

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

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 Hyundai Electronics Industries Co., Ltd., and Hyundai Electronics America, Inc., v. United States and Micron Technology, Inc., No. 01-00027, Slip Op. 04-37 (Ct. Int'l Trade April 16, 2004)(Hyundai). The Court in Hyundai addressed seven issues arising 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, 1997 through April 30, 1998. The seven issues covered are (1) the Department's treatment of LG Semicon Co., Ltd. (LG) DRAMs sold through Germany in Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Administrative Review and Determination Not To Revoke the Order in Part, 64 FR 69694 (December 14, 1999) (Final Results); (2) the Department's application of total adverse facts available (AFA) to LG's entire U.S. sales database; (3) the Department's decision not to calculate research and development (R&D) costs on a product-specific basis for LG and Hyundai Electronics Industries Co., Ltd. (Hyundai); (4) the Department's rejection of LG's and Hyundai's method of accounting for R&D expenses; (5) the Department's calculation of Hyundai's R&D cost allocation ratio using cost of goods sold (COGS); (6) the Department's calculation of Hyundai's total R&D costs; and (7) the Department's treatment of Hyundai's interest earned on severance deposits. The Court affirmed the Department's positions as stated in points (1), (5), (6), and (7). As to point (1), the Court held that the Department's "determination that LG knew or should have known that DRAMs it sold were destined for the United States is supported by substantial evidence." Further, the Court held that the Department "did not violate LG's right to a fair and honest proceeding." With respect to issues (5) and (6), the Court held that the Department's calculation of Hyundai's R&D cost allocation is reasonable and that Hyundai did not provide sufficient evidence of double counting by the Department in determining Hyundai's total R&D costs. Finally, the Court held that the Department's treatment of Hyundai's interest earned on severance deposits is reasonable. See, Hyundai at 5, 39, 42, and 43. However, with regard to issues (2), (3), and (4), the Court found that the Department's actions are in error or unsupported by substantial evidence, and require recalculation or further explanation. See, Hyundai at 24, 31, and 35.

The Court ordered that the Department upon remand shall recalculate LG's dumping

margin on subject merchandise produced by LG using the U.S. sales data submitted by LG for sales to [***] and use AFA for LG's sales to the German subsidiary of [***]. See, Hyundai at 30. Further, the Court ordered that the Department, on remand, provide additional information regarding the effect of non-subject merchandise R&D on the R&D for the subject merchandise, or alternatively, recalculate R&D costs on the most product-specific basis possible. Id. at 35. With regard to the Department's rejection of LG's and Hyundai's method of accounting for R&D expenses, the Court ordered the Department on remand to provide specific evidence showing how LG's and Hyundai's actual R&D costs are not reasonably accounted for by amortization and provide additional information showing how R&D costs that are currently deferred affect production and revenue for this review period, or alternatively, accept LG's and Hyundai's accounting methodology in calculating R&D expenses for the cost of production (COP). Id. at 39.

With respect to R&D, we provide additional information to support calculating R&D on the basis of semiconductor production. The Department also provides evidence to show that LG's and Hyundai's deferred R&D costs affect production and revenue for this review period. In accordance with the Court's remand instructions, we have recalculated LG's dumping margin on subject merchandise produced by LG using AFA for LG's sales to [***] German subsidiary. Further, although we disagree with the Court's findings that the Department's determination on amortization of R&D costs was not supported by substantial evidence, the Department has nevertheless recalculated LG's and Hyundai's R&D costs in this review period. See, Viraj Group v. United States, 343 F. 3d 1371, 1376 (Fed. Cir. 2003) (Viraj Group). As a result of these recalculations, LG's and Hyundai's margins of dumping are 15.87 percent and 5.37 percent, respectively.

BACKGROUND

On December 14, 1999, the Department published the Final Results. In this notice, regarding the issues remanded by the Court, the Department made the following statements: (1) "We . . . find that LG did not act to the best of its ability to comply with the request for information under section 776(b) and that, under section 776(b), an adverse inference is warranted." (2) ". . . we found that the reduced R&D cost recognized by Hyundai and 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, 64 FR at 69700) and (3) ". . . we have continued to allocate all semiconductor R&D expenses over the total semiconductor cost of goods sold (COGS), a methodology which does not overstate costs, but which we believe reasonably and accurately identifies the R&D expense attributable to subject merchandise." See, 64 FR at 69702.

DISCUSSION

Total Adverse Facts Available for LG

As noted above, the Court on remand ordered that the Department recalculate the dumping margin on subject merchandise produced by LG using the U.S. sales data submitted by LG for sales to [***] Further, the Court ordered that in recalculating LG's dumping margin the Department use AFA for sales to the German subsidiary of [***].

In its decision, the Court stated that with respect to the sales to the Mexican customer, "Commerce not only failed to meet the requisite finding for adverse facts available, but also failed to demonstrate the need to apply facts otherwise available." According to the Court, "Commerce erred in concluding that LG's insistence that the sales to the unaffiliated Mexican customer were third country sales rendered the data untimely, unusable, and unverifiable. . . . It is indisputable that LG Semicon timely submitted computer sales listings and subsequently amended its submission in response to further information placed by Commerce upon the record. Although Commerce is not required to verify each piece of information, Commerce may not arbitrarily disregard timely-submitted information. . . ." See, Hyundai at 28-30.

In calculating LG's weighted-average dumping margin for these final results on remand, we have used the SAS margin program and databases used in the Department's preliminary results. See, Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Order in Part, 64 FR 30481 (June 8, 1999) (Preliminary Results). We have corrected certain clerical and programming errors in the Preliminary Results margin program.

In the Final Results, the Department determined, as it had in the prior review, that numerous sales which LG had reported as third-country sales were in fact sales to the United States. Similarly, the Department discovered that LG was shipping subject merchandise from Korea to the United States through a customer in Germany and that these shipments were being made with the knowledge and support of LG's senior management. The Department provided LG with an opportunity to explain its deficiencies with respect to the unreported U.S. sales. However, LG failed to correct these deficiencies. Thus, we found that LG did not act to the best of its ability to comply with the request for information under section 776(b) and we used an adverse inference in selecting from the facts otherwise available.

The Court affirmed the Department's position that LG did not act to the best of its ability to comply with the Department's request for information regarding the [***] sales through Germany. See, Hyundai at 30. The Court found that LG did not provide the Department with complete information regarding the universe of LG's subject sales; its sales to [***]. Further, the Court affirmed the Department's determination that LG sold to [***] German subsidiary to avoid reporting these sales as U.S. sales. Id. at 12.

However, as discussed previously, the Court found that the Department erred in using AFA for sales to the unaffiliated Mexican customer and, thus, that the use of total AFA was not warranted. The Court instructed the Department to recalculate LG's dumping margin using AFA

only for LG's sales to [***] German subsidiary.

Pursuant to the Court's instructions we have calculated a weighted-average dumping margin for LG. We have applied partial AFA to LG's sales to [***] in Germany. Unlike the situation at the time we completed the administrative review, we now have available for this remand calculated rates which range as high as 223 percent, reflecting LG's sales practices in the United States during the review segment in question. In accordance with our normal practice, as partial AFA, we have applied 89.10 percent, the highest non-aberrational margin calculated for any U.S. transaction for LG in the period of review (POR). See, Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Color Television Receivers From the People's Republic of China, 69 FR 20594 (April 16, 2004) and accompanying issues and decision memorandum at Comment 27; see, also Static Random Access Memory Semiconductors from Taiwan: Final Results of the Antidumping Duty New Shipper Review, 64 FR 12214 (March 8, 2000) and accompanying issues and decision memorandum at Comment 1. In selecting a facts available margin, we sought a margin that is sufficiently adverse so as to effectuate the statutory purposes of the AFA rule, which is to induce respondents to provide the Department with complete and accurate information in a timely manner.

We note that there is no record evidence to suggest that this rate is aberrational or otherwise inappropriate to use as the AFA rate for the sales to [***]. While a quantity of subject merchandise was sold at much higher margins, the margin selected is for a sale that clearly fell within the mainstream of LG's sales. This margin falls in a range of margins for a large portion of LG's review period transactions that decrease steadily by small amounts. As noted above, the Department has used this approach in other cases to select non-aberrational margins as facts available. Furthermore, consistent with the Statement of Administrative Action (SAA), this rate is sufficiently adverse to ensure that the "party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." See, SAA accompanying the Uruguay Round Agreements Act (URAA), H.R. Doc No. 103-316 at 870 (1994). Because we have relied on the respondent's own sales data as facts available, it is not necessary to corroborate such information under section 776(c) of the Act.

R&D Costs

A. Cross-Fertilization

In its remand order, the Court ordered the Department to provide additional information specifically pointing to the effect of non-subject merchandise R&D on the R&D for the subject merchandise, or alternatively, recalculate R&D costs on the most product-specific basis possible for both LG and Hyundai. See, Hyundai at 35.

The Department believes that it has demonstrated that cross-fertilization of R&D exists for LG and Hyundai in this case. However, in accordance with the Court's remand instructions,

we have provided additional factual information which exists on the administrative record of this proceeding. We have provided a detailed discussion of this additional factual information at Comment 2, below.

B. Amortized and Deferred R&D Costs

As stated above, the Court remanded this issue to the Department to provide specific evidence regarding how LG's and Hyundai's actual R&D costs for this POR are not reasonably accounted for in its amortized R&D costs.

