

**FINAL RESULTS OF REDETERMINATION
PURSUANT TO COURT REMAND
Welded Line Pipe from the Republic of Korea
Stupp Corporation et al. v. United States,
Consol. Court No. 15-00334, Slip Op. 19-2 (CIT January 8, 2019)**

Summary

The Department of Commerce (Commerce) prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (the Court) issued in *Stupp Corporation et al. v. United States*, 359 F. Supp. 3d 1293, (CIT 2019) (*Stupp*). This action arises out of the final determination in the less-than-fair-value (LTFV) investigation of *Welded Line Pipe from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 80 FR 61366 (October 13, 2015) (*Final Determination*); *see also* *Welded Line Pipe from the Republic of Korea: Amended Final Determination of Sales at Less Than Fair Value*, 80 FR 69637 (November 10, 2015) (*Amended Final Determination*). The Court remanded to Commerce to: (1) explain or reconsider its decision regarding respondent Hyundai HYSCO’s home market “local sales” (*i.e.*, certain sales that it made to customers in the Republic of Korea (Korea) that are likely to export the merchandise, either subsequent to further manufacturing or “as-is”); and (2) place on the administrative record all or part of a supplemental case brief filed by petitioner, Maverick Tube Corporation (Maverick), which Commerce rejected in the LTFV investigation. Upon reconsideration of the record evidence and the Court’s remand order, Commerce: (1) determined that Hyundai HYSCO knew, or should have known, that

certain sales it reported as home market “local sales” were exported without further manufacturing; and (2) placed on the record Maverick’s supplemental brief and accepted Hyundai HYSCO’s rebuttal to that brief. As a result, Commerce recalculated Hyundai HYSCO’s estimated weighted-average dumping margin without including these sales in the calculation of normal value, which resulted in a recalculated weighted-average margin of 6.22 percent.

Background

Commerce published the *Final Determination* on October 13, 2015.¹ Prior to issuing the *Final Determination*, Commerce established a revised briefing schedule to allow parties additional time to comment on the revised databases submitted by the respondents close to the deadline for case briefs.² Commerce subsequently rejected Maverick’s supplemental case brief submitted on September 8, 2015, because the comments contained in that brief were not limited to comments related to revisions to the respondents’ sales databases.³

As discussed in the *Final Determination*, Commerce accepted Hyundai HYSCO’s claim that, for virtually all of Hyundai HYSCO’s local sales, at the time of sale, Hyundai HYSCO did not have knowledge of the final destination of this merchandise, nor whether the merchandise in these specific sales would be further processed prior to export. Thus, Commerce concluded that these sales were properly considered to be home market sales.⁴

However, in its January 8, 2019, opinion, the Court remanded the *Final Determination* to Commerce, concluding that the inclusion of certain local sales in Hyundai HYSCO’s home

¹ See *Final Determination*.

² See Memorandum, “Revision to Briefing Schedule,” dated August 31, 2015.

³ See Letter, “Antidumping Investigation of Welded Line Pipe from Korea,” dated September 9, 2015.

⁴ See *Final Determination*, and accompanying Issues and Decision Memorandum (IDM) at Comment 6.

market sales database was not in accordance with law and not supported by substantial evidence.⁵ According to the Court, the record evidence suggests that Hyundai HYSCO knew, or should have known, that the sales at issue would be exported without further processing, and Commerce failed to address such evidence.⁶ Therefore, the Court remanded for Commerce to explain or reconsider its decision to include certain local sales in Hyundai HYSCO's home market database in light of this record evidence.⁷

Separately, the Court held that Commerce's rejection of Maverick's September 8, 2015, supplemental case brief constituted an abuse of discretion.⁸ Therefore, the Court remanded for Commerce to review and determine which portions of Maverick's supplemental case brief should be retained, and place those portions of the brief on the record.⁹

On February 6, 2019, we reopened the administrative record to permit Maverick to place its September 8, 2015, supplemental case brief on the record in its entirety, and to provide other interested parties the opportunity to submit rebuttal briefs in response to Maverick's supplemental case brief.¹⁰ On February 8, 2019, Maverick placed its supplemental case brief on the record of this proceeding.¹¹ On February 15, 2019, Hyundai Steel Company (Hyundai Steel)¹² submitted a rebuttal brief.¹³

⁵ See *Stupp*, 359 F. Supp. 3d at 1309.

