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Hyundai Electric & Energy Systems Co. Ltd. v. United States
Court No. 20-00108, Slip Op. 22-42 (CIT May 10, 2022)
Large Power Transformers from the Republic of Korea

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (the Court) issued on May 10, 2022, in *Hyundai Electric & Energy Systems Co. Ltd. v. United States*, Court No. 20-00108, Slip Op. 22-42 (CIT 2022) (*Second Remand Order*). These final results of redetermination concern the final results in the 2017-2018 administrative review of the antidumping duty order on large power transformers (LPT) from the Republic of Korea (Korea).[1]

In the underlying review, Commerce assigned to Hyundai Electric & Energy Systems Co. Ltd. (Hyundai) a final dumping margin of 60.81 percent based on total facts available with an adverse inference (total AFA).[2] On October 30, 2020, the Court granted Hyundai's motion to supplement the record with two documents that Hyundai presented at verification.[3] At Commerce's request, the Court remanded the *Final Results* with respect to Hyundai to allow

[1] *See Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21827 (April 14, 2020) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).
[2] *Id.*, 85 FR at 21829.
[3] *See Hyundai Electric & Energy Systems Co., Ltd. v. United States*, 477 F. Supp. 3d 1324 (CIT 2020) (Order Granting Motion); *see generally* Confidential Pl.'s Mot. to Supp. the Record (Hyundai's Motion), ECF No. 28.

Commerce to consider the two documents.[4] Commerce filed its *First Remand Results* on March 25, 2021.[5] The Court remanded the *First Remand Results* on May 10, 2022, for Commerce to reconsider or further explain its application of adverse facts available with respect to Hyundai's reporting of certain parts and components, as well as its application of total AFA to Hyundai based, in part, on Hyundai's reporting of certain parts and components.[6]

On July 20, 2022, Commerce issued its Draft Second Remand Results to interested parties and provided them an opportunity to comment.[7] On July 25, 2022, Hyundai filed comments on the Draft Second Remand Results.[8] Complete responses to Hyundai's comments are provided below. For these final results of redetermination, we are not making any changes to the Draft Second Remand Results.

In accordance with the *Second Remand Order*, Commerce has reconsidered its application of facts available with respect to Hyundai's reporting of parts and components and does not find that Hyundai's reporting warrants the application of facts available with respect to this issue. However, also in accordance with the *Second Remand Order*, Commerce continues to find that, with respect to Hyundai, the application of total AFA is warranted. Commerce discusses below the legal and factual basis for the application of total AFA to determine Hyundai's margin.

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[4] *See Hyundai Electric & Energy Systems Co. Ltd. v. United States*, Court No. 20-00108, Slip Op. 20-160 (CIT 2020).

[5] *See Final Results of Redetermination Pursuant to Court Remand, Hyundai Electric & Energy Systems Co. Ltd. v. United States and ABB Enterprise Software Inc. and SPX Transformer Solutions, Inc.*, Court No. 20-00108, Slip Op. 20-160 (CIT November 9, 2020), dated March 25, 2021 (*First Remand Results*), available at https://access.trade.gov/resources/remands/20-160.pdf.

[6] *See Second Remand Order*.

[7] *See* Draft Results of Redetermination, *Hyundai Electric & Energy Systems Co. Ltd. v. United States* Court No. 20-00108, Slip Op. 22-42 (CIT May 10, 2022), dated July 20, 2022 (Draft Second Remand Results).

[8] See Hyundai's Letter, "Large Power Transformers from Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated July 25, 2022 (Hyundai Draft Comments).

II. DISCUSSION

i. Statutory and Regulatory Background

Commerce conducts an administrative review in accordance with 19 CFR 351.221, under which Commerce sends to appropriate interested parties questionnaires requesting factual information for the review. Factual information includes, *inter alia*, evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or to rebut, clarify, or correct such evidence submitted by any other interested party.[9] Further, and pursuant to section 776 of the Tariff Act of 1930, as amended (the Act), when a party provides less than the complete information necessary to make a determination, Commerce must fill in the gaps with facts otherwise available.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to sections 782(c)(1) and (e) of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified.

Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In doing so, Commerce is not required to determine, or to make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with

[9] *See* 19 CFR 351.102(21)(i).

Commerce's request for information.[10] In addition, the SAA explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."[11] Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may select information based upon the application of an adverse inference.[12] It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[13]

Further, section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.[14] In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.[15]

When using facts otherwise available, section 776(c)(1) of the Act provides that, except as provided under section 776(c)(2) of the Act, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information

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[10] *See* section 776(b)(1)(B) of the Act.
[11] *See* Statement of Administrative Action Accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA), at 870; *see also Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).
[12] *See, e.g.*, *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); and *Antidumping Duties; Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997).
[13] *See, e.g.*, *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Preliminary Decision Memorandum (PDM), at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).
[14] *See also* 19 CFR 351.308(c).
[15] *See* SAA at 870.

derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.[16] The SAA clarifies that "corroborate" means that Commerce will satisfy itself that the secondary information to be used has probative value.[17] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[18] Under section 776(c)(2) of the Act, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.[19] The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an "alleged commercial reality" of the interested party.[20] When assigning adverse rates in a review, Commerce's practice, consistent with section 776(d)(2) of the Act, is to select as

[16] *Id*.
[17] *Id.*; *see also* 19 CFR 351.308(d).
[18] *See, e.g*., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).
[19] *See* section 776(d)(1)-(2) of the Act.
[20] *See* sections 776(d)(3)(A) and (B) of the Act.

AFA the higher of: (a) the highest dumping margin alleged in the petition; or (b) the highest calculated rate for any respondent from any segment of the proceeding.

ii. Factual Background

As noted above, Commerce issued its *First Remand Results* on March 25, 2021.[21] Commerce, after reconsidering the evidence, continued to find that the application of total AFA was warranted.[22] In the *First Remand Results*, Commerce continued to determine that the application of total AFA was warranted based on the following:

> (1) Hyundai failed to cooperate by not acting to the best of its ability to comply with a request for sales documentation, which include {documentation related to} service-related revenues and expenses; (2) Hyundai impeded the proceeding by providing shifting and opaque explanations for its classification of certain parts and components as out-of-scope; and (3) Hyundai failed to demonstrate that it reported all required sales in its U.S. sales database and therefore that its reporting of all U.S. sales of subject merchandise during the POR was complete.[23]

In the *Second Remand Order*, the Court determined that, with respect to the question of the provision of sales documentation, "{t}he the statutory requirements for using facts available were met not only because necessary information was not available on the record, but also because {Hyundai} withheld from Commerce the requested documentation of 'all service-related revenue' between {Hyundai} and its customers."[24] The Court sustained Commerce's use of total AFA to Hyundai for its failure to provide documents concerning service-related revenues.[25] Concerning the issue of unreported U.S. sales, the Court stated that it "sustains Commerce's reliance on adverse facts available with respect to {Hyundai's} failure of the completeness test"[26] and that "evidence supports Commerce's decision to apply an adverse inference"[27] with

[21] *See First Remand Results*.
[22] *Id*.
[23] *Id*. at 31.
[24] *See Second Remand Order* at 15.
[25] *Id.* at 18-20.
[26] *Id*. at 30.
[27] *Id*. at 32.

respect to Hyundai's completeness failure at verification. However, with respect to the issue of the classification of certain parts and components as out-of-scope, the Court stated that "substantial evidence does not support Commerce's reliance on" adverse facts available "with respect to this issue"[28] because "substantial evidence does not support Commerce's finding that {Hyundai} misclassified the contested part(s)."[29] The Court ordered, on remand, that Commerce reconsider or further explain whether Hyundai failed to report the contested part(s) properly and, if so, what the appropriate consequences of that reporting are.[30]

