

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. 03-152 (Ct. Int'l Trade November 24, 2003) (Hynix II). The Court in Hynix II addressed 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 rejection of Hynix Semiconductor, Inc., and Hynix Semiconductor America's, Inc. (Hynix) reported indefinite deferral of certain R&D expenses; (2) the Department's rejection of Hynix's amortized R&D costs; (3) the Department's treatment of Hynix's reported product-specific R&D costs (cross-fertilization); and (4) the Department's treatment of Hynix's accounting adjustments for the average useful lives (AULs) of its semiconductor equipment in calculating depreciation. The Court sustained the Department's positions as stated in point (1) by finding that the Department's "...explanation for rejecting {Hynix's} indefinite deferral of certain R&D expenses is supported by substantial evidence and is otherwise in accordance with the law. See Hynix II at 10. However, with regard to points (2), (3) and (4), the Court found that the Department's actions are unsupported by substantial evidence, and require further explanation. See Hynix II at 9, 12 and 16-17.

The Court remanded for reconsideration and further explanation the Department's decision to reject Plaintiff's R&D costs and the AULs used to calculate depreciation costs. In the alternative, the Court directed the Department to recalculate using Plaintiff's data. Although we disagree with the Court's findings in Hynix II that the Department's determinations on remand were not supported by substantial evidence, the Department nevertheless has recalculated Hynix's R&D costs and the AULs used for depreciation costs in this review period. See Viraj Group v. United States, 343 F.3d 1371, 1376 (Fed. Cir. 2003). As a result of these recalculations, Hynix's margin of dumping is 2.07 percent.

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 Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final

Results of Antidumping Administrative Review, 66 FR 52097 (October 12, 2001) (Final Results). In these Final Results, the Department stated that: (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., 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, 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 January 2003, the Court remanded the Department’s Final Results, 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 I). In its remand, the Court ordered the Department to (1) reconsider and further explain why the use of {Hynix’s} amortized R&D costs would not reasonably reflect {Hynix’s} actual R&D expenses for this period of review, and to identify what distortions, if any, would arise in the COP calculation if amortized R&D costs were used; and to reconsider and address {Hynix’s} assertion that all 1996 R&D costs that should have been carried forward into this period of review, if amortized, were fully taken into account prior to or within the Fifth Administrative Review, when Commerce used expensed R&D costs in the cost of production calculation; (2) reconsider and further explain why {Hynix’s} deferral of certain R&D costs does not reasonably reflect the R&D costs related to the subject merchandise; (3) further explain whether the subject merchandise has benefitted from R&D activities for non-memory products and identify substantial evidence in the record to justify this conclusion; (4) explain how the revised average useful lives reported by {Hynix} are not standard industry practice; how and where in the record {Hynix’s} reported AULs were overstated; and whether the use of {Hynix’s} reported AULs would not reasonably reflect depreciation in the cost of production. See Hynix I at 2-3.

In the Department’s first redetermination on remand, Final Results of Redetermination Pursuant to Court Remand; Hynix Semiconductor, Inc., Hynix Semiconductor America, Inc. v. United States and Micron Technology, Inc., (June 6, 2003) (Remand Results), the Department, as ordered by the Court, fully explained, and supported with substantial evidence, its positions regarding Hynix’s R&D costs and AULs. As a result, the Department reached the same conclusions it reached in the final results of the administrative review; namely that: (1) Hynix’s amortization of its R&D costs does not reasonably reflect Hynix’s actual R&D expenses for this period of review; (2) Hynix’s deferral of certain R&D costs does not reasonably reflect the R&D costs related to the subject merchandise; (3) Hynix’s production of subject merchandise has benefitted from R&D activities for non-memory products; and (4) the use of Hynix’s reported AULs does not reasonably reflect the cost of production.

In its remand of the Department's June 6, 2003, Remand Results, the Court sustained the Department's findings that Hynix's indefinite deferral of certain R&D expenses does not accurately reflect Hynix's cost of producing the subject merchandise for this period of review. See Hynix II at 9. In Hynix II, however, the Court again remanded the Department's findings regarding Hynix's amortization of R&D costs, cross-fertilization and AULs.

On December 12, 2003, the petitioner submitted comments on the Court's findings in Hynix II. Specifically, the petitioner again addressed each of the remanded issues and suggested that the Department reopen the administrative record and send a questionnaire to Hynix concerning these issues. The Department has addressed each of these issues below and has declined to reopen the administrative record for further information given the Court's findings in Hynix II and the specific directions contained in the Court's remand order of November 24, 2003.

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 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.