⁶ *Id.* at 1309-1312.

⁷ *Id.* at 1312.

⁸ *Id.* at 1311-1312.

⁹ *Id.* at 1312.

¹⁰ See Letter, "Court Remand in the Less-Than-Fair-Value Investigation of Welded Line Pipe from the Republic of Korea," dated February 6, 2019.

¹¹ See Letter from Maverick, "Welded Line Pipe from the Republic of Korea: Supplemental Case Brief," dated February 8, 2019 (Maverick Supplemental Brief).

¹² We note that Hyundai HYSCO merged with Hyundai Steel prior to the LTFV investigation, and Hyundai HYSCO no longer exists. See *Final Determination*, and accompanying IDM at 1.

¹³ See Letter from Hyundai Steel, "Welded Line Pipe from Korea: Rebuttal to Maverick's Supplemental Case Brief," dated February 15, 2019.

Analysis

Consistent with *Stupp*, we reconsidered whether Hyundai HYSCO knew, or should have known, the ultimate disposition of certain “local sales” that we treated as home market sales in the *Final Determination*.

The Court discussed the following factors that suggest Hyundai HYSCO knew, or should have known, based on the particular facts and circumstances of the investigation, that the merchandise would be exported from Korea without further processing:

- the merchandise was invoiced in U.S. dollars;¹⁴
- the sale received value-added tax (VAT)-free treatment;
- the merchandise was shipped from Hyundai HYSCO to a facility at or near a port; and
- the merchandise was sold to a customer that, based on the record information, was not a distributor, reseller, or an owner of a facility to further process the merchandise before export.¹⁵

Accordingly, we reviewed the record evidence for those sales satisfying these criteria in order to determine whether Hyundai HYSCO knew, or should have known, that the sales at issue would be exported from Korea without further processing. Specifically, we examined record evidence, including the submission referenced by the Court,¹⁶ that included public sources, such as internet websites indicating that certain of Hyundai HYSCO’s customers were trading or

¹⁴ Although the Court treated this item as proprietary information (*see Stupp*, 359 F. Supp. 3d at 1310), Hyundai HYSCO publicly disclosed that it invoiced some home market customers in U.S. dollars. *See, e.g.*, the public version of Hyundai HYSCO’s March 24, 2015, supplemental questionnaire response (March 24 SQR) at 1-2.

¹⁵ *See Stupp*, 359 F. Supp. 3d at 1310.

¹⁶ *Id.* (citing Letter from Maverick, “Welded Line Pipe from the Republic of Korea: Comments on Hyundai HYSCO’s Supplemental Section D Questionnaire,” dated June 8, 2015 (Maverick Hyundai SQRD Comments)).

engineering services companies that did not own a facility in Korea to further manufacture welded line pipe before export.¹⁷

We first identified the home market local sales¹⁸ that received VAT-free treatment,¹⁹ and were sold in U.S. dollars.²⁰ For this resulting subset of Hyundai HYSCO's home market sales, we analyzed the information on the record to consider whether each of the customers identified in Maverick's submissions was likely to consume the merchandise in Korea, resell the merchandise to another customer for consumption in Korea, or further process the merchandise before export. In other words, we evaluated whether the sales at issue were likely to be exported "as-is" after purchase from Hyundai HYSCO.

We also considered the extent to which Hyundai HYSCO had knowledge of its customers' activities. In its questionnaire response, Hyundai HYSCO reported that its home market sales staff had regular contact with its customers and, thus, it is reasonable to assume that Hyundai HYSCO had knowledge of its customers' activities:

As sales in the domestic market are highly dependent upon the maintenance of close personal relationships with business partners, HYSCO considers its long-standing relationships with its customers as a key component of its sales strategy. Therefore, in order to maintain these personal ties, HYSCO sales personnel regularly communicate with their customers by telephone with respect to a range of sales issues.²¹

¹⁷ See Letter from Maverick, "Welded Line Pipe from South Korea: Maverick's HM Viability Allegation," dated February 18, 2015 (HM Viability Allegation) at 3-4 and Attachments 2 and 3; and Maverick Hyundai SQRD Comments at 12-14, and Exhibits 9, 11, 14, 16, 17, 19, and 21.