We believe that in the Final Results, we fully explained, and supported with substantial evidence, our positions regarding the amortization of LG's and Hyundai's R&D costs. Nevertheless, the Court has found that the information cited by the Department does not constitute substantial evidence supporting this determination. Therefore, although we disagree with the Court's findings, we have recalculated LG's and Hyundai's R&D costs to allow for amortization.

The Court also instructed the Department "to provide additional information and to present substantial evidence on the record showing how R&D costs for long-term projects might affect current projects for this review period with respect to deferral."

We believe the Department provided a reasoned explanation for rejecting LG's and Hyundai's indefinite deferral of certain R&D expenses. As with the amortization methodology, LG and Hyundai switched from expensing its R&D costs in the year incurred, to indefinitely deferring a portion of these expenses. We found that expensing LG's and Hyundai's R&D in the year incurred, as opposed to indefinite deferral, is a more reasonable reflection of LG's and Hyundai's production costs.

Korean Generally Accepted Accounting Principles (GAAP) state that R&D expenditures may be treated as deferred charges if future economic benefits are reasonably expected to cover the expenditures. See Hynix v. United States, 295 F. Supp 1365, 1371 (CIT 2003). 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." See IAS 9, Research and Development Costs (January 1995). 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." In the instant proceeding, it stands to reason that, if LG and Hyundai are repeatedly changing their policy for recording R&D costs from review segment to review segment, then there is neither probable reason nor sufficient certainty that future economic benefits will be realized to warrant deferring the costs.

Further, 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. 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. Miegs & Walter B. Meigs, Financial Accounting 734 (7th ed. 1992).

During the review period in question, LG and Hyundai provided no evidence to indicate that their deferred R&D would produce revenue in future periods. Therefore, according to established accounting principles, the Department finds that LG and Hyundai offered no reasonable evidence to indicate that their deferred costs will benefit future periods. As a result, 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. Consequently, given these omissions, and based on the accounting principles discussed above, we find that LG and Hyundai's deferred R&D costs should be expensed in the period incurred and we have done so for purposes of this remand.

INTERESTED PARTY COMMENTS

Comment 1: LG's AFA rate

Plaintiffs' Argument:

Hynix Semiconductor Inc., and Hynix Semiconductor America Inc.¹ asserts that the margin selected by the Department for LG's sales to [***] was aberrational. Hynix notes that in the redetermination, the Department stated that it "applied the highest non-aberrational margin, 88.78 percent, calculated for any U.S. transaction for LG." Further, Hynix states that as support for this margin, the Department explained that, "{t}his margin falls in a range of margins for a large portion of LG's review period transactions that decrease steadily by small amounts." Hynix contends, however, that the Department did not actually explain why the 88.78 percent margin was non-aberrational, while the other margins above it were. According to Hynix, simply stating that it is non-aberrational does not meet the substantial evidence standard.

Hynix states that if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department

¹After the fifth administrative review was completed, Hyundai acquired LG Semicon Co., Ltd., and LG Semicon America, Inc. (collectively LG). Hyundai then changed its name to Hynix Semiconductor Inc., and Hynix Semiconductor America, Inc. (collectively Hynix).

may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available. However, Hynix argues, the Department does not have unlimited discretion in applying the AFA standard. According to Hynix, the Department must objectively examine the reliability and relevance of the information used, whether it is probative, and whether the selected rate is reasonable.

Furthermore, Hynix contends that the 88.78 percent margin is also inaccurate as a result of several clerical errors that must first be corrected. However, Hynix maintains that even with the correction of the Department's clerical errors, the margin selected by the Department is unduly punitive. When compared against margins for this period, the Department's AFA margin is almost sixteen times greater than Hyundai's dumping margin, almost ten times greater than LG's margin when excluding the AFA margin on the sales from Germany, and more than eighteen times LG's margin when the correction for exchange rate is made. Hynix asserts that this margin is also excessive relative to LG's prior margin in earlier administrative reviews.

In conclusion, Hynix argues that the 88.78 percent rate is neither relevant nor reasonable and, as a result, is not supported by substantial evidence or in accordance with the law. Hynix states that it was the intent of Congress to strike a balance between deterrence for non-compliance and assuring a reasonable margin will be applied. According to Hynix, that balance has not been achieved in this case.

Petitioner's Argument:

Micron Technology, Inc. (Micron) argues that Hynix's claim that the Department failed to "explain why the 88.78 percent margin was non-aberrational, while the other margins above it were" is incorrect. Micron notes that the Department explained that the 88.78 percent margin "falls in a range of margins for a large portion of LG's review period transactions that decrease steadily by small amounts." In other words, the margin is not an "outlier," but instead falls within a large cluster of sales with very similar margins while the higher margins (those exceeding [***] percent) are more scattered. Accordingly, the Department appropriately selected a margin of 88.78 percent as the highest non-aberrational rate.

Micron states that if the Department agrees with Hynix that it used the incorrect currency exchange rate in the draft redetermination and makes a revision, there would still exist a sale with a margin of 89.03 percent, which is within only .25 percentage points of the margin selected in the draft remand results. The quantity of this sale is [***] than that of the sale selected by the Department in its draft remand results. Moreover, there are [***] other sales, with a combined quantity of [***] units, with even higher margins than this one. Finally, just as before, this margin falls within a large range of margins that decrease steadily by small amounts. Accordingly, the 89.03 percent margin cannot be characterized as "aberrational."

Finally, Micron maintains that there is no support for Hynix's assertion that the margin selected was "unduly punitive." Micron contends that this is not a case of mere negligence in

preparing a questionnaire response. As the Court noted, LG established a sales channel through its German affiliate "to avoid reporting these sales as U.S. sales." Hyundai at 12. Moreover, this was not LG's first attempt to conceal U.S. sales. According to Micron, given such behavior, the Department must select a margin that is sufficiently adverse so that, when a respondent such as LG performs a cost/benefit analysis weighing the benefits of concealment against the risk of detection and adverse result in the event of detection, it will decide to comply with its reporting obligations. The SAA makes clear that an adverse inference must "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully." SAA at 870. Micron states that the selection of the highest non-aberrational margin in this case will help to effectuate the purpose of the facts available rule.

Department's Position:

We disagree with Hynix that we failed to explain why the AFA rate selected for LG was non-aberrational. On the contrary, we stated that the margin selected falls in a range of margins for a large portion of LG's review period transactions that decrease steadily by small amounts. This means that the margin is not an "outlier," but falls instead within a large cluster of LG sales with very similar margins.

We also disagree with Hynix's rate comparisons and characterization of the AFA rate selected for LG as "unduly punitive." The AFA rate is taken from margins resulting from our analysis of LG's actual review period transactions and is not aberrational. Moreover, in choosing this rate, the Department took account of the Court's acknowledgment of the fact that [***] established the sales channel to avoid reporting these sales as U.S. sales. See, Hyundai at 12. We agree with Micron that "this is not a case of mere negligence in preparing a questionnaire response." See, LG's Rebuttal Comments at 11. Moreover, as Micron correctly notes, this was not LG's first attempt to conceal U.S. sales. See, LG Semicon v. U.S., 23 CIT 107 (CIT 1999). The SAA makes clear that an adverse inference must "ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully. We agree with Micron, that given these facts, we must select a margin that is sufficiently adverse so that, when a respondent such as LG weighs the benefits of concealment against the risk of detection and adverse result in the event of detection, it will decide to comply with its reporting obligations.

Finally, we disagree with Hynix's contention that the Department has not "objectively examined the reliability and relevance of the information used, whether it is probative, and whether the selected rate is reasonable." As discussed previously, we have used as facts available respondent's own sales data from the instant review segment; therefore, it is not necessary to corroborate such information under section 776(c) of the Act.

For this remand determination, after correcting the currency exchange rate that we used (see, Comment 6) in making our margin calculations, we have applied, as partial AFA and the highest non-aberrational margin calculated for any U.S. transaction, the rate of 89.10 percent. We note that there is a quantity of subject merchandise sold at much higher margins than rate we

are selecting as AFA. More specifically, we found that there are [***] other sales, with a combined quantity of [***] units and higher margins than this one. Finally, this margin, like the 88.78 percent rate we initially used, falls in a range of margins for a large number of LG transactions that decrease steadily by small amounts. Accordingly, the 89.10 percent margin cannot be characterized as "aberrational."

Comment 2: Cross-Fertilization

Petitioner's Argument:

Micron argues that the Department should account for cross-fertilization of semiconductor R&D and should identify additional factual information supporting its finding of cross-fertilization. In the Draft Remand Results, the Department expressed its continued position that the evidence provided by Dr. Jhabvala "demonstrated that cross-fertilization of R&D exists for LG and Hyundai in this case." Micron agrees. However, the Department also stated that "no additional factual information exists on the administrative record" to support its conclusion. Micron disagrees. Micron claims that, in fact, there is voluminous additional information on the record supporting the Department's finding of cross-fertilization.

Micron claims that its submission dated December 18, 1998 contains information "specifically pointing to the effect of non-subject merchandise R&D on the R&D for the subject merchandise." In particular, Micron cites the "World Technology Evaluation Center Report on the Korean Electronics Industry" which it claims specifically addresses the R&D efforts of Hyundai and LG, in addition to Samsung. This report states that, for SRAMs, the R&D "goals closely parallel to the main goals for DRAMs." See, "World Technology Evaluation Center Report on the Korean Electronics Industry," page 8, contained at Attachment 8 of Micron's Submission of Factual Information (December 18, 1998). According to Micron, the development goals for both SRAMs and DRAMs are identical: to achieve "higher speeds, larger capacities, lower power dissipation, higher integration, and wider I/O architectures." Id. Moreover, the report states that one of the R&D objectives for SRAMs is the "use of heavily integrated architecture and pseudostatic DRAM technology to increase capacity." Id. at 9.