Finally, the Court also found that because "substantial evidence does not support Commerce's use of facts available with respect to {Hyundai's} reporting of the contested part(s), the court does not reach the question of whether substantial evidence supports Commerce's use of total AFA."[31] The Court further explained:

> {a}lthough Commerce stated that {Hyundai's} failure to provide the requested service-related revenue documentation warranted the application of total adverse facts available ... Commerce also stated that it relied on a combination of failures as the basis for applying total adverse facts available: specifically the failures to provide service-related revenue documentation, the failed completeness test, and inconsistently reported contested parts for home market sales.[32]

The Court remanded to Commerce its decision to apply total AFA, stating that Commerce must reconsider or further explain its use thereof.[33] We have considered the record evidence, and discuss these issues below in the "Analysis" section.

[28] *Id*. at 23.
[29] *Id*. at 26.
[30] *Id*.
[31] *Id.* at 34.
[32] *Id*.
[33] *Id*.

iii. Analysis

A. *Part(s) and Components*

In the *Second Remand Order*, the Court stated that "Commerce failed to establish that {Hyundai} incorrectly reported the contested parts."[34] The Court further stated that it is,

> unable to follow {Commerce's} logic, not only because the relevant scope language has not been interpreted by Commerce, but because Commerce does not clearly identify the particular part(s) that it believes {Hyundai} should have included in the gross unit price and does not explain why it finds the contested part(s) are within the scope of the order.[35]

The Court also found that substantial evidence does not support Commerce's finding that Hyundai classified the parts in question in an inconsistent manner or that Hyundai's explanations were inconsistent.[36] For these reasons, the Court found that substantial evidence does not support the finding by Commerce that Hyundai misclassified the parts in question and, thus, does not support Commerce's reliance on AFA.[37]

Following the Court's ruling, we have reconsidered our determination with respect to the parts in question and the application of total AFA, and we find that we do not have a sufficient basis on the record to determine that Hyundai misclassified these parts in question. Therefore, we do not find that Hyundai's reporting of parts and components was incomplete such that it contributes to Commerce's determination to apply total AFA to Hyundai. However, as explained below, and based on other failures by Hyundai to provide complete information, we continue to find that application of total AFA to Hyundai is warranted.

[34] *Id.* at 24.
[35] *Id*.
[36] *Id*. at 24-25.
[37] *Id*. at 26.

B. *Application of Total AFA*

Depending on the severity of a party's failure to respond to a request for information and failure to cooperate to the best of its ability, Commerce may select either partial or total AFA. Generally, the "use of partial facts available is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty."[38] Where there are "pervasive and persistent deficiencies that cut across all aspects of the data," all of the reported information may be unreliable, making a total AFA application appropriate.[39] Although we have determined that Hyundai's reporting of certain parts and components does not warrant the application of AFA, we find that the remaining deficiencies in Hyundai's reporting of service-related revenue and Hyundai's failure of the completeness test at verification continue to warrant the application of total AFA.

With respect to both service-related revenues and completeness of the U.S. sales database, the Court found that substantial evidence supports Commerce's findings that necessary information was not on the record and that Hyundai's failure to provide information significantly impeded the proceeding.[40] Moreover, the Court sustained Commerce's use of AFA with respect to Hyundai's reporting of service-related revenues and failure of the completeness test at verification.[41] We find that Hyundai's failures to provide necessary information on the record of the administrative review with respect to service-related revenues and a complete U.S. sales database are sufficient to warrant the application of total AFA, because we are unable to calculate an accurate margin, including application of our capping policy, absent a complete U.S. sales database and reporting of revenues.

[38] *See Mukand, Ltd. v. United States*, 767 F.3d 1300, 1308 (Fed. Cir. 2014).
[39] *See Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (citing *Steel Auth. of India, Ltd. v. United States*, 25 CIT 482, 487-88, 149 F. Supp. 2d 921, 928-29 (2011)).
[40] *See Second Remand Order* at 14 and 32-34.
[41] *Id*. at 20 and 34.