¹⁸ See Hyundai HYSCO's April 9, 2015, supplemental questionnaire response at 3.

¹⁹ See March 24 SQR at 2.

²⁰ See Hyundai HYSCO's March 31, 2015, supplemental questionnaire response at Exhibit B-13.

²¹ See Hyundai HYSCO's Section A Questionnaire Response (AQR), dated January 14, 2015, at A-21.

At verification, we examined sales to three of the customers identified in Maverick's submissions: [];²² [];²³ and []. According to the documentation reviewed at verification and our discussions with Hyundai HYSCO staff, we found that these customers "are [] or distributors with no facilities of their own to further manufacture {welded line pipe} prior to export."²⁴ Hyundai HYSCO staff stated at verification that, while they had no actual knowledge of the ultimate disposition of local sales for which they did not prepare the export documentation, they were aware that many of these sales could have been exported "as-is" without further manufacture, regardless of whether or not the merchandise was shipped to a port.²⁵ Based on the totality of the information on the record, including our verification findings and the absence of contrary evidence, we now determine that Hyundai HYSCO knew, or should have known, that its VAT-free, local sales to [], [], and [], which were invoiced in U.S. dollars, would be exported without further processing in Korea. Therefore, for these final results of redetermination, we removed the local sales to these customers from the home market sales used to determine normal value.²⁶

The other customers for local sales identified in Maverick's submissions are: []; [];²⁷ [];²⁸ []

²² This company also appears as []. See Maverick SQRD Comments at HM Viability Allegation at 12; and March 24 SQR at 4.

²³ This company also appears as []. See Hyundai HYSCO Sections B and C Questionnaire Response, dated February 2, 2015, at Exhibit B-7 (Home Market Sales customer list).

²⁴ See Memorandum to the File, "Verification of the Sales Responses of Hyundai HYSCO (HYSCO)," dated August 18, 2015 (Hyundai HYSCO SVR), at 7-8, and Sales Verification Exhibit (SVE) 29.

²⁵ *Id.* at 8; see also Letter from Maverick, "Welded Line Pipe from South Korea: Pre-Preliminary Comments on HYSCO's HM Viability and CV Profit Issues," dated May 11, 2015, at 18-20, and Attachments 1 and 4.

²⁶ See Memorandum, "Calculations for Hyundai HYSCO and All-Others Rate Pursuant to Draft Results of Redetermination," dated March 12, 2019 (Calculation Memorandum).

²⁷ Both names appear on the record for this customer. See March 24 SQR at 4.

²⁸ Both names appear on the record for this customer. See March 24 SQR at 4.

];²⁹ and [].³⁰ Because we did not examine these customers in detail at verification, we considered whether the sales to these customers were shipped to a port location, based on information reported in Hyundai HYSCO's home market sales database.³¹ Based on the totality of the information on the record, including the absence of contrary evidence, we determine for this remand determination that Hyundai HYSCO knew, or should have known, that its VAT-free, local sales to these customers, invoiced in U.S. dollars, that were shipped to a port location, would be exported without further processing in Korea. Therefore, for these final results of redetermination, we removed these additional local sales from the home market sales used to determine normal value.³²

Interested Party Comments

On March 12, 2019, Commerce released the draft results of redetermination to all interested parties, and invited parties to comment. On March 19, 2019, we received comments from Maverick and Hyundai Steel.³³ After considering the parties' comments, we made no changes to the draft results of redetermination for these final results of redetermination in response. We address these comments below:

Comment 1: Reclassification of Local Sales as Export Sales

Hyundai Steel's Comments

- Commerce should not exclude the local sales at issue from the home market sales used to calculate Hyundai HYSCO's normal value. Commerce's analysis to exclude these sales is flawed because it relies on information Hyundai HYSCO did not know at the time of sale.

²⁹ Both names appear on the record for this customer. See March 24 SQR at 4.

³⁰ See HM Viability Allegation at 3; see also Maverick Hyundai SQRD Comments at 12-14.

³¹ See Hyundai HYSCO's April 29, 2015, supplemental questionnaire response at 2.