Micron asserts that record evidence indicates even greater levels of cross-fertilization of R&D resulting from the melding of logic and memory capabilities into a single semiconductor. As noted in an affidavit from Eugene H. Cloud, an engineer with significant experience in the area of semiconductor design, R&D of Application Specific Integrated Circuits (ASICs), a type of logic semiconductor (i.e., non-subject merchandise), had "clear and tangible applications" for memory chip designs (i.e., subject merchandise). See, Affidavit of Eugene H. Cloud, Vice President of Marketing, Micron Technology, Inc., page 2, contained at Attachment 8 of Micron's Submission of Factual Information (December 18, 1998).

Further, Micron notes that an article accompanying Mr. Cloud's affidavit illustrates the development of a great deal of overlap in process technology for logic and memory circuits. The

article notes that "embedded DRAM SLI means putting advanced logic and DRAM processes in the same fab and on the same wafer. . . . Devices with large amounts of DRAM will benefit from optimizing the DRAM process, improving density and device performance. Devices with smaller amounts of DRAM will derive the most benefit from optimizing the logic part of the chip." See, "The Challenges of Embedded DRAM in ASICs: A Manufacturing Economics Point of View," Dataquest Interactive (August 25, 1997) at 1, contained in Attachment 8 of Micron's Submission of Factual Information (December 18, 1998).

Another article accompanying Mr. Cloud's affidavit discusses advancements in copper metallization technology, first developed for use in ASIC semiconductors. According to Micron, this process technology helps to reduce the signal clash that occurs when transistors become smaller and are spaced closer together, also a common problem in the production of memory semiconductors. The article noted that "others, such as Texas Instruments, Inc. are exploring the use of low-k dielectric insulators to boost performance of DSPs and memories. See, "IBM Launches Advanced Process With Copper Metallization," The Semiconductor DQ Monday Report (September 22, 1997) and "Chip Makers Hot on Copper," Electronic Buyers' News (October 6, 1997), contained at Attachment 8 of Micron's Submission of Factual Information (December 18, 1998).

According to Micron, this evidence provides ample additional support for the Department's finding that all semiconductor R&D spending benefits all semiconductor production, and that the allocation of R&D expenses must be made on this basis.

In addition, Micron states that the Department has, over the course of many semiconductor reviews, developed significant expertise on this highly technical issue. Micron maintains that in every one of those reviews, the Department found that semiconductor industry R&D relating to one aspect of producing semiconductors has a significant cross-fertilizing effect for the R&D relating to all semiconductor products. Micron claims that the evidence on the record in the instant review, combined with the Department's substantial experience with respect to R&D cross-fertilization in the semiconductor industry, clearly supports the original findings made in the final results.

Plaintiffs' Argument:

Hynix states that both the report of the Korean electronics industry and the affidavit from Mr. Cloud encounter the same evidentiary pitfall that the Court found in Hynix II when it rejected Mr. Jhabvala's memo as substantial evidence supporting cross-fertilization. See, Hynix v. United States, 295 F. Supp. 1365 (CIT 2003). Hynix maintains that during oral argument the Court pointed out that a key to the lack of Mr. Jhabvala's credibility on this particular matter lay in the fact that he did not have personal knowledge of LG's or Hyundai's operations. See, Hyundai Hearing Transcript at 65-66 (June 6, 2001). Micron alleges that like Mr. Jhabvala, the report writers and Mr. Cloud did not have access to LG or Hyundai's production facilities or R&D operations, nor do they comment specifically on them. The absence of any connection to

the actual facts of this case render those sources largely irrelevant.

Additionally, Hynix points out that the report Micron cites focuses on SRAMs R&D "goals" and objectives but does not provide specific evidence on how DRAMs benefit specifically from SRAM development at those facilities. Further, Hynix claims that Mr. Cloud has no specific expertise with respect to subject merchandise.

Further, Hynix argues that neither the report nor Mr. Cloud can refute the evidence particular to this case that both LG and Hyundai in their development operations make clear distinction between memory and non-memory research. Therefore, for the reasons stated above, the report and affidavit are not additional evidence sufficient to justify the Department ignoring its statutory mandate of allocating R&D costs on a product-specific basis, as the Court directed.

Moreover, Hynix contends that most of the cases cited by Micron supporting the proposition that the Department has "developed significant expertise on this highly technical issue" in fact involve DRAMs from Korea where the cross-fertilization findings had later been rejected by the Court. In any event, Hynix claims that what matters are the facts on the record of this case and the Court's instructions for this case.

In conclusion, Hynix requests that the Department abide by the Court's mandate to recalculate R&D costs on the most product-specific basis possible for LG and Hyundai by excluding non-subject merchandise R&D expense from the calculation.

Department's Position:

The Court stated that it is appropriate to include R&D expenditures for non-subject merchandise in calculating the cost of producing subject merchandise if substantial evidence supports such a conclusion. See, Micron Tech., Inc. v. United States, 19 CIT 829, 832, 893 F. Supp.21 (1995). In the Department's finding that cross-fertilization occurs between DRAMs and non-DRAM merchandise with respect to R&D costs in this case, the Court noted that the Department relied on the expert opinion of Dr. Murzy Jhabvala. According to the Court, Dr. Jhabvala's opinion was based on research for a prior antidumping investigation involving SRAMs, not DRAMs, which are the focus of this review. The Court also noted that there is no overlap between the parties in the SRAM case and this DRAM review. Because the evidence cited by Commerce concerned different products and parties, the Court did not sustain Commerce's determination regarding cross-fertilization. On remand, the Court ordered the Department to provide additional information specifically pointing to the effect of non-subject merchandise R&D on the R&D for the subject merchandise.

As we explain below, the Department is providing additional evidence from the record of this proceeding to support the Department's theory of cross-fertilization in accordance with the Court's remand. This information was submitted for the record of the fifth administrative review by Micron on December 18, 1998. See Micron's Submission of Factual Information (December

18, 1998), Attachment 8. These data demonstrate that incremental developments in the process and product design for one type of semiconductor provide real and significant benefits to other semiconductor types. Whether the advances are made from research involving DRAMs or they are made while developing new knowledge about SRAMs, semiconductor products in general can be shown to build upon the advances that have been made in other semiconductor products in areas ranging from fabrication and geometry to advanced metallization schemes.

To illustrate this phenomenon, Micron provided a report that was issued in 1997 by the World Technology Evaluation Center (WTEC) specifically addressing the Korean electronics industry. Id. According to WTEC, the Korean electronics industry is dominated by a relatively small number of firms, including LG and Hyundai. WTEC reports that Korea invests heavily in R&D for electronics and most of its electronic research concentrates on semiconductor research, including DRAM technology. One of the principal goals of the government is linking strategic technologies together for synergistic advancements. WTEC states that Korean industry believes that government planning, coordination and funding of semiconductor research reduces redundancy of effort and contributes to synchronized development in many related areas. Similarly WTEC observes that educators report that competitiveness requires combining all fields related to electronics manufacture (layout, architecture, systems, fabrication, analog, and others) and that imaginative and resourceful minds and team efforts are needed to achieve interdisciplinary solutions. Among the specific efforts that WTEC reports the Koreans are taking to build technological proficiency is the use of heavily integrated architecture and pseudostatic DRAM technology to increase SRAM capacity. See, WTEC Report at 8-9. WTEC notes that the R&D goals and planned improvements in the SRAM industry closely parallel the main goals for DRAMs. As Micron noted above, the SRAM industry, like the DRAM industry, wants to achieve smaller chip sizes, "higher speeds, larger capacities, lower power dissipation, higher integration, and wider I/O architecture." The fact that DRAMs may involve a more mature technology is not relevant. Breakthroughs in SRAM process technology clearly can benefit DRAMs just as breakthroughs in DRAM process technology can help advance SRAM technology.

Micron also provided a letter from Eugene H. Cloud, Vice President of Marketing, Micron Technology, Inc. to William Daley, Secretary of Commerce (October 15, 1997) that discusses cross-fertilization in R&D in the semiconductor industry. See Micron's Submission of Factual Information (December 18, 1998), Attachment 8. Mr. Cloud has substantial expertise and hands-on experience in the area of semiconductor design and technology development having served as a semiconductor designer for Motorola for nine years and as an applications engineer with National Semiconductor for eight years. Mr. Cloud refutes the claims that "the development of logic and application-specific products using mature process technologies does not contribute to advanced product and process development for SRAM or other memory products" (e.g. DRAMs). According to Mr. Cloud, "companies must conduct leading-edge process and product R&D in order to be competitive, and many of the developments in these semiconductor areas provide significant benefits to memory semiconductors. . . ." Mr. Cloud notes, as an example, that advancements in multi-layer metal design in the ASIC/logic product

area have important ramifications for chip design and higher operating speeds in the memory area. He explains that multi-layer metal design is often conducted in the logic/ASIC/microprocessor unit (MPU) product areas because these devices require five to seven layers of metal, whereas memory chips such as SRAMs and DRAMs have two to three layers of metal. Nonetheless, developments in metal design for the ASIC/logic/MPU area can have clear and tangible applications for memory designs.

Accompanying his letter, Mr. Cloud attaches several articles regarding copper metallization technology. See, "IBM Launches Advanced Process With Copper Metallization," The Semiconductor DQ Monday Report (September 22, 1997) and "Chip Makers Hot on Copper," Electronic Buyers' News (October 6, 1997), contained at Attachment 8 of Micron's Submission of Factual Information (December 18, 1998). One article indicates that IBM will use this new technology first in an ASIC chip, but then it will eliminate all aluminum and use only copper in its chip products generally. The article explains that using copper in place of aluminum will permit companies to build chips that are smaller, faster, and more power-efficient than current chips. Several articles mention that Motorola also announced use of the copper interconnect technology saying it is a "core process platform for a broad range of products including microprocessors, memory, and mixed-signal devices." This, according to Mr. Cloud, is a clear example of a technological breakthrough that has significant benefits for products requiring metal layers like ASICs, but which eventually would be utilized to optimize memory products such as DRAMs. See, The Semiconductor DQ Monday Report, dated September 22, 1997 and October 6, 1997 and; Electronics Buyers' News, dated October 6, 1997.

Mr. Cloud also submits a discussion of the firm's Merged Memory with Logic technology (MML) that has resulted in the MDL90, a 24Mbit of on-chip DRAM from Samsung Semiconductor's Home Page . This web site notes that this is a new blended-process product that contains on-chip DRAM as well as on-chip SRAM, Flash Memory and EEPROM. In addition, he points out an article where a Korean firm announced the roll out of its DRAM ASIC technology. See Webmaster@sec.samsung.com. With this technology, Mr. Cloud claims that it would be difficult for a firm to say that the design of one product was clearly segregated from the other. See, Electronic News, dated October 6, 1997. He references another article that discusses embedded memory and states that the design and development work involves work on microprocessors as well as the memory that has been embedded on the same semiconductor chip. In that same article the fast SRAM and the 'pseudo-DRAM' structures are portrayed as a subset of the process flow for advanced logic, with the result that the construction of system level integration (SLI) ASICs is described simply as a natural extension of this process technology. See, Semiconductor Contract for Manufacturing Services, dated August 25, 1997. Mr. Cloud notes that with the advent of embedded memory and these blended-process products, there has been a blurring of the line between memory and non-memory chips. This reinforces his observation that the semiconductor process technologies and the R&D for them are coalescing and overlapping.

In its August 18, 2004, comments, Hynix argues that IC Lab R&D costs should be

excluded when calculating Hyundai's R&D ratio. Hynix states that to calculate "the most product-specific R&D expenses, the Department must allocate memory-specific R&D over total memory products, as reported by Hyundai." *See*, Hynix's August 18, 2004, Comments, at 3. At verification, however, the Department found that Hyundai was conducting research in its IC Lab on "Merged MPEG2 Decoder and DRAM," "Merged Graphics Controller and DRAM," and "Wafer for merged Logic With DRAM." *See*, Hyundai Cost Verification Exhibit 10 C. Clearly, Hyundai was conducting MML research during the POR in its IC Lab. We note that this research, as discussed above, involving subject merchandise, was not only being conducted in a non-memory lab but also this process technology has relevance for other memory and non-memory products.

These data clearly indicate that in the semiconductor industry, there is enough similarity among semiconductor products and process technology objectives, that advances from R&D for one type of semiconductor product can benefit other semiconductor products. This is an industry, not company-specific phenomenon. Hynix argues the direction or amount of the R&D benefit to justify the R&D calculation the company maintains should be used, but in the words of Mr. Cloud, it is "trying to draw a line that simply does not exist." The data show that the distinction between semiconductor products is blurred and the R&D for semiconductor products and process technologies is overlapping.

Finally, we do not believe that the respondent's laboratory designations or accounting records are relevant to the cross-fertilization decision. The fact that R&D projects for memory and non-memory products may be run in different laboratories and that respondents may claim that they account for R&D for memory and non-memory projects separately in their books and records does not address whether there is cross-fertilization in semiconductor R&D. Moreover, these lab and project titles can be arbitrary and misleading. Notably Hyundai itself is conducting research involving DRAMs in one of its non-memory labs. *Id.* The Department believes that the additional evidence presented above along with Dr. Jhabvala's Memorandum constitutes substantial record evidence to sustain the Department's determination that cross-fertilization is prevalent in the semiconductor industry and provides the support needed to sustain the Department's determination that R&D should be calculated on the basis of semiconductor production.

Comment 3: Amortization

Petitioner's Argument:

Micron states that in the draft remand results the Department recalculated LG's and Hyundai's R&D costs to allow for amortization. It argues that for the final results, the Department should not perform this recalculation. Instead, the Department should, as the Court instructed, explain why the R&D costs amortized during the POR do not reasonably account for actual R&D costs incurred during the POR.

Micron notes that under section 773(f)(1)(A) of the Act, the Department is directed to rely on a respondent's normal accounting records, provided they "reasonably reflect the cost associated with the production and sale of the merchandise." In making the latter determination, the statute directs the Department to consider whether the respondents's allocation methodologies "have been historically used by the exporter or the producer." Further, as explained in the SAA, "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." See, SAA at 834. According to Micron, this burden is not satisfied simply because a respondent had once used an allocation methodology in the distant past, if the respondent had not consistently used that methodology. That is because, as the statute and SAA recognize, there is a significant potential for distortion when a respondent changes from one allocation methodology to another. Micron notes that in the instant review, the Department determined that:

Hyundai and LG have repeatedly changed their accounting method for R&D expenses throughout the course of these proceedings (*i.e.*, from capitalizing and amortizing, to expensing in the year incurred, and now back to capitalizing and amortizing) and are now deferring certain R&D expense indefinitely. As a result, the respondents recognize, in relation to amounts that would be recognized if either method was constantly applied, aberrationally high amounts of R&D expense in some years, and aberrationally low amounts of R&D expense in other years, that do not reasonably reflect the costs of producing subject merchandise. . . .

See, Final Results at 64 FR 69699.

According to Micron, it is true that changing methodologies produces aberrationally high amounts of R&D expense in years where the respondent switches from amortizing to expensing, and aberrationally low amounts of R&D expense where (as here) the respondent switches from expensing to amortizing. This alone would distort dumping margins from review to review were the Department to accept an amortizing methodology. However, Micron states that because of the Court's decision in an earlier review of this proceeding, the distortion would be far greater. Micron argues that if the Department were to accept respondent's amortization methodology, the result would be that aberrationally low R&D costs would be included in the dumping calculations (in those years when the respondent switches from expensing to amortizing), but aberrationally high R&D costs would not be included in the dumping calculations (in those years when the respondent switches from amortizing to expensing). Consequently, a significant portion of the respondent's R&D expenditures would never be picked up in the dumping calculations for any review period.

Micron states that the Court has already held that aberrationally high R&D costs that result from switching from amortizing to expensing may not be included in the dumping

calculations. When LG changed from amortizing to expensing its R&D costs in 1993, it realized the sum of (i) all R&D incurred during 1993, and (ii) R&D from prior periods amortized during 1993. The Court ruled however, that Commerce could not include in the cost calculations more than the R&D actually incurred during 1993. See, Micron v. U.S., 23 CIT 380, 381 (CIT 1999).

Micron argues that if the Department is not permitted to include the "aberrationally high" R&D costs in years when the respondent switches from amortizing to expensing, then it must not be limited to including only the "aberrationally low" R&D costs in years when the respondent switches from expensing to amortizing. Otherwise, Micron claims, R&D costs that had been amortized to future periods (but not yet recognized) would, if the respondent switches to an expensing methodology, never be included in the dumping calculations.

To illustrate this, Micron provides the following example. Suppose company X, which began operations in 2000, incurs \$100 of R&D every year. Suppose further that, during the first year, the company amortized its R&D over a two year period, so that it recognized only \$50 in costs during the first year. However, suppose that during 2001 the company switched to an expensing methodology, and recognized the full \$100 incurred during 2000, as well as the \$50 incurred in 2000 but amortized in 2001. According to Micron, if the Department were to include in its dumping calculations for the 2000 POR only \$50 (pursuant to Hyundai), and included for the 2001 POR only the \$100 in R&D incurred in that year (pursuant to Micron I), there would remain \$50 incurred during 2000 that would never be picked up in the calculations.

Finally, Micron argues that accepting LG's and Hyundai's amortized R&D would result in costs that do not reasonably account for each company's actual R&D costs. Accordingly, the Department should not recalculate the R&D expense ratio to exclude amortized costs.

Plaintiffs' Argument:

Hynix rejects Micron's position regarding the amortization of R&D expense and claims that the Court has agreed that Micron's position is wrong. See, Hyundai at 9. According to Hynix, the Court has already determined that LG and Hyundai meet the "historically used" requirement of section 773(f)(1)(A) of the Act, and for the Department to determine otherwise, would directly contradict the Court's decision.

With respect to Micron's argument that allowing a change in accounting methodology would mean "a significant portion of the respondent's R&D expenditures would never be picked up in the dumping calculations for any review period," Hynix notes that Micron is unable to support its allegation with any record evidence of R&D expenses that were not properly accounted for. According to Hynix, the Court directed that the Department support its position with record evidence specific to this review period and alleges that Micron has provided no such evidence.