First, with respect to service-related revenues, as we stated in the *First Remand Results*,[42] Hyundai failed to report service-related revenues.[43] As further explained in the *Final Results*,[44] Commerce's practice to decline to treat service-related revenues as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38)[45] has been upheld by the Court in previous segments of this proceeding when "Hyundai failed to provide information necessary for Commerce to apply its capping methodology with respect to" certain U.S. sales transactions.[46] Because Hyundai failed to report service-related revenues, we are unable to determine: (1) the exact amount of the service-related revenues; and (2) whether or not the unreported service-related revenues are included in or excluded from the gross unit prices and/or corresponding service-related expenses. Additionally, because Hyundai submitted incomplete and unreliable information in response to our request for information on service-related revenues, we are unable to identify corresponding service-related expenses to implement Commerce's normal capping policy. Thus, Hyundai's failure to report service-related revenues impedes Commerce's ability to determine an accurate export price by either ensuring that such revenue has been properly excluded from U.S. price or deducting the improperly included service-related revenues from U.S. price; moreover, without knowing the value of service-related revenue, Commerce is unable to apply properly its capping methodology. Thus, without accurate export prices, we are also unable to calculate an accurate dumping margin.

Hyundai was in possession of this information and had the opportunity to provide complete and accurate information and documentation of its service-related revenues, but failed

[42] *See First Remand Results* at 31.
[43] *See Final Results* IDM at 10-14.
[44] *Id*. at 14.
[45] *See Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM, at Comment 2.
[46] *See ABB Inc. v. United States*, 355 F. Supp. 3d 1206, 1221 (CIT 2018).

to provide the information despite numerous requests by Commerce.[47] The Court sustained Commerce's use of facts available with an adverse inference with respect to Hyundai's reporting of service-related revenue.[48] However, Hyundai's failure to report service-related revenues affects more than just a discrete calculation in this review, it also impacts Commerce's overall ability to calculate an accurate dumping margin. Because Hyundai submitted incomplete and unreliable information with respect to its service-related revenues, Commerce cannot reasonably calculate an accurate dumping margin based on the factual information on the record of this proceeding. Thus, the failures by Hyundai to report its service-related revenues and explain and document to Commerce's satisfaction that these revenues were either already excluded from or were included in Hyundai's reported gross U.S. price (such that Commerce itself could make an adjustment, if necessary) warrant the application of total AFA to Hyundai for purposes of determining the antidumping duty rate applicable to Hyundai in this review.

We similarly find that Hyundai's failure of the completeness test at verification supports the application of total AFA to Hyundai. The objective of verification is to confirm the accuracy and completeness of factual information submitted by a respondent over the course of an investigation or administrative review.[49] This is especially true with respect to confirming the accuracy and completeness of the reported sales transactions in all markets. At verification, as we noted in the *First Remand Results*, after performing completeness tests, Commerce determined that Hyundai failed to report a complete U.S. sales database.[50] Specifically, Hyundai was unable to provide evidence to prove conclusively that a particular sale of an LPT in the United States was of an LPT manufactured in Alabama, as reported, rather than in Korea and,

[47] *See Second Remand Order* at 14-15, 17-18, and 20.
[48] *Id*. at 20.
[49] *See* 19 CFR 351.307(d).
[50] *See First Remand Results* at 9-10.

thus, Hyundai could not establish that it was appropriate not to include this sale in its U.S. sales database.[51] Indeed, Commerce found that there was sufficient record evidence to indicate that the LPT in question was manufactured in Korea, and therefore, its sale in the United States should have been included in Hyundai's database of reported U.S. sales, and it was not.[52] Thus, Commerce found that the totality of the record evidence demonstrated that the LPT in question was not manufactured in Alabama, that it was manufactured in Korea, that its sale should have been included in the U.S. sales database, and that, therefore, that Hyundai failed the completeness test at verification by not demonstrating it had reported its complete U.S. sales database.