A. Amortized R&D Costs

As stated above, the Court remanded this issue to the Department for further explanation as to why the Department finds that Hynix's reported amortized R&D costs do not accurately capture its R&D costs in this period of review. In particular, the Court directed the Department to provide a reasoned explanation, supported by substantial evidence, that distortions in the cost of production calculation for this period of review necessarily arise, where Hynix's R&D costs which were previously accounted for through expensing, are now accounted for through amortization.

As the Department explained in the Final Results and in the Remand Results, amortization, on its face, is not distortive if the approach is applied consistently. However, had the Department accepted Hynix's changes in R&D treatment, distortions to Hynix's cost of production would have arisen in this and other review periods. When a company changes from expensing to a 5 year amortization methodology, the first year of the change captures only 1/5 of the expense that would have been claimed if the respondent had continued expensing. While this accounting change may be permissible, it has a distortive impact on production costs. It takes five years before the amortization methodology can be considered equivalent to the expensing methodology. To address the distortion caused by the change in R&D accounting methodologies used in the earlier review period of this

proceeding and to ensure that all R&D expenses for Hynix ultimately were captured in the company's antidumping calculations, the Department decided to expense the company's R&D from that review on, a decision that was only challenged in the review period before the Court. Expensing Hynix's R&D costs in this review period, save for non-memory products (see cross-fertilization section below), produces an R&D ratio of [* * *] percent. See March 5, 2001, supplemental response at Exhibit 24. However, if we accept Hynix's reported amortized R&D costs, not only is Hynix's R&D ratio [* * *] percent, but the difference in the R&D amounts that result from these different methodological approaches can never be picked up as a production cost in antidumping calculations. Id. As explained in the Remand Results, if Hynix had amortized its R&D costs historically and continued to amortize its costs throughout the review period, then the distortions we have described would not have been created. However, as evidenced by record data, it is the switch between methodologies that causes distortions to occur in Hynix's cost of production over the course of a number of review periods, including the one before this Court.

As stated previously, we believe that, in the Final Results and the Remand Results, we fully explained, and supported with substantial evidence, our positions regarding the amortization of Hynix's R&D costs. Nevertheless, the Court in Hynix II has found that the information cited by the Department is not as substantial evidence supporting its determination. Therefore, although we disagree with the Court's finding, we have recalculated Hynix's R&D costs to allow for amortization.

B. Cross-Fertilization

In its remand order, the Court ordered the Department to establish, through substantial evidence on the record, that the R&D activities for non-subject merchandise provide benefits to subject merchandise. As stated in the Remand Results, the Department compared Hynix's overall R&D expenses for semiconductors to its overall semiconductor production costs to determine the relative amount of R&D that should be included in the production cost buildup for DRAMs. In finding this methodology was reasonable, the Department finds the fact that Hynix has memory projects listed in its non-memory lab, coupled with expert advice that the architecture of semiconductors is such that research on one semiconductor product can and has benefitted other semiconductor forms to be substantial record evidence in support of its determination.

In Hynix II, the Court remanded for reconsideration and further explanation the Department's decision to reject Plaintiff's calculated R&D costs. The Court asked the Department to establish through record evidence that the projects cited in the Remand Results, or other non-subject merchandise projects, provided benefits to subject merchandise, noting that it requires more than the presence of memory projects in Hynix's non-memory lab to establish the existence of a mutually beneficial R&D relationship. In the alternative, the Court ordered Commerce to recalculate these costs, excluding R&D costs for non-subject merchandise. However, R&D, by its nature, does not always produce new knowledge or products and the results of Hynix's ongoing R&D efforts were not known during the review period. Consequently, although the Department believes that it has

demonstrated that cross-fertilization of R&D exists for Hynix in this case, the Department is unable to make the connection the Court requested in Hynix II based on existing record evidence. Therefore, we have recalculated Hynix's R&D costs for these remand results to exclude R&D costs for non-subject merchandise.

AULs

In its remand order, the Court ordered the Department to provide a reasoned explanation for finding that Hynix's revised AULs do not reasonably reflect its cost of production. As stated in the Remand Results, the Department rejected Hynix's revised AULs and used its pre-1998 AULs to calculate its cost of production. In finding this methodology was reasonable, the Department finds Hynix's continual change to the treatment of its depreciation methodology distortive 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. The Court remanded for reconsideration and further explanation the Department's decision to reject Plaintiff's revised AULs. In the Final Results and Remand Results, the Department explained its position regarding AULs, identifying substantial record evidence to support it. Nevertheless, the Court in Hynix II has found that the information cited by the Department is not substantial evidence in support of its determination. Therefore, we have recalculated Hynix's AULs to allow for its reported accounting adjustment.

RESULTS OF REMAND DETERMINATION

As a result of this redetermination, Hynix's dumping margin for the period May 1, 1999 - December 30, 1999 is 2.07 percent. This rate has changed from the rate announced in the October 12, 2001, final results of the seventh administrative review.

James J. Jochum
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(date)