information of a change in industry practice that Hynix had submitted in the underlying review. Hynix argues that, instead of relying on the additional information Hynix submitted, the Department has taken the position that it will not allow any change that deviates from what was previously done. Hynix also claims that the Court noted that the Department’s own practice is to evaluate new information that shows the prior estimated AULs were inaccurate. Hynix claims that the Department cannot ignore evidence that is contrary to its prior decision.

With respect to the appraisers’ report, Hynix claims that the Department argued that it could not rely on it because Hynix only translated part of the report, and was therefore, “unable to adequately evaluate the appraisers’ findings.” Hynix claims that the Department is unable to disregard this factual evidence as insufficient because it did not indicate to Hynix that the information it had submitted was inadequate. It also notes that, in the Final Results, it used the same appraisers’ report to revalue Hynix’s assets.

In addition, Hynix claimed that the Court also directed the Department to explain specifically where the

⁴Based on the hypothetical figures used above in the Cross-Fertilization and R&D section, the allocation would be: $\frac{\text{total R\&D costs } (\$150,000)}{\text{total COGS } (\$900,000)} = 16.67\%$.

AULs were overstated and, instead, the Department merely uses a hypothetical example. Further, Hynix argues that the Department failed to address how the use of the reported AULs would not reasonably reflect Hynix's COP, as instructed by the Court. Instead, according to Hynix, the Department gave an example of how changing the AULs will affect the reported costs, which is not in dispute. Hynix claims that the Department did not show evidence that the AULs did not accurately reflect the costs. Hynix states that because the Department's decision cannot be supported by substantial evidence, the Department must accept Hynix's revised AULs and adjust Hynix's COP accordingly.

Micron's Argument: Micron argues that the Department properly rejected Hynix's accounting change relating to useful lives. Micron states that in addition to frequent changes in R&D accounting, Hynix has made repeated changes in its depreciation accounting. Micron notes that, in 1996, the Department accepted a revision to both Hyundai and LG's AULs assigned to major production assets. Micron states that in 1998, Hyundai and LG again revised their AULs assigned to their production assets and the Department found this second revision to be distortive and based Hynix's depreciation on pre-1998 useful lives.

Micron states that in the Department's Draft Remand Results, the Department notes significant deficiencies in the appraisers' report Hynix submitted. Hynix argues that, since the Department failed to note these deficiencies in the Final Results, or to notify Hynix of these deficiencies, it is therefore somehow precluded from considering those deficiencies now. Micron states that Hynix's criticisms are misplaced. Micron argues that the purpose of the remand is to allow the Department to reconsider its original determination and render a new determination. Therefore, the Department may re-evaluate the information placed on the record by Hynix as well as the contents of its original Final Results determination. In addition, Micron notes that Hynix cites no authority for its assertion that the Department must provide a respondent a second opportunity to place information on the record.

Micron states that Hynix's citation to the broad ranges of depreciation periods reported in the annual and 10-K reports of certain semiconductor producers, ranging from 2 to 20 years, indicate an industry standard. Micron maintains that these ranges do not identify a particular useful life with a particular class of assets or equipment, or even indicate whether they pertain to semiconductor equipment at all, and vary significantly among various producers. Micron argues that with the ever-increasing rates of technological development in this industry, the average useful lives of semiconductor manufacturing equipment are decreasing, not increasing. According to Micron, the Department properly concluded that it did not have substantial evidence to indicate an industry-wide change in useful lives in 1998 that would support Hynix's extension.

Department's Position:

We disagree with Hynix. First, with respect to the independent appraiser's report, we note that, although we did use a portion of the appraisers' findings in the Final Results, it was only with respect to revaluation of assets, which is discussed in a separate portion of the appraisers' report. See Final Results and accompanying Decision Memorandum at Comment 5. As noted in the Final Results, the Department found the revaluation of Hynix's assets to be appropriate, given the widely-known economic circumstances that affected the POR. Id. Specifically, publicly available information regarding the devaluation of the won substantiated the appraisers' findings concerning revaluation of assets. In addition, unlike information regarding Hynix's AULs, there is no evidence on the record of this review to indicate that Hynix revalued its assets multiple times.

We also disagree with Hynix's assertion that the Department cannot demonstrate deficiencies in Hynix's factual evidence for the first time during a remand proceeding. During the remand proceeding, the Department makes a new determination in accordance with the Court's order. We further note that it is the respondent's obligation to provide the Department with fully translated documents. See 19 CFR 351.303(e). Hynix must have been fully aware of this requirement as it was informed of this requirement in the Department's standard questionnaire. See Department's Questionnaire at G-4, dated July 19, 2000.

The Department reiterates that its above examples, with respect to AULs, demonstrate the distortions to Hynix's costs that are raised by Hynix's continual change in the treatment of its AULs. Similar to the course Hynix has taken with respect to its treatment of its R&D costs, it has continually revised its AULs over the course of this proceeding. The machinery and equipment that had an AUL of three years during previous segments of this proceeding, now have an AUL of seven years. See Hynix's Section D Questionnaire Response at D-13, dated October 17, 2000. As stated previously, while these types of changes may be acceptable for financial reporting purposes under Korean GAAP, Hynix's change with respect to its depreciation methodology, especially given short period of time over which it made such changes, can lead to distortions for antidumping purposes because such a change causes arbitrary fluctuations in its reported costs that are unrelated to the actual costs incurred by Hynix. As noted above, the Department often must analyze an issue in the context of an entire proceeding, in order to accurately determine the that it will have on a particular POR. In this case, as demonstrated by the examples above, Hynix's continual revisions to its AULs would cause distortions to its seventh POR production costs. Therefore, in order to avoid introducing distortions to Hynix's COP, we have continued to base Hynix's depreciation on its pre-1998 AULs.

RESULTS OF REMAND DETERMINATION

As a result of this redetermination, Hynix's dumping margin for the period May 1, 1999 - December 30, 1999 is 2.92 percent. This rate has not changed from the rate announced in the October 12, 2001, final results of the seventh administrative review.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

(date)