Further, Hynix states that neither LG nor Hyundai continuously changed their R&D

accounting methodology. As an example, Hynix claims that Hyundai expensed its R&D costs during the first through the fourth PORs, and began capitalizing its R&D costs during the fifth POR. Hynix argues that because Hyundai expensed for the first four PORs, the accounting change in the fifth POR occurred with a clean slate, all prior R&D expenses had already been accounted for and, therefore, there were no R&D expenditures in the fifth POR that would not be accounted for.

Hynix maintains that Micron's effort to provide an example to show that allowing amortization of R&D "would not accurately reflect the actual R&D costs incurred by the respondent," is inaccurate because Plaintiffs did not switch each year between expensing and amortizing costs. Hynix argues that not only was Micron's example not reflective of the record evidence, it did not address the Court's order to identify any distortion of costs in the fifth POR.

Additionally, Hynix contends that another flaw in Micron's example results from its assumption that all R&D costs are the same from year-to-year. Moreover, the total amount of R&D costs realized in a given POR is only relevant to the extent that all the costs incurred for that POR are accounted for. Hynix states that in AK Steel Corp. V. United States, 21 CIT 1204, 1213-1214 (CIT 1997), the Court found that costs relating to a prior period have no logical relation to production costs of the subject merchandise during a later period. According to Hynix, the Court effectively determined that only events affecting costs during the POR in question will be considered in the COP calculation. The Court in this case agreed, explaining that:

Plaintiffs' previous changes in accounting methodology are not relevant in this case as the Court is concerned with the actions of the parties with respect to their R&D costs only for this period of review. . . Commerce also points out that the inadvertent result of the change in accounting practice allows LG Semicon and Hyundai to recognize less than one-fifth of the current year's R&D costs as a result of the change in methodology. . . However, in switching from expensing to amortization, a difference in costs will likely occur

See, Hyundai at 38.

Therefore, according to Hynix, the Court has already dismissed Micron's arguments on this issue and Micron's example has not met the Court's requirement of proof of distortion of LG's and Hyundai's actual R&D cost for this POR.

Department's Position:

We agree with Micron that accepting LG's and Hyundai's amortized R&D results in costs that do not account for actual R&D costs incurred by LG and Hyundai. While Hyundai's and LG's practice of changing between methods of R&D allocation may be consistent with Korean

GAAP, it nonetheless produces results which distort the cost calculations in an antidumping analysis and do not reasonably reflect the cost associated with the production of DRAMs in accordance with section 773(f)(1)(A) of the Act.

Hyundai and LG have changed their accounting methodology for R&D expenses throughout the course of these proceedings (i.e., from capitalizing and amortizing, to expensing in the year incurred, and back to capitalizing and amortizing) and are now deferring certain R&D expenses indefinitely. As a result, LG and Hyundai recognize, in relation to amounts that would be recognized if either method was constantly applied, aberrationally high amounts of R&D expense in some years, and aberrationally low amounts of R&D expense in other years, that do not reasonably reflect the costs of producing the subject merchandise.

In the first administrative review of this proceeding, LG changed its method for recognizing R&D expenses from capitalizing and amortizing over five years to expensing in full in the current year. See, Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea; Final Results of Antidumping Duty Administrative Review, 61 FR 20216 (May 6, 1996). In that year, LG recognized in addition to its current year R&D expense, R&D expenses from its balance sheet which it had capitalized in prior years (as part of its capitalizing and amortizing methodology) and not yet amortized and recognized on its income statement. Consequently, in that year, LG recognized the full amount of R&D expenses incurred in that current year (under its expensing methodology) as well as all of the previously unamortized and unrecognized amounts of R&D expenses remaining on its balance sheet from prior years. LG thus recognized in that year significantly higher than normal amounts of R&D expenses than it would have under the consistent application of either methodology.

In the instant review, Hyundai and LG changed their accounting methodology for R&D expenses again, this time back to capitalizing and amortizing their R&D expenses over five years. As a result, the respondents recognized less than one-fifth of their current year's R&D costs. This methodology allows the respondents to recognize in the following year approximately one-fifth of that year's R&D expense and approximately one-fifth from the instant review period. By adopting this methodology, LG and Hyundai would not recognize the equivalent of a full year's R&D expense until at least the fifth year. Thus, because of changes in their accounting treatment, the respondents are recognizing an aberrationally low amount of R&D expense.

Hyundai and LG, by changing their R&D accounting methodologies, are manipulating the magnitude of the R&D expense that they are recognizing and reporting as production costs to the Department. This switching of methodologies can lead to distortions for antidumping purposes because the fluctuating costs tend to overstate per unit amounts and understate these amounts in other periods. For example, in the instant review if LG and Hyundai had recognized all of its R&D expenses in the year incurred (i.e., expensed) their R&D ratios would have been [***] percent and [***] percent, respectively. If, instead, they amortized these costs their R&D ratios would have been [***] percent and [***] percent, respectively. However, if they amortized and

deferred their R&D costs as proposed for this POR, their R&D ratios are [***] percent and [***] percent, respectively, representing a significant reduction in product costs. See Memorandum to File Regarding LG's and Hyundai's R&D Expense Ratios, date August 31, 2004.

Moreover, when LG changed from amortizing to expensing its R&D cost in 1993, it recognized the sum of all R&D incurred during 1993 and R&D from prior periods amortized during 1993. However, the Court has held that the Department may not include in the cost calculations more than the R&D actually incurred during 1993. See, Micron v. U.S., 44 F Supp. 2d, 216 (CIT 1999) (Micron II). Thus, if the Department accepts LG's and Hyundai's current amortization methodology, the result will be that aberrationally low R&D costs are included in the dumping margin calculations. However, if, at a future date, LG and Hyundai switches from amortizing to expensing, aberrationally high R&D costs would not be included in the dumping calculations. Consequently, as noted by Micron, a significant portion of the respondent's R&D expenditures would never be picked up in the dumping calculations for any review period. See, Micron's August 18, 2004, Comments at 9.

In conclusion, the Department has, in accordance with the Court's instructions, recalculated LG's and Hyundai's R&D expenses to include only amortized R&D costs recognized in the POR. See, Viraj Group 343 F. 3d 1371, 1375-76 (Fed. Cir. 2003). However, we note that the Court's decision in the instant proceeding and the Court's decision in Micron II, effectively insure distortions in the Department's dumping margin calculations. When these companies change from expensing to amortizing, one-fifth or less of their R&D expenses will be captured in their costs. Furthermore, if the Department is not allowed to include "aberrationally high" R&D costs in years when respondents switch from amortizing to expensing and are limited to including only the "aberrationally low" R&D costs in years when respondents switch from expensing to amortizing, R&D costs that have been amortized to future periods, but not yet recognized, would never be included in the dumping calculations.

Comment 4: Deferral of R&D Costs

Plaintiff's Argument:

Hynix argues that the Department has not provided substantial evidence to support its rejection of the deferred R&D costs for long-term projects. Instead of meeting the burden of persuasion set by the Court and citing appropriate factual evidence, the Department instead, erroneously reversed the burden, placing it instead onto Hyundai and LG.

Hynix states that the law and the Department's own questionnaire required Hyundai and LG to report their costs in accordance with Korean GAAP and show that following those methodologies reasonably reflects the costs incurred. Hynix contends that LG and Hyundai provided such evidence. The Department has admitted that deferral is in accordance with Korean GAAP. The Court agrees that the burden is now on the Department to demonstrate why those costs are not reasonable. Therefore, according to Hynix, before the Department can reject those

reported costs, it must explain, with record evidence, how Hyundai's and LG's reported R&D costs that are currently deferred actually affect production and revenue for this review period. However, Hynix asserts that the Department has failed to cite any evidence supporting its position that deferred R&D actually affects production and revenue for the fifth review period.

Further, Hynix contends that Hyundai and LG have provided substantial evidence supporting the deferral of R&D expense for long-term projects. Hynix states that at verification the Department reviewed LG's R&D accounting methodology, and specifically reviewed the list of projects for which amortization was deferred until the relevant revenue is realized. According to Hynix, the Department verified that LG reported R&D amounts amortized in 1997 in accordance with its normal accounting, and verified that the projects for which amortization was deferred were in fact related to future generation products of which there were no current production and thus no current revenue. See, LG's Cost Verification Exhibits 8 and 8A and LG's Cost Verification Report at 9.

Hynix alleges that while the Department continues to ignore the evidence of future benefit submitted by LG, it also fails to cite a single project on LG's list about which there is the slightest ambiguity as to whether related revenue was being realized. Indeed, all of the DRAM projects on the list relate to [***] for which there was no current production, making it readily apparent that there was no related revenue. According to Hynix, the Department's position that R&D related to future generation [***] could somehow benefit the current production of [***], is absurd and devoid of any support in the record.

In addition, Hynix contends that substantial evidence was also provided by Hyundai that demonstrated that the deferred R&D was specifically targeted to producing the next new generation of DRAM products, and that the future benefits of this research are both readily discernible and imminent at the time of expenditures. For example, Hyundai provided a tabulation of the costs of the projects of the Memory R&D Lab and the projects of the System IC Lab. See, Hyundai Cost Verification Exhibits 10a and 10c. Hynix states that the total expenditure for these projects amounted to [***] won in 1997. About [***] percent of that amount was spent for R&D on products that were to be sold in 1998 and 1999 while only [***] percent was spent on products that were to be sold after the year 2000. See, Hyundai's Case Brief, Exhibit 6 (October 21, 1999). According to Hynix, even the R&D projects that will result in commercial production after the year 2000 involve products that were expected to be available within the next five years. Id. at Exhibit 7.

In conclusion, Hynix notes that the Department has failed to address any of this evidence. Consequently, it asks that the Department reconsider its remand determination and accept Hyundai's and LG's accounting methodology for their deferred R&D expenses.

Petitioner's Argument:

Micron states that the Department should continue to include indefinitely deferred R&D

cost in the R&D expense ratio. 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." Similarly, according to Micron, U.S. GAAP requires that R&D costs be recognized in the period in which they are incurred. See, Financial Accounting Standards Board (FASB) Statement of Financial Accounting Standards No. 2 (1974) at 12. Micron notes that the FASB states that "a direct relationship between research and development costs and specific future revenue generally has not been demonstrated, even with the benefit of hindsight." Id. at 41. Moreover, according to Micron, the FASB states that there is "little, if any, direct relationship between the amount of current research and development expenditures and the amount of resultant future benefits to the enterprise. Research and development costs therefore fail to satisfy the suggested measurability test for accounting recognition as an asset." Id. at 45. FASB concludes that "the notion of 'matching' - when used to refer to the process of recognizing costs as expenses on any sort of cause and effect basis - cannot be applied to research and development costs. Indeed, the general lack of discernible future benefits at the time the costs are incurred indicates that the 'immediate recognition' principle of expense recognition should apply." Id. at 49.

Thus, according to Micron, International and U.S. GAAP agree that capitalizing R&D costs as an asset, and attempting to "match" those costs to future revenues would be distortive. Also, Micron argues that the FASB's findings and opinions cited above clearly constitute substantial evidence showing that Hyundai's and LG's R&D costs, whether amortized or indefinitely deferred, relate to and should be matched to current period production.

Micron also notes that if the Department does not include deferred R&D costs in the year incurred, such expenses would never be captured for two reasons. First, as found by the Department, Hyundai and LG could potentially never realize any revenue from a particular project, and never recognize any of the R&D expense from that project, as long as they arbitrarily foresee any "possibility of realizing revenue." See, Memorandum from Alexander Amdur to Holly Kuga, "Whether to Accept the Reported Research and Development Expenses of Hyundai" (June 1, 1999) at 4. Second, even if Hyundai and LG eventually do recognize revenue from such long-term R&D projects, the deferred R&D costs still would not be included in costs. As stated previously by Micron, the Court has held that the R&D expenses that can be included in COM cannot exceed the R&D expenses incurred during the POR. See, Comment 3. Thus, even if the respondents ever elect to recognize such expenses on their own books, the Department would be precluded from including such prior period expense in cost of manufacture (COM). Micron states that this is especially problematic where a respondent continuously switches between amortizing/deferring and expensing R&D costs. Because such expenses, if treated as current year expenses, would never be captured in the dumping analysis, it would distortive to exclude such expenses from the R&D calculation.

Department's Position:

We agree with Micron that the Department properly adjusted Hyundai and LG's COP to include the deferred R&D in COP.

It is the Department's long standing practice, codified at section 773(f)(1)(A) of the Act, to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing merchandise. The company's normal books and records kept in accordance with GAAP provide both LG, Hyundai and the Department a reasonably objective and predictable basis by which to compute costs for the merchandise under review. However, in those instances where it is determined that a company's normal accounting practices result in a misallocation of production costs, the Department will adjust respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. See, Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (August 30, 2002). Therefore, because Hyundai and LG's R&D is deferred in the company's normal records, we must follow this treatment if it reasonably reflects the costs associated with the production of the merchandise under consideration.

In the instant proceeding, Hyundai and LG deferred what they claim are R&D expenses for long-term projects which allegedly will provide future benefits to discernible products to be produced in the future. We disagree with Hyundai and LG's characterization of these costs as having discernible future benefits. We continue to find that these costs should be included in current COP because of the high degree of uncertainty of any resulting future benefit. We disagree with the respondents' claim that there is a clear causal relationship between R&D expenses today and sales revenue from the products that are released in the future. No record evidence exists that these products will be marketed in the future or will have revenues to be matched to the deferred R&D expenses. We conclude that R&D should not be deferred because the future economic benefits cannot be quantified and measured with a reasonable degree of certainty.

This view is supported by both IAS and U.S. GAAP. 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." Similarly, U.S. GAAP requires that R&D costs be recognized in the period in which they are incurred. See, FASB No. 2 (1974) at 12. The FASB states that "a direct relationship between research and development costs and specific future revenue generally has not been demonstrated, even with the benefit of hindsight." Id. at 41. Moreover, the FASB states that there is "little, if any, direct relationship between the amount of current R&D expenditures and the amount of resultant future benefits to the enterprise. R&D costs therefore fail to satisfy the suggested measurability test for accounting recognition as an asset." Id. at 45. The FASB concludes that "the notion of 'matching' -- when used to refer to the process of recognizing costs as expenses on any sort of cause and effect basis -- cannot be applied to R&D costs. Indeed, the general lack of discernible future benefits at the time the costs are incurred indicates that the 'immediate recognition' principle of expense recognition should

apply." *Id.* at 49.

Thus, International and U.S. GAAP agree that capitalizing R&D costs as an asset, and attempting to "match" those costs to future revenues would be distortive. The Department concludes that the FASB's findings and opinions cited above clearly constitute substantial evidence showing that Hyundai's and LG's R&D costs, whether amortized or indefinitely deferred, relate to and should be matched to current period production.

In this case, we find that Hyundai's and LG's deferral of R&D was inappropriate and resulted in unreasonable per-unit costs. While the amount of deferred R&D may be tied to company documentation, the Department does not agree that these costs should be deferred. These costs are more appropriately identified as current costs of production because they are in the nature of overhead costs which must be borne by current production since the future benefits are uncertain and not quantifiable. We have not followed Hyundai's or LG's normal books and records in this instance because the deferral of R&D does not reasonably reflect the cost of producing the merchandise under consideration. By excluding these costs from the reported production costs Hyundai and LG have understated the cost of producing the merchandise under consideration and have not reported the actual cost of producing the merchandise under consideration as required by the Act. *See*, Section 773(b)(3) of the Act..

Comment 5: Construction-in-Progress (CIP)

Plaintiffs' Argument:

Hynix contends that LG's accounting methodology for CIP is reasonable and non-distortive. Hynix states that the Department in its redetermination adjusted LG's COM based on the erroneous conclusion that the company had improperly excluded certain costs of a new facility by recording them in a CIP account. According to Hynix, the record provides no basis for the Department to disregard LG's verified, GAAP-consistent accounting. Moreover, Hynix maintains that the Department has disregarded the holding of the Court in Micron v. United States, 19 CIT 829, 893 F. Supp. 21 (CIT 1995) at 36 (Micron I), in which the Court specifically upheld LG's accounting for CIP costs incurred in the construction of new facilities.

Hynix contends that during this review period, LG completed construction and testing at its new [***] facility in Chenongju, which was intended to be used for fabrication of [***]. Further, in accordance with its usual procedures, as part of the final testing of its new technology and new equipment at [***], LG put into test production limited quantities of DRAMs. According to Hynix, at verification the Department examined the official "confirmation for commercial production" letter from Hitachi, the unaffiliated Japanese company from which LG purchased [***] production technology for which [***] was designed. *See*, LG's Cost Verification Exhibit 13 at 23. Hynix states that the letter from Hitachi, dated September 19, 1997, states: . . . [***] Hynix claims that LG began commercial production at [***] was achieved.

Hynix notes that in its Preliminary Analysis Memorandum, the Department stated only that "since there was actual work in progress realized for the DRAMs processed at this fab line, the Department treated these expenses as COM." See, LG's Preliminary Analysis Memorandum at 4 (June 1, 1999). The Department apparently failed to realize that the costs of producing the work in progress at this new facility were not part of the costs that were included in the CIP. Rather, in accordance with LG's normal process cost accounting system, all of the costs of production associated with the work in progress at the end of the test of production period on September 30, 1997 were transferred forward to become the initial beginning work in progress of [***] for the fourth quarter of 1997, and thus became part of the fully loaded cost of the DRAMs that were ultimately produced. See, LG Cost Verification Exhibit 16 at 6. Similarly, the costs associated with production of the small number of finished DRAMs output during the test production period were fully loaded onto those DRAMs. Hynix states that it is only the remaining costs, the costs associated with construction, testing, and lost test production, that were transferred to CIP at the end of the test production period. According to Hynix, LG capitalized such construction and testing costs as part of its normal accounting system in accordance with Korean GAAP. These costs were then amortized as part of the depreciation of the new facility. This depreciation was included in LG's depreciation expenses that are a part of its reported DRAM costs.

Hynix asserts that the law is clear that the Department may only revise a respondents' GAAP-consistent costs when the respondent deviates from its audited financial statements in reporting its costs, or if the cost accounting methodology is somehow distortive. See, 19 USC § 1677b(f)(1)(A); NTN Bearing Corp. v. United States, 17 CIT 713, 826 F. Supp. 1435, 1441 (1993). Hynix contends that LG's treatment of these costs in accordance with Korean GAAP was a logical and reasonable way to account for LG's facility construction and testing costs and did not hide actual production costs. Hynix argues that by its very definition, commercial production is not the start of production from scratch. Rather, commercial production begins at some point after test production has begun. In this case, LG had achieved only small amounts of production as of the time that commercial production began.

