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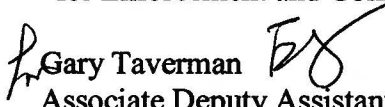
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March 23, 2015

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

FROM:  Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on Large
Power Transformers from the Republic of Korea; 2012-2013

I. Summary

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes to the margin calculations of both respondent companies, as discussed below. We recommend that you approve the positions described in the "Discussion of Interested Party Comments" section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:¹

¹ Due to the proprietary nature of certain details in the case and rebuttal briefs regarding some of the issues raised in this proceeding, the Department has drafted accompanying proprietary memoranda for each respondent. *See* Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Proprietary Arguments from the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Review of the Order on Large Power Transformers from the Republic of Korea – Hyosung Corporation" (Hyosung Proprietary Memorandum) and Memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled, "Proprietary Arguments from the Issues and Decision Memorandum for the Final Results of the Antidumping Duty Review of the Order on Large Power Transformers from the Republic of Korea – Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively, Hyundai)" (Hyundai Proprietary Memorandum), both dated concurrently with this memorandum. These memoranda are incorporated by reference into this Issues and Decision Memorandum, providing supplementary detail regarding business proprietary aspects of the issues discussed and summarized below.



II. List of Issues

A. General Issues

Comment 1: Whether the Department Treats Installation Expenses as Further Manufacturing Costs

B. Hyosung -Specific Issues

Comment 2: Discrepancies Between Hyosung's Net U.S. Price (as Calculated by the Department) and Reported Entered Values

Comment 3: Hyosung Has Overstated Its Reported U.S. Prices and Understated/Omitted U.S. Expenses and Whether to Apply Adverse Facts Available (AFA)

Comment 4: U.S. Commission Expenses

Comment 5: U.S. Ocean Freight Expenses

Comment 6: Installation Expenses

Comment 7: The Department Erred in Conducting the Differential Pricing Analysis

Comment 8: Consideration of an Alternative Comparison Method in an Administrative Review

Comment 9: Denial of Offsets for Non-Dumped U.S. Sales When Using the A-To-T Comparison Method In Administrative Reviews

Comment 10: Harbor Maintenance Fees

Comment 11: Oil Expenses

Comment 12: Exclusion of Certain U.S. Freight Expenses for a Particular U.S. Sales Transaction

Comment 13: Calculation of Importer-Specific Assessment Rate

Comment 14: Incomplete Further Manufacturing Cost Data

C. Hyundai Heavy Industries Co., Ltd.-Specific Issues

Comment 15: U.S. Sales Data are Not Reliable or Verifiable Because of Certain Submissions and Should Not Be Used in the Final Results

Comment 16: AFA with Respect to Comment 15 (Above).

Comment 17: "Overlapping" Sales between Investigation and This Review

Comment 18: Alleged Underreported U.S. Movement and Selling Expenses

Comment 19: Hyundai's Reporting of Home Market Sales

Comment 20: Indirect Selling Expenses

Comment 21: Section E Response Was Not Complete

Comment 22: Whether Total AFA is Warranted Based Given On the Totality of Hyundai's Responses

III. Background

On September 24, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty (AD) order on large power transformers from the Republic of Korea (Korea) for the period February 16, 2012,

through July 31, 2013.² The review covers five producers/exporters of the subject merchandise: Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (HHI/Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). The two manufacturers/exporters that were selected as mandatory respondents were Hyosung and Hyundai.³ ILJIN, ILJIN Electric, and LSIS were not selected for individual examination. The petitioner in this review is ABB Inc. (Petitioner).

On October 15, 2014, the Department issued a post-preliminary supplemental questionnaire, to which Hyundai responded on November 3 and 12, 2014, and December 2, 2014. On December 19, 2014, Hyosung, Hyundai, and Petitioner timely submitted case briefs commenting on our *Preliminary Results*.⁴ Rebuttal briefs were also timely filed by Hyosung, Hyundai, and Petitioner, on January 9, 2015.⁵ On January 15, 2015, Petitioner filed a letter alleging that Hyundai's Rebuttal Brief contained new factual information. After reviewing Petitioner's allegation, we identified certain aspects of Hyundai's Rebuttal Brief that required clarification and requested Hyundai to "cite to the record where the information {was} presented in your January 9, 2015 rebuttal brief" and to "cite to the specific documents and submissions in your response." We instructed Hyundai that if it "cannot cite to evidence on the record" to resubmit its rebuttal brief and remove the information from its argument.⁶ On February 5, 2015, Hyundai responded to the Department's February 2, 2015 letter and provided appropriate citations and explanation.⁷ No parties filed any further comments on this issue.

A hearing was requested by Hyