

FINAL RESULTS OF REDETERMINATION
PURSUANT TO REMAND
HYUNDAI ELECTRONICS INDUSTRIES, CO., LTD., AND HYUNDAI ELECTRONICS
AMERICA, INC. V. THE UNITED STATES AND MICRON TECHNOLOGY, INC.
Consol. Court No. 00-01-00027

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to a remand from the U.S. Court of International Trade (the Court) in Hyundai Electronics Industries, Co., Ltd., and Hyundai Electronics America Inc. v. United States and Micron Technology, Inc., Cons. Court No. 00-01-00027, Slip Op. 06-9 (Ct. Int'l Trade January 18, 2006) (Hyundai III). The Court in Hyundai III addressed the Department's Final Results of Redetermination Pursuant to Court Remand, Hyundai Electronics Industries, Co., Ltd., and Hyundai Electronics America Inc. v. United States and Micron Technology, Inc., Court No. 01-00027, (Final Results of Redetermination) dated September 23, 2005, and the Department's Motion for Reconsideration and Partial Modification of the Court's previous remand decisions in light of the Court of Appeals for the Federal Circuit (Federal Circuit) decision in Hynix Semiconductor Inc. v. United States, 424 F.3d 1363 (Fed. Cir. 2005) (Hynix IV). Specifically, the Court addressed the Department's motion that the Court revise its prior decisions and reinstate the Department's original findings with respect to both amortization and deferral of research and development (R&D) costs for LG Semicon Co., Ltd. (LG) and Hyundai Electronics Industries, Co., Ltd. and Hyundai Electronics America Inc. (collectively, Hyundai). Upon consideration of the Federal Circuit's decision in Hynix IV, the Court ordered that the Department's Motion for Reconsideration and Partial Modification is granted in part and denied in part. The Court ordered that the Department's original finding rejecting LG and Hyundai's cost amortization methodology as stated in Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea, 64 FR 69694 (Dec. 14, 1999) (Final Results) shall be reinstated in accordance with Hynix IV. However, the Court declined to revisit its conclusions on the issue of R&D cost deferral.

The Court remanded the case with instructions to the Department to reinstate its original findings regarding R&D cost amortization and recalculate LG and Hyundai's antidumping duty margins. Although the Department disagrees with the Court's decision with respect to the issue of R&D cost deferral, the Department nevertheless has recalculated Hyundai and LG's weighted average dumping margins, pursuant to the Court's instructions. As a result of these recalculations, Hyundai's margin of dumping is 3.76 percent and LG's margin of dumping is 15.87 percent.

BACKGROUND

On December 14, 1999, the Department published a notice of final results of the antidumping duty administrative review of dynamic random access memory semiconductors of one megabit or above (DRAMs) from the Republic of Korea in the Federal Register. See Final Results.

In those Final Results, the Department determined that: (1) the use of total AFA was warranted for LG (see Final Results at 69,695); (2) Hyundai's and LG's reported R&D expenses did not reflect the appropriate R&D cost of the subject merchandise (see Final Results at 69,702); and, (3) the reduced R&D costs recognized by Hyundai and LG, through the amortization and deferral of their R&D expenses did not reasonably reflect the R&D cost of the subject merchandise (see Final Results at 69,700).

In April 2004, the Court remanded the Department's Final Results, in Hyundai Electronics Industries, Co., Ltd., and Hyundai Electronics America Inc. v. United States and Micron Technology, Inc., Court No. 01-00027, Slip Op. 04-37 (Ct. Int'l Trade April 16, 2004) (Hyundai I). In its remand, the Court ordered the Department to: (1) recalculate LG's dumping margin by application of AFA to only a portion of its U.S. sales; (2) provide additional information regarding the effect of non-subject merchandise R&D on R&D for subject merchandise, or recalculate R&D costs on the most product-specific basis possible; (3) provide specific evidence showing how Hyundai and LG's actual R&D expenses for the review period are not reasonably accounted for in their amortized R&D costs, or accept their amortization of R&D expenses and, (4) provide additional information showing how R&D expenses that are currently deferred by Hyundai and LG affect production or revenue for the instant review period, or accept their deferral methodology.

In its first redetermination on remand, the Department: (1) recalculated LG's dumping margin using 89.10 percent as partial AFA; (2) provided information to demonstrate that Hyundai and LG's production of subject merchandise has benefitted from cross-fertilization; (3) recalculated LG and Hyundai's R&D costs to allow for amortization; and, (4) expensed Hyundai and LG's deferred R&D costs in the period incurred and explained why deferral of certain R&D expenses does not reasonably reflect the R&D expenses related to the subject merchandise.

In Hyundai II, the Court sustained the Department's application of 89.10 percent as partial AFA, and its use of amortized R&D expenses for calculating Hyundai and LG's respective costs of production. The Court remanded the Department's cross-fertilization determination with instructions to recalculate Hyundai and LG's R&D expenses without application of the cross-fertilization theory, and also remanded the Department's recognition of all of Hyundai and LG's 1997 R&D expenses for antidumping duty purposes with instructions to accept Hyundai's and LG's deferral methodology in calculating R&D expenses for their respective costs of production.

In Hyundai III, the Court ordered that the Department's Motion for Reconsideration and Partial Modification is granted in part and denied in part. The Court ordered that the Department's original findings rejecting LG and Hyundai's cost amortization methodology, as stated in the Final Results, shall be reinstated in accordance with Hynix IV. However, the Court denied the Department's motion that its original findings rejecting LG and Hyundai's R&D deferral methodology, as stated in the Final Results, be reinstated in accordance with Hynix IV.