Given the value of this omitted U.S. sale compared to the total value of the reported U.S. sales transactions and given the difference of gross unit price among U.S. sales transactions, we find that omission of this U.S. sale from Hyundai's U.S. sales database could lead to a significantly inaccurate calculation of the weighted-average dumping margin for Hyundai.[53] Further, Commerce was unable to confirm that relevant data, such as other U.S. sales, were not omitted from Hyundai's U.S. sales database, and thus, Commerce was unable to achieve one of the primary objectives of verification: establishing the completeness of the information reported. Hyundai possessed and had the opportunity to provide complete and accurate information with respect to its reporting of its U.S. sales, but failed to provide such information. Under these circumstances, the Court sustained Commerce's use of facts available with an adverse inference with respect to Hyundai's completeness failure at verification.[54] As with

[51] *Id*. at 14-19.
[52] *Id*.
[53] *See* Commerce's Memorandum, "Constructed Export Price Verification of the Sales Response of Hyundai Electric & Energy Systems Co., Ltd. in the Antidumping Review of Large Power Transformers from the Republic of Korea," dated October 9, 2019, at 10-11, and U.S. sales database heesus03 for more details containing these quantity and value data, which are Hyundai's business proprietary information.
[54] *See Second Remand Order* at 32-34.

Hyundai's failure to provide a complete report of service-related revenues, its failure of the completeness test at verification impacts Commerce's overall ability to calculate an accurate dumping margin in this proceeding, because the record does not contain a complete and reliable U.S. sale database with which to conduct those calculations. Thus, Hyundai's failure of the completeness test at verification also supports the application of total AFA to Hyundai.

As the Court noted, our application of total AFA to Hyundai in the *Final Results* relied on a combination of its failures to provide a complete and accurate report of service-related revenue, failure of the completeness test at verification, and failure regarding the accurate reporting of certain parts and components. Although we are no longer applying facts available with respect to Hyundai's reporting of certain parts and components, we find that the remaining combination of Hyundai's failures – in reporting service-related revenue, and its failure of the completeness test at verification – warrants the continued application of total AFA to Hyundai.[55] The Court has found that the use of total AFA is appropriate when the respondent's conduct undermines the credibility and reliability of the data overall.[56] Hyundai's failure to report service-related revenues and its failure to create a complete and reliable U.S. sales database undermine Commerce's ability to calculate a dumping margin in this review, so much so that Commerce finds it appropriate under these circumstances to apply total AFA to determine the dumping rate applicable to Hyundai for this review. For purposes of these final results of redetermination, Commerce is continuing to apply the total AFA rate of 60.81 percent to Hyundai for the period of review (POR), August 1, 2017, through July 31, 2018. The AFA rate is the dumping margin alleged in the Petition.[57] As explained in the *Final Results* IDM,

[55] *Id.* at 34.
[56] *See Papierfabrik August Koehler SE v. United States*, 7 F. Supp. 1304 (2014).
[57] *See* Petitioners' Letter, "Petition for the Imposition of Antidumping Duties on Large Power Transformers from Korea," dated July 14, 2011 (Petition).

Commerce corroborated this rate in a prior segment of the proceeding, and it, thus, does not need to be corroborated again.[58]

iv. Party Comments

Hyundai's Comments

- Commerce's Draft Second Remand Results with respect to parts and components was consistent with the remand order.[59]
- While acknowledging that the Court affirmed Commerce's application of AFA with respect to service-related revenues and the completeness failure at verification, Hyundai nevertheless contends that Commerce's continued application of total AFA is not supported by substantial evidence.[60]
- The legal standard for total AFA is established by *Mukand, Ltd. v. United States*, CIT No. 11-00401, Slip Op. 13-41 at 12-13, *aff'd* 767 F.3d 1300, 1307-08 (Fed. Cir. 2014), and the standard states that it is appropriate to apply total AFA only where none of the reported data is reliable or usable because the submitted data exhibits pervasive and persistent deficiencies.[61]
- The omission of service-related revenue documentation is a limited and discrete category of information that does not justify the use of total AFA.[62]

[58] *See Final Results* IDM at Comment 2 ("Commerce corroborated the current AFA rate of 60.81 percent in the previous segments of this proceeding, … . As a result, according to 776(c)(2) of the Act, this rate does not require corroboration for this review." (internal citation omitted)).
[59] *See* Hyundai Draft Comments at 2-3.
[60] *Id*. at 3-4.
[61] *Id*. at 4.
[62] *Id*.