According to Hynix, the antidumping law specifically acknowledges that it is appropriate to amortize high costs associated with a new product or new production facility. This is the purpose of the law's provisions regarding startup adjustments. See, Section 773(f)(1)(C) of the Act. As the SAA explains: "In calculating cost of production and constructed value, it is appropriate to take into account that a firm may experience unusually high costs when it is 'starting up' a new product or new production facility." SAA at 165. Thus, Hynix maintains that if LG had not amortized test production costs in its normal accounting, it would have been entitled to do so for antidumping purposes under the startup provisions of the law.

Hynix maintains that this methodology was also considered and approved by the Department with regard to this facility in the previous review. In the verification report in the fourth review, the Department stated that it "also reviewed details of Construction-in-progress account for [***] (Exhibit A13). Production data provided at verification and contained in

submissions was consistent with our verification findings." See, Fourth Review Cost Verification Report (February 24, 1998) at 4. Thus, according to Hynix, the Department in the fourth review verified, understood, and approved the same cost accounting methodology for the CIP costs associated with construction of the same facility that is at issue in this review.

Finally, Hynix argues that LG's accounting methodology for CIP was specifically approved by the Court in Micron I. In that case, the Department reclassified certain capitalized cost of facility construction and testing incurred by LG during the first part of 1991 as COP. The Department explained that:

While the amount of manufacturing costs capitalized as CIP {construction in progress} and R&D may be tied to company documentation, the Department does not agree that these costs should be capitalized. These costs are more appropriately identified as current costs of production because they include the component costs of manufacture, *i.e.*, materials, labor, and overhead, which should be expensed as incurred. Therefore, the Department reclassified the manufacturing costs capitalized as CIP and R&D to current costs of production.

See, Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above From the Republic of Korea, 58 FR 15467, 15475 (March 23, 1993) (DRAMs Final Determination).

Hynix notes that on appeal, the Court overturned the Department's determination, and its analysis is precisely on point in the current review:

To the extent test production and related construction provide a benefit to current and future production, such costs are properly capitalized and amortized over the periods in which those benefits accrue. . . . Indeed, it is Commerce's methodology which distorts costs by allocating all construction, installation, and testing costs to current period production. In sum, {LG} Semicon accounted for testing costs as R&D and amortized such costs accordingly. {LG} Semicon also accounted for related construction by transferring such costs {to CIP} and depreciating these amounts over the useful lives of the related equipment. Commerce has failed to establish that this treatment, which is in accordance with Korean GAAP and {LG} Semicon's internal accounting procedures, significantly distorts costs. The Court therefore concludes that Commerce's decision to reclassify as costs of production {LG} Semicon's capitalized costs of facility construction and testing is unsupported by substantial evidence and and otherwise not in accordance with law.

See, Micron I at 36.

According to Hynix, since Micron I, the Department has allowed other respondents to capitalize costs of facility construction and testing. See, e.g., Notice of Final Determination of Sales at Less Than Fair Value: Dynamic Random Access Memory Semiconductors of One Megabit and Above ("DRAMs") From Taiwan, 64 FR 56308 (October 19, 1999) In this case, the Department concluded that capitalization as CIP of test phase manufacturing costs, when done in accordance with home country GAAP and the respondent's normal and historical accounting, is appropriate. Id. at 56319. Hynix notes that the Department stated, "that it was appropriate to report only the amortized portion of the manufacturing because the capitalization of these expenses during the testing phase of production is reasonable and the amortization of these expenses reasonably reflects the per-unit cost of producing the subject merchandise." Id. Hynix argues that the Department's analysis is equally applicable to LG in this case.

Therefore, Hynix asserts that in the final results the Department should reverse its redetermination and eliminate the unwarranted adjustment that it made to COM.

Petitioner's Argument:

Micron submits that the Department properly adjusted LG's reported costs. It argues that, in essence, LG claims that its [***] was going through a startup phase and its accounting treatment for the "test production" costs was consistent with Korean GAAP. However, Micron states that the antidumping law contains very specific provisions governing startup adjustments. See, Section 773(f)(1)(C) of the Act. According to Micron, LG has not demonstrated its entitlement to a startup adjustment under the statute. In addition, LG's proposed adjustment deviates markedly from the treatment required under the law.

Micron states that in the SAA, "the burden will be on companies to demonstrate their entitlement to a startup adjustment. Specifically, companies must demonstrate that, for the period under investigation or review, production levels were limited by technical factors associated with the initial phase of commercial production and . . . identify those technical difficulties." See, SAA at 838. In the instant case, LG has only asserted that such technical factors exist, but has provided no evidence regarding these technical factors. Moreover, while LG claims that the "test production period" ended on September 30, 1997, the evidence demonstrates that [***]. According to Micron, the verification exhibits show that, as measured by units processed, LG had reached [***]. See, LG Cost Verification Exhibit 16.

Micron alleges that LG's accounting treatment for the DRAMs produced during the claimed startup period and for the start-up adjustment costs is directly at odds with the statute. The startup provision specifies that if the criteria for making a startup adjustment are satisfied, then the Department shall replace the actual unit production costs incurred during the startup period with the unit production costs incurred at the end of the startup period. See, Section 773(f)(1)(C)(iii) of the Act. According to Micron, LG has not followed this requirement. Instead, LG [***] for the costs of the start-up period products. This approach, Micron maintains, is not in keeping with the statute. In sum, Micron submits that LG has not shown that it qualifies

for a startup adjustment, nor has LG adequately explained what happened to [***] costs before the claimed initiation of commercial production.

Department's Position:

We agree with Micron that the Department properly adjusted LG's COM to account for the amount of expenses LG placed in CIP. In the Preliminary Results, we included in COP certain costs for production activity in a new fabrication facility. LG capitalized these production costs as part of the cost of the new fabrication facility. See, Preliminary Results at 64 FR 30485.

It has been the Department's long standing practice, codified at section 773(f)(1)(A) of the Act, to rely on data from a respondent's normal books and records where those records are prepared in accordance with home country GAAP and reasonably reflect the costs of producing merchandise. The company's normal books and records, kept in accordance with GAAP, provide both LG and the Department a reasonably objective and predictable basis by which to compute costs for the merchandise under review. However, in those instances where it is determined that a company's normal accounting practices result in a mis-allocation of production costs, the Department will adjust respondent's costs or use alternative calculation methodologies that more accurately capture the actual costs incurred to produce the merchandise. See, Notice of Final Determination of Sales at Less Than Fair Value: Carbon and Certain Alloy Steel Wire Rod From Canada, 67 FR 55782 (August 30, 2002). Therefore, because LG's production expenses are capitalized in the company's normal records, we must follow this treatment if it reasonably reflects the costs associated with the production of the merchandise under consideration.

In the instant proceeding, LG capitalized what they claim are construction, testing and lost production costs for a new fabrication facility [***] as part of the cost of the new facility. See Hynix Comments (August 18, 2004) at 10. We disagree with LG's characterization of these costs and we continue to find that these costs are for production of the merchandise under consideration in the normal course of business. We find that the production quantities in LG's Cost Verification Exhibit 16 at page 6 (Exhibit 16), referred to by respondents to support their claim, represent nothing more than production costs for DRAMS. Given that the record does not support treating these costs as anything other than production costs, and the costs include the component costs of manufacture, *i.e.*, material, labor, and overhead, which should be expensed as incurred, these costs are more appropriately identified as current costs of production. See, DRAMs Final Determination. This approach is not inconsistent with the Department's past practice or the CIT's decision in Micron I. At times it may be appropriate to capitalize certain manufacturing costs, such as test phase manufacturing costs that are not associated with commercial production. However, the facts in this review segment do not support such treatment for the costs in question.

In this case, we find that LG's capitalization of production expenses was inappropriate and resulted in unreasonable per-unit costs. While the amount of manufacturing costs capitalized may be tied to company documentation, as explained above, the Department does not agree that

these costs should be capitalized. We have not followed LG's normal books and records in this instance because the reclassification of production costs from the income statement to an asset account on the balance sheet does not reasonably reflect the cost of producing the merchandise under consideration. See, Final Results of Antidumping Duty Administrative Review of Certain Preserved Mushrooms from India, 66 FR 42507 (August 13, 2001) and accompanying issues and decision memorandum at Comment 7. By excluding these costs from the reported production costs LG has understated the cost of producing the merchandise under consideration and has not reported the actual cost of producing the merchandise under consideration as required by the Act. See, Section 773(b)(3). In order to accurately reflect the COP of the merchandise under consideration for these final results, we have included the production costs that were capitalized by LG in the reported costs as we did in the preliminary results.

In addition, LG claims that if it had not amortized test production costs in its normal accounting then it would have been entitled to a startup adjustment under section 773(f)(1)(C) of the Act. Even if the costs at question were as described by LG, and that is not supported by the record evidence, LG did not qualify for a start-up adjustment under the statute because LG did not fulfill the requirements set by the Department to qualify for a startup adjustment. We do not consider LG's claim that its new facility started commercial production on September 30, 1997 to be valid. The record of this review does not support LG's claim that its production levels were limited due to technical factors associated with the initial phase of production. LG's production was below its planned capacity during the quarters prior to September 1997. The SAA, however, does not provide for the efficiency of production operations or full capacity utilization as criteria for measuring production levels. See, Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from India, 63 FR 72246, 72253 (December 31, 1998) and Notice of Final Determination of Sales at Less Than Fair Value: Certain Preserved Mushrooms from Chile, 63 FR 56613, 56618 (October 22, 1998). The SAA states that the attainment of peak production levels will not be the standard for identifying the end of the startup period, because the startup period may end well before a company achieves optimum capacity utilization. See, SAA at 836. Although production levels at LG's [***] were not at their peak levels, LG produced and sold sizable quantities of DRAMS from [***].