³² See Calculation Memorandum.

³³ See Letters dated March 19, 2019, from Maverick, "Welded Line Pipe from the Republic of Korea: Comments on Draft Results of Redetermination Pursuant to Court Remand, *Stupp Corp. v. United States*, Consol. Ct. No. 15-00334, Slip Op. 19-2 (Ct. Int'l Trade Jan. 8, 2019)" (Maverick Comments); and from Hyundai Steel, "Welded Line Pipe from Korea: Comments on the Department's Draft Remand Redetermination" (Hyundai Steel Comments).

- Commerce’s reliance on whether particular sales were shipped to a port location to impute knowledge of export without further manufacture is misplaced. There are many industrial locations in Korea where products are further manufactured, as well as warehousing facilities where industrial goods are stored for shipment to domestic and export locations are located near ports, and there are examples of sales shipped to these locations where the welded line pipe was likely further manufactured by the home market customer.³⁴
- Commerce’s exclusion of certain home market sales to specific customers is also misplaced because it assumes Hyundai HYSCO’s imputed knowledge of the customers’ operations means that it would have known that merchandise sold to these customers would not be further manufactured prior to export. Once Hyundai HYSCO sells its merchandise, the welded line pipe enters the commercial stream and may be resold such that Hyundai HYSCO has no way of knowing whether a product would be exported “as is.” Thus, Commerce’s analysis may have excluded sales that were actually consumed in the home market.³⁵
- Finally, Hyundai HYSCO’s reporting of “local sales” in the LTFV investigation was consistent with the methodology used in previous cases to distinguish between “local export” sales and “local domestic” sales, as well as the methodology used by respondent SeAH Steel Corporation (SeAH) in the LTFV investigation.³⁶ Commerce’s analysis is based, instead, on speculation of what may have ultimately happened with certain sales after shipment.

Maverick’s Comments

- While it concurs with Commerce’s exclusion of certain alleged home market local sales, Maverick’s argument was not limited to sales denominated in U.S. dollars. The currency of the sale transaction should not be a factor in determining if a local sale should be excluded from the home market sales database.³⁷

³⁴ See Hyundai Steel Comments at 4-7 (citing Hyundai HYSCO’s letter, “Welded Line Pipe from the Republic of Korea: Submission of Rebuttal Factual Information,” dated May 22, 2015, at Exhibits 1-6; and Hyundai HYSCO SVR at 8 and SVE 1 and 36).

³⁵ *Id.* at 7-11 (citing Hyundai HYSCO SVR at 8).

³⁶ *Id.* at 11-18 (citing Maverick Hyundai SQRD Comments at Exhibits 1 and 4; Memorandum, “Verification of the Sales Responses of SeAH Steel Corporation (SeAH) and Pusan Pipe America (PPA),” dated August 24, 2015, at 11; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663 (December 10, 2007), and accompanying IDM at Comment 2; and *Notice of Final Results of the Tenth Administrative Review and New Shipper Review of the Antidumping Duty Order on Certain Corrosion-Resistant Carbon Steel Flat Products from the Republic of Korea*, 70 FR 12443 (March 14, 2005), and accompanying IDM at Comment 28).

³⁷ See Maverick Comments at 2 (citing Maverick Supplemental Brief at 2-10).

Commerce's Position:

As discussed above, the Court instructed Commerce to explain or reconsider its decision to include certain local sales in Hyundai HYSCO's home market database in light of record evidence that suggested Hyundai HYSCO knew or should have known that the sales at issue would be exported without further processing.³⁸ Thus, the Court remanded to Commerce to further explain or reconsider its decision to include certain local sales in Hyundai HYSCO's home market database.