- In a similar remand from an earlier segment of the proceeding, the Court found that only partial AFA was justified for missing service-related revenues, and the essential facts of this remand are the same as those of the earlier remand.[63]
- While the service-related revenue issue affects the overall calculation of the dumping margin, the effect is on a discrete and limited element of the calculation.[64]
- Partial AFA is appropriate where missing information is limited to a discrete category of information, and that the issue of missing service-related revenues is such a discrete category.[65]
- With respect to the reported U.S. sales, the omission of a single sale does not undermine the entirety of Hyundai's U.S. sales reporting.[66]
- The Court has found, in *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 27 C.I.T. 1059, 1061, 276 F. Supp. 2d 1371, 1374 (2003) (*Fujian*), that the omission of a single U.S. sale is insufficient to warrant the use of total AFA.[67]
- Commerce has applied partial AFA in other instances where one or more U.S. sales were missing.[68]
- Commerce did not provide any support for its statement that the U.S. sale in question could lead to a significantly inaccurate dumping calculation.[69]
- The omitted sale in question accounts for a small percentage of the value of the U.S. sales database and does not indicate a large difference in gross unit prices.[70]

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[63] *Id*. at 4-5.
[64] *Id*. at 5.
[65] *Id*. at 6.
[66] *Id*.
[67] *Id*.
[68] *Id*. at 6-7.
[69] *Id*. at 7.
[70] *Id*. at 7-8.

- Commerce was able to reconcile Hyundai's reported U.S. sales to its books and records, reconciled period of review costs for all projects, and performed many other completeness checks at verification successfully, thus precluding the use of total AFA.[71]
- The combination of the failures to report service-related revenues and the completeness failure at verification do not, in combination, warrant the use of total AFA and can be easily resolved by application of partial AFA.[72]

The Petitioners' Comments

The petitioners did not comment on our Draft Second Remand Result*s*.

v. Comment Analysis

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from the facts otherwise available. Where there are "pervasive and persistent deficiencies that cut across all aspects of the data," Commerce may conclude that all of the reported information is unreliable, making a total AFA application appropriate.[73]

[71] *Id*. at 8-10.
[72] *Id*. at 10-11.
[73] *See Zhejiang DunAn,* 652 F.3d at 1348.

Hyundai's argument that its failure to report-service related revenues and its completeness test failure at verification are not such "pervasive and persistent deficiencies" that justify the use of total AFA is unpersuasive.[74] Hyundai attempts to minimize these failures and argues that Commerce should rely on partial AFA. Contrary to Hyundai's assertions, we continue to find that Hyundai's failure to report service-related revenues and its completeness test failure at verification affect Commerce's ability to calculate an accurate dumping margin to such an extent that application of total AFA is warranted in this case.

Hyundai cites to *ABB Inc. v. United States*, 437 F. Supp. 3d 1289, 1300-01 (CIT 2018) (*ABB 2018*) to argue that the fact pattern surrounding Hyundai's failure to report service-related revenues for this segment of the proceeding is the same as a previous segment in which Commerce applied only partial AFA for reporting deficiencies on service-related revenues. Because Commerce did not apply total AFA in the review underlying *ABA 2018,* Hyundai argues that Commerce should also not apply total AFA in this case. As an initial matter, Commerce's review is limited to the record in the particular proceeding at issue.[75] In *AB 2018,* Commerce specifically stated that one of the reasons for declining to apply total AFA was that Commerce "verified the total quantity and value of the reported U.S. sales."[76] However, for this segment of the proceeding, Commerce was not able to verify the total quantity and value of the reported U.S. sales.