The SAA directs the Department to examine the number of units processed as the primary indicator of production levels in determining the end of the start-up period. Id. From Exhibit 16, page 6, it is clear that LG had a significant number of units processed during the POR which were not small quantities representing test batches of production. From this we must conclude that LG had enough confidence in its production process to place significant numbers of DRAMS in production. As Section 773 (f)(1)(C)(ii) of the Act established that both prongs of the start-up test must be met to warrant a startup adjustment had one been requested a startup adjustment, which they did not, we would have denied it.

Comment 6: Exchange Rates

Plaintiffs' Argument:

Hynix states that in its Analysis Memorandum for LG for the draft remand results, the Department stated that it applied the exchange rate database used in the calculation of the final results for Hyundai. This exchange rate file, SKOREA97, takes into consideration the rapid decline in the value of the Korean won during the POR when it converted won to U.S. Dollars.

Hynix notes that there are two places in the SAS program that employ the exchange rates – lines 18 and 692. At line 18, the correct file, SKOREA97, is processed. At line 692, the Department used a different file, SKOREA. Hynix argues that this latter file differs from the SKOREA97 file in that it represents the 40-day benchmark rates for the entire period. According to Hynix, this error can be corrected by replacing line 692 to read: "SET COMPANY.SKOREA97".

Petitioner's Argument:

The petitioner submitted no comments on this issue.

Department's Position:

We agree with Hynix that there is an error with regard to the exchange rates in LG's SAS margin program for the draft remand results. Therefore, for these final results we have made a change in LG's SAS margin program to reflect "SET COMPANY.SKOREA97" at line 692.

Comment 7: Calculation of R&D Expense Ratio

Plaintiffs' Argument:

Hynix contends that although the Department indicated that it "recalculated LG's and Hyundai's R&D for these remand results by using R&D expenses as reported by LG and Hyundai, it continued to allocate non-DRAM R&D for LG's costs. The Department calculated the revised R&D ratio by dividing all of LG's R&D expense by all of its COGS for semiconductors. Instead, to calculate DRAM-specific R&D, it should have divided only the DRAM-specific R&D expenses with the DRAM-specific COGS.

According to Hynix, the Department in its calculations incorrectly used R&D expenses for all of LG's semiconductor products instead of only the DRAM-specific R&D expenses. It also maintains that the Department erroneously applied the COGS for all of LG's semiconductor products instead of the DRAM-specific COGS.

Hynix maintains that the Department should correct its R&D calculation for LG to ensure that only DRAM-specific R&D is utilized in the margin correction and that the Department incorporated LG's amortized R&D expense, as it stated it had done.

Petitioner's Argument:

Micron contends that, as explained in its August 18, 2004 comments, there is voluminous additional information on the record which demonstrates the effect of non-subject merchandise R&D on the R&D for subject merchandise. In particular, information on the record shows that R&D in the area of logic semiconductors has had substantial benefits in the production of memory semiconductors. Micron notes that at verification, the Department discovered that Hyundai's [***] during the POR. See, Hyundai Cost Verification Report at 9 (June 1, 1999).

According to Micron, this constitutes additional evidence which specifically shows the cross-fertilization effect between Hyundai's [***] during the POR. As such, it directly addresses the Court's instructions to "provide additional information specifically pointing to the effect of non-subject merchandise R&D on the R&D for the subject merchandise." Consequently, rather than recalculating Hyundai's R&D expense, the Department should simply present this additional evidence of cross-fertilization.

However, Micron argues that if the Department does recalculate Hyundai's R&D expense ratio on a memory-specific basis, it should be aware that there is an error in the recalculation suggested by Hynix. In particular, Hynix deducted from the numerator amortized R&D lab expenses and amortized R&D Engineering expenses. However, [***] of these amortized amounts were recognized by Hyundai during the POR. Any recalculation of the R&D expense ratio for Hyundai should include these amounts recognized in the numerator.

Department's Position:

We agree with Micron that additional information exists on the record which demonstrates the effect of non-subject merchandise R&D on the R&D for subject merchandise. See, Comment 2, above. We believe that this information directly addresses the Court's instructions to "provide additional information specifically pointing to the effect of non-subject merchandise R&D on the R&D for the subject merchandise." See, Hyundai at 35. Therefore, contrary to the argument presented by Hynix, we have not recalculated LG's and Hyundai's R&D expense ratio on a memory specific basis. As we calculated Hyundai's R&D ratio on a semiconductor basis, the calculation error raised by Micron is moot.

Comment 8: Interest Expense Ratio

Plaintiffs' Argument:

Hynix contends that LG provided the Department with its interest expense calculation in its response to the Department's section D questionnaire. That worksheet demonstrated that the interest expense for LG was [***] percent. However, in its redetermination, the Department revised the interest expense to [***] percent, but failed to explain the basis for this increase. Hynix argues that Department should revise its calculations to apply LG's reported interest expense of [***] percent.

Petitioner's Argument:

Micron states that for the preliminary results, the Department adjusted LG's reported interest expense ratio to include foreign currency translation gains and losses. According to Micron, LG never argued that such an adjustment was incorrect. In fact, the relevant programming language implementing this change was proposed by LG in its Case Brief. See, LG's Case Brief at 124 (October 21, 1999). Further, Micron notes that it is the Department's practice to include foreign exchange gains and losses in the numerator of the interest expense ratio. Accordingly, the Department should make no further revision to the ratio.

Department's Position:

We agree with Micron. In the Preliminary Results (64 FR 30485), the Department adjusted LG's interest expense by including translation gains and losses and the amortized amounts of deferred foreign currency translation gains and losses, consistent with the Department's practice. See, Dynamic Random Access Memory Semiconductors of One Megabit or Above From the Republic of Korea: Final Results of Antidumping Duty Administrative Review, Partial Rescission of Administrative Review and Notice of Determination Not to Revoke Order, 63 FR 50867 (September 23, 1998). Therefore, the Department has made no revision of its calculation of LG's interest expense ratio for these final results.

Comment 9: Importer-Specific Duty Assessment Rates for Hyundai

Petitioner's Argument:

Micron claims that there is an error in the margin program of the Draft Remand Results which affects the calculation of the entered value of the further-manufactured DRAM modules sold by Hyundai. This error, Micron notes, does not affect the dumping margin. However, it causes a substantial overstatement of the total entered value of sales for the POR, resulting in an erroneously low importer-specific assessment rate.

According to Micron, this error occurs at the very end of the margin program in the calculation of the total entered value (ENTERVAL). The program calculates ENTERVAL as the sum of ENTVL for each sale multiplied by quantity (QTY) for each sale. However, for sales of modules that were further manufactured in the United States from imported chips, this calculation produces a distorted result. Micron maintains that this is because, for sales of further manufactured modules, ENTVL represents the entered value of the module, whereas QTY represents the number of chips contained in each further manufactured module sale, not the number of modules in the sale. This mismatch results, under the current calculations, in the improper multiplication of the entered value for an entire module times the total number of chips in the module sale. As a consequence, the ENTERVAL calculated by the Department and used to derive the assessment rate i.e., [***], vastly exceeds the total entered value reported by Hyundai, i.e., [***].

Plaintiff's Argument:

Hynix agrees that the Department should address this issue, but contends that Micron has misstated the facts. According to Hynix, the correct entered value the Department should use to calculate the assessment rate is [***], not the figure alleged by Micron.

Hynix argues that the value Micron focuses upon consists of sales transactions only to U.S. customers. The total imports, however, were [***] and includes sales transactions to customers both inside and outside the United States. See, Hyundai's Sales Verification Exhibit 4. According to Hynix, the Bureau of Customs and Border Protection (CBP) could not and cannot distinguish the exact entry transactions of [***] to U.S. customers from all Hyundai entries of [***] to assess the antidumping margin. CBP cannot know whether these products will be sold inside or outside the United States. Therefore, Hynix contends that if the Department calculates the assessment rate by dividing the antidumping margin found from the entered value only to customers in the United States and applies this assessment rate to a "larger" entered value that includes both U.S. and non-U.S. customer transactions, the resulting dumping duties will be substantially overstated. In conclusion, Hynix states that the assessment rate should be calculated based on the entered value of [***].

Department's Position:

We agree with Micron that the calculation of the entered value of the further-manufactured DRAM modules in Hyundai's SAS margin program is a clerical error. This error has been corrected by making the programming changes recommended by Micron for these final results of redetermination on remand.

However, we have not addressed the issue raised by Hynix. We note that we calculated an importer-specific assessment rate in Hyundai's SAS margin program for the Preliminary Results and the Final Results using exactly the same methodology that was employed in the draft remand. However, as Hyundai did not raise this as an issue during the review, we cannot confirm the factual basis of their claim to determine if the adjustment they are proposing is appropriate. More importantly, the record does not appear to contain the data necessary to support Hyundai's claim for an adjustment to the assessment rate calculation. See, Hyundai Case Brief (October 21, 1999).

RESULTS OF REMAND DETERMINATION

As a result of this determination, LG's dumping margin for the period May 1, 1997-April 30, 1998 is 15.87 percent. Hyundai's dumping margin for the period May 1, 1997-April 30,

1998 is 5.37 percent. These rates have changed from the rates announced in the December 14, 1999, final results of the fifth administrative review.

James J. Jochum
Assistant Secretary
For Import Administration

(Date)