Hyundai Steel contends that, at the time of the sale, it had no specific knowledge regarding the disposition of a particular pipe. On that basis, Hyundai Steel argues that Hyundai HYSCO could not have known if its customer would export the product as is. However, as the Court explained, relying on a respondent's records and sales information is insufficient for Commerce's determination of knowledge:

To determine whether a sale is a home market sale, Commerce objectively assesses whether, given the particular facts and circumstances, a producer would have known that the merchandise will be sold domestically or for export. Commerce's review is not limited to documentation submitted by the producer; it may review petitioner's submissions as well. Commerce must diligently inquire into allegations of knowledge and render its conclusion based on all relevant facts and circumstances. Commerce's conclusion that the challenged sales were home market sales fails to address record evidence that the subject merchandise was exported without further processing.³⁹

Consistent with the Court's remand order, and as described above, Commerce conducted an analysis of the local sales, taking into consideration not only Hyundai HYSCO's sales records, but also the additional information cited by the Court, including the material submitted by Maverick. Specifically, the Court instructed Commerce not to rely on the respondent's sales documentation alone to determine whether the sales at issue would be exported without further

³⁸ See *Stupp*, 359 F. Supp. 3d at 1309-1312.

³⁹ *Id.* at 1310 (internal cites omitted).

processing. Accordingly, on remand, we considered the other information on the record, such as the customer's business and facilities, and the delivery point of the sale in Korea.

As noted above, Hyundai HYSCO stated that it maintained close relationships with its customers, indicating that it developed knowledge of its customers business activities and their usage of Hyundai HYSCO's welded line pipe.⁴⁰ During the period of investigation, Hyundai HYSCO conducted a significant number of sales transactions with its local sales customers, further demonstrating its level of interaction with these customers.⁴¹ We find that this level of customer interaction provides support that Hyundai HYSCO knew or should have known whether sales to these customers would have been further manufactured or exported "as-is."

Hyundai Steel contends that our analysis for the draft remand redetermination improperly focuses on the shipping destination of the sale. Because of Korea's geography, many industrial sites are clustered around ports. As a result, Hyundai Steel speculates that this methodology would cause Commerce to reclassify, as export sales, certain local sales transactions that were delivered to a port location, but near facilities that could further process welded line pipe.⁴² Despite pointing to two examples of such a situation, Hyundai Steel concedes that the sales examples cited "are not sales which {Commerce} ultimately excluded from the home market database in the Draft Remand Redetermination...."⁴³ Indeed, Hyundai Steel fails to point to any Hyundai HYSCO local sale that was misclassified by the agency as an export sale as a result of our analysis. As described above, we considered several factors before making the determination that Hyundai HYSCO knew or should have known a given sale would be exported

⁴⁰ See AQR at A-21; *see also* Hyundai HYSCO SVR at 8.

⁴¹ See Calculation Memorandum at Attachment 1 (SAS log indicating number of observations in datasets with local sales transactions).

⁴² See Hyundai Steel Comments at 4-5.

⁴³ *Id.* at 5.

without further manufacture in Korea. Accordingly, Hyundai Steel's failure to support its argument only confirms the reasonableness of this analysis.

Hyundai Steel further contends that its local sales reporting methodology is consistent with Hyundai HYSCO's reporting methodology in previous cases, which Commerce accepted.⁴⁴ In those cases, as in the *Final Determination*, Commerce relied on the sales records and documentation to determine whether the sales merchandise would be exported directly or further manufactured prior to export.⁴⁵ As stated previously, the Court specifically instructed Commerce to conduct a further analysis of evidence on the record and consider all relevant information, not simply the respondent's sales documentation. We have complied with these instructions and analyzed the information on the record of this proceeding. Because our analysis is specific to the information on the record of this proceeding, Hyundai HYSCO's manner of reporting its local sales in other cases is not relevant.

Finally, we disagree with Maverick's contention that Commerce should disregard the currency of the transaction in its reconsideration of Hyundai HYSCO's local sales. Such an approach ignores the Court's instructions to consider whether the local sale was invoiced in U.S. dollars as evidence the merchandise was to be exported without further manufacturing.⁴⁶ Accordingly, we find that our analysis and reclassification of certain Hyundai HYSCO local sales in the draft results of redetermination, as discussed above, addresses the Court's

⁴⁴ *Id.* at 13-15.

⁴⁵ See *Final Determination* at Comment 6.

⁴⁶ See *Stupp*, 359 F. Supp. 3d at 1310.

instructions in the remand. As a result, we made no changes to the Hyundai HYSCO home market sales we disregarded for these final results of redetermination.