Furthermore, although Hyundai argues that service-related revenues affect only a discrete category of information that does not justify total AFA, we disagree. The facts of this review demonstrate that Hyundai's reporting failures affected our overall ability to calculate an accurate

[74] *See* Hyundai's Draft Comments at 4-6 (citing *Mukand*, 767 F.3d at 1307-08).
[75] *See Jiaxing Bro. Fastener Co., Ltd. v. U.S.*, 822 F.3d 1289, 1297 (Fed. Cir. 2016) (*Jiaxing Bro.*).
[76] *See AB 2018* at 18.

dumping margin; Commerce was unable to account properly for the value of service-related revenue (because Hyundai did not provide the value) and ensure the proper treatment of such revenue for purposes of calculating U.S. price (because Hyundai did not explain whether such revenues were already properly excluded from U.S. price, or whether they were incorrectly included in U.S. price, so that Commerce itself could an adjustment if necessary). These failures impeded Commerce's ability to calculate an accurate U.S. price for every sale reported in the U.S. sales database. Thus, contrary to Hyundai's argument, the failure was not discrete; rather, it was pervasive.[77]

Hyundai also argues that the failure to report a single U.S. sale does not undermine the entirety of its reporting. Hyundai cites to a number of cases where Commerce declined to apply total AFA in instances where a single sale was missing, or where a missing sale and missing discounts were discovered at verification. However, each case must be decided on its particular facts and Commerce's review in any proceeding is limited to the record before it.[78] Thus, the existence of cases where Commerce did not apply total AFA in the case of one or more missing sales does not indicate that it would be inappropriate to do so in other cases and that Commerce should, therefore, decline to apply total AFA in all instances where a single missing sale is discovered during verification. The fact patterns of each case are unique, and Commerce must use its discretion in the application of AFA to comport with the unique fact patterns. In this segment of the proceeding, the number of U.S. sales is low. Thus, the failure to report even a single sale may dramatically affect the final margin calculation.

[77] *See Zhejiang DunAn,* 652 F.3d at 1348.
[78] *See Jiaxing Bro.*, 822 F.3d at 1297; *see also Mid Continent Nail Corp. v. U.S.*, 725 F.3d 1295, 1305 (Fed. Cir. 2013) ("{W}e continue to recognize that . . . each case must be decided on its particular facts . . . .") (internal quotations and citations omitted).

Hyundai argues that the total value of the unreported sale, compared to the total value of the reported U.S. sales, indicates that the unreported sale value is low and would not impact the margin calculation in a significant way. However, the value of a sale compared to the total value of U.S. sales does not indicate the impact that the sale will have on the margin calculation. The timing and matching of the sale, sales adjustments, and Commerce's capping methodology, as well as the gross unit price together, may indicate a much larger margin impact. For these reasons, it is critical that respondents report a complete and accurate U.S. sales database to Commerce.

Hyundai states that Commerce reconciled Hyundai's reported U.S. sales, data from U.S. Customs and Border Protection, and cost data, indicating that Hyundai submitted a substantially complete U.S. sales report. However, the fact that the unreported U.S. sale does not appear in any of these other databases raises questions regarding whether the reconciliations accurately captured all of the U.S. sales and cost information, specifically when weighed against the other evidence collected at the U.S. verification by Commerce with respect to this sale. Hyundai cites to the reconciliation done by Commerce at the verification in Korea, which occurred prior to the verification in the U.S. and the discovery of the unreported sale, and notes the Court's statement that the reconciliation supports Hyundai's position. However, in sustaining Commerce's findings, the Court also stated that "Commerce weighed this evidence against more than a single piece of evidence" and further stated that "substantial evidence" supports Commerce's application of AFA for Hyundai's failure to accurately report its U.S. sales.

The Court in *Fujian*, citing to *Nippon Steel Corp. v. United States*, 146 F.Supp.2d 835, 841 n. 10 (2001), stated that "because 'a completely errorless investigation is simply not a reasonable expectation,' it would be unfair to a respondent if Commerce were permitted to extrapolate from a single error, which may well have been an isolated oversight, a conclusion

that the entirety of the respondent's submissions concerning other classes of subject merchandise are unreliable."[79] However, also citing *Nippon Steel,* the Court noted that "on the other hand, numerous 'oversights' would likely suggest a 'pattern of unresponsiveness' justifying not only the application of facts available ('FA') but of AFA" and that "it is incumbent upon Commerce specifically to identify such oversights" and that "substantial evidence does not comprise broad allusions to the verifiers' gut feelings."[80] Furthermore, in *Fujian*, the Court sustained Commerce's application of total AFA due to an inability to reconcile sales revenue with financial statements, a failure to provide sufficient documentation for two U.S. sales, and a failure to provide quantity and value worksheets. In this proceeding, Commerce has identified Hyundai's failures at verification, which suggest a "pattern of unresponsiveness." Commerce found that Hyundai failed the completeness checks due to the failure to report a U.S. sale. The completeness failure at verification calls into question Hyundai's documentation with respect to more than just the sales ledger. Hyundai USA stated that it maintained folders for all sales involving Hyundai and HPT which were supposed to contain documentation for each sale.[81] However, Hyundai was unable to provide documentation for the sale in question, such as the shipment documents for the main body of the LPT in question.[82] Commerce previously highlighted internal inconsistencies in other documentation presented by Hyundai.[83] Taken as a whole, the incomplete and contradictory documentation contributes to a finding of a "pattern of unresponsiveness" that requires the application of total AFA.

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[79] *See Fujian*, 276 F. Supp. 2d at 1070 (n.2).
[80] *Id*.
[81] *See* Hyundai CEP Verification Report at 10-11.
[82] *Id*. at 10.
[83] *See Hyundai Electric & Energy Systems Co. Ltd. v. United States and ABB Enterprise Software Inc. AND SPX Transformer Solutions, Inc.*, Final Results of Redetermination Pursuant to Court Remand, Court No. 20-00108, Slip Op. 20-160 (CIT November 9. 2020), dated March 25, 2021, at 11-12 and 15.

Moreover, Commerce finds that the combination of the failure to report service-related revenues, and the failure to report one U.S. sale, is a reasonable basis for the application of total AFA. The Court stated that Commerce uses total AFA when "none of the reported data is reliable or usable." The failure of Hyundai to report all U.S. sales calls into question the completeness of the U.S. sales database, and it is impossible to determine the actual dumping margin of the sale or how it will affect the total dumping margin. Similarly, Hyundai's failure to report service-related revenues and expenses makes it impossible to determine if the U.S. prices, and therefore the margins for all U.S. sales, are accurate.

Given that both the number of sales and the price adjustments are incomplete, and given both the small number of U.S. sales and the large value of those sales, the omission of these data would result in large and distortive changes in the margin calculation. Therefore, we continue to find that the application of total AFA is warranted.

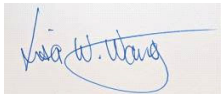
III. FINAL RESULTS OF REDETERMINATION

In accordance with the *Second Remand Order*, Commerce reconsidered its previous decision to apply facts available based on incomplete and inconsistent reporting of parts and components, and determined that there is insufficient record evidence to conclude that Hyundai incorrectly reported these parts and components. We are, thus, not applying facts available in these final results of redetermination with respect to Hyundai's reporting of parts and components.

In addition, Commerce has determined not to modify its *Final Results* with respect to application of total AFA to Hyundai. We continue to find that total AFA is warranted, because Hyundai's failure to provide information regarding service-related revenues for U.S. transactions, as well as its failure of a completeness check at verification, renders Commerce unable to calculate an accurate dumping margin. Thus, in these final results of redetermination,

Commerce continues to apply the total AFA rate of 60.81 percent to Hyundai for the POR, August 1, 2017, through July 31, 2018, for LPTs from the Republic of Korea.

8/15/2022

X 

Signed by: LISA WANG
Lisa W. Wang
Assistant Secretary
for Enforcement and Compliance