DISCUSSION

Pursuant to the Court's remand order, the Department has recalculated the R&D ratio for Hyundai and LG. For LG, we recalculated the R&D ratio by dividing the total amount of DRAMs R&D recognized and amortized in 1997 by the total cost of DRAMs sold in 1997, and for Hyundai, we divided the total amount of memory R&D recognized and amortized in 1997 by the total memory cost of goods sold for 1997. See Redetermination on Remand-Analysis Memorandum for LG Semicon Co., Ltd.: Dynamic Random Access Memory Semiconductors (DRAMs) From the Republic of Korea, dated February 17, 2006, (Analysis Memorandum for LG) and Redetermination on Remand-Analysis Memorandum for Hyundai Electronics Industries, Co.: Dynamic Random Access Memory Semiconductors (DRAMs) From the Republic of Korea, dated February 17, 2006 (Analysis Memorandum for Hyundai).

INTERESTED PARTY COMMENTS

Hyundai's R&D Ratio Calculation

Hynix Comments:

Hynix Semiconductor, Inc. (Hynix), the plaintiff,¹ states that the Department's total R&D amount in its draft remand calculation includes some R&D costs that were expensed in the fiscal year in question (1997) in the company's books and records, but had been incurred in prior years and amortized forward. Hynix argues that these R&D costs should be deducted from the current year R&D calculation. Hynix states that the exclusion of prior year R&D from the current year calculation is consistent with the Department's original calculations, which excluded prior year R&D amounts that had been amortized to later years.

Micron Comments:

Micron Technology, Inc. (Micron), the petitioner, states that Hynix's assertion that "the exclusion of prior year R&D from the current year calculation is consistent with the Department's

¹After the fifth administrative review was completed, respondent Hyundai acquired LG. Subsequent to the acquisition the name of the combined company was changed to Hynix Semiconductor, Inc.

original calculations, which excluded prior year R&D amounts that had been amortized to later years,” is wrong. Micron contends that amortized amounts incurred prior to 1997 were specifically included in the numerator of the R&D ratio for the fifth review.

According to Micron, Hynix is raising an entirely new methodological issue regarding the treatment of amortized amounts incurred prior to 1997. This methodological issue could have been raised during the original review, but was not. Indeed, Micron maintains that at no point during the original review (or even on appeal) did Hynix ever complain about the inclusion of pre 1997 amortized R&D amounts in the calculation. As such, the issue has long ago been waived.

Micron argues that the Department may not, at this point, entertain this new methodological argument. According to Micron, the Court’s remand order dated January 18, 2006 instructs the Department that its “original findings rejecting Plaintiffs’ cost amortization methodology, as stated in Dynamic Random Access Memory Semiconductor of One Megabit or Above from the Republic of Korea, 64 FR 69694 (December 14, 1999) (final determination), shall be reinstated.” Micron states that in its original findings, the Department included the amortized amounts about which Hynix now complains. Accordingly, Micron concludes, the Department must continue to include those amounts, and should not address Hynix’s new methodological argument.

Department’s Position:

In its remand, the Court ordered the Department to reinstate its original findings as stated in the Final Results, rejecting Hyundai’s cost amortization methodology. Further, the amount of R&D amortized by Hyundai in 1996 (fourth administrative review) and expensed in 1997 should be included in the calculation of Hyundai R&D ratio as it was in the Final Results. See HEI Calculations for the Final Results of the Fifth Administrative Review of the AD Order on DRAMs (December 6, 1999), (HEI Calculation Memorandum) Attachment 2. However, the amount of R&D amortized in 1996, but not expensed in 1997, should not be included in the calculation of Hyundai’s R&D. An examination of Attachment 2 of the HEI Calculation Memorandum clearly reflects that the amount of Hyundai’s R&D amortized in 1996, but not expensed in 1997, was not included in the calculation of Hyundai’s R&D in the Final Results.

Therefore, we have recalculated Hyundai’s R&D ratio for this final redetermination to include that portion of R&D amortized in 1996, but expensed in 1997, and have excluded that amount of R&D amortized in 1996 but not expensed in 1997. See Attachment (Hyundai Electronics Co. Ltd. Revised Calculation of R&D Ratio) to Analysis Memorandum for Hyundai and Attachment.

LG R&D Ratio Calculation

Hynix Comments:

Hynix states that the error in the LG calculation is in the “common” memory amortized R&D that has been re-included in the current year R&D calculation. According to Hynix, the Department, in its draft remand, charged all of the common memory amortized R&D to DRAMs. Consistent with its treatment of current year “common” R&D, the Department should allocate the common R&D between DRAMs and other memory products based on the cost of goods sold.

Micron Comments:

Micron had no comments or rebuttal comments with regard to this issue.

Department’s Position:

We agree with Hynix that the Department should allocate LG’s 1997 “common” R&D between DRAMs and other memory products based on the cost of goods sold, and have done so for this final redetermination. See Attachment (LG Revised Calculation of R&D Ratio) to Analysis Memorandum for LG .

RESULTS OF REMAND REDETERMINATION

As a result of this redetermination, Hyundai’s dumping margin for the period May 1, 1997 through April 30, 1998, is now 3.76 percent, and LG’s dumping margin for the same period is 15.87 percent.

Joseph A. Spetrini
Acting Assistant Secretary
for Import Administration

Date