Comment 2: Whether to Reconsider Hyundai HYSCO's Home Market Viability

Maverick's Comments

- Commerce improperly limited its redetermination to excluding certain home market sales from the normal value calculation. However, after excluding the home market sales at issue, Commerce should also reconsider Hyundai HYSCO's home market viability. Accordingly, Commerce will find that Hyundai HYSCO did not have a viable home market and should recalculate its margin using a constructed value (CV) methodology.
- In applying the CV methodology, Commerce should rely on the CV profit rate calculated for the other mandatory respondent in the LTFV investigation, SeAH.⁴⁷

Hyundai Steel's Comments

- Commerce correctly relied on Hyundai HYSCO's remaining home market sales as the basis for normal value, consistent with Commerce's statutory discretion and authority.⁴⁸
- Commerce determines which market to use early in a proceeding, and usually does so before analyzing whether certain sales are usable in its margin calculations. Thus, the decision to include particular sales in Commerce's analysis is separate from the market viability issue.⁴⁹
- However, should Commerce rely on CV rather than Hyundai HYSCO's home market sales to determine normal value, Commerce should use Hyundai HYSCO's own data to calculate CV profit, rather than data from other Korean or third-country welded line pipe producers.

⁴⁷ See Maverick Comments at 4-5 (citing Letter from Maverick, "Welded Line Pipe from the Republic of Korea: Case Brief," dated September 1, 2015, at 23-29).

⁴⁸ See Hyundai Steel Comments at 18-22 (citing sections 773(a)(1)(c) and 773(a)(1)(B)(ii)(II) of the Act; and Uruguay Round Agreements Act Statement of Administrative Action (SAA), attached to H.R. No. 103-316, vol. 1 at 821 (1994) ("...Commerce will normally use the five percent threshold except where some unusual situation renders its application inappropriate.... In unusual situations, however, home market sales constituting less than five percent of sales to the United States could be considered viable.")).

⁴⁹ *Id.* at 22-23 (citing *Certain Oil Country Tubular Goods from Saudi Arabia: Final Determination of Sales at Less Than Fair Value*, 79 FR 41986 (July 18, 2014) (*OCTG from Saudi Arabia*), and accompanying IDM at Comment 2).

Commerce's Position:

Commerce's practice is to identify the appropriate basis for normal value early in a proceeding.⁵⁰ As Commerce explained in *OCTG from Saudi Arabia*:

It would be extremely difficult for the Department to conduct the investigation within the statutory time limits if it waited until after all decisions have been made concerning affiliation and the arm's length test, cost and the sales-below-cost test, before determining whether the home market is viable.⁵¹

We note that Maverick provides neither a statutory basis nor case precedent for Commerce to revisit its home market viability determination as a result of our determination to disregard certain home market sales. Thus, consistent with our practice, Commerce is not revisiting its home market viability determination for Hyundai HYSCO. Moreover, because we are using Hyundai HYSCO's home market sales as the basis for NV, parties' comments concerning the appropriate source to use for CV profit are moot.

Final Results of Redetermination

For the foregoing reasons, and consistent with the Court's remand order, we find that Hyundai Steel knew, or should have known, that certain local sales included in its home market database would be exported without further processing in Korea. Accordingly, we excluded the sales at issue and recalculated Hyundai HYSCO's normal value and estimated weighted-average dumping margin. Hyundai HYSCO's revised estimated weighted-average dumping margin is 6.22 percent.⁵² This change to Hyundai HYSCO's margin did not affect the calculation of the all-others rate presented in the *Amended Final Determination* (i.e., 4.38 percent).⁵³ Because

⁵⁰ See, e.g., *OCTG from Saudi Arabia*, and accompanying IDM at Comment 2; and *Notice of Final Determination of Sales at Less Than Fair Value: Bottle-Grade Polyethylene Terephthalate (PET) Resin from Indonesia*, 70 FR 13456, (March 21, 2005), and accompanying IDM at Comment 11.

⁵¹ See *OCTG from Saudi Arabia*, and accompanying IDM at Comment 2.

⁵² See Calculation Memorandum.

⁵³ *Id.* at Attachment 3.

Hyundai HYSCO's estimated weighted-average dumping margin calculated in these final results of redetermination is different from the estimated weighted-average dumping margin in the *Amended Final Determination*, we intend to issue a *Timken* Notice with an amended final determination, should the Court sustain these results.

5/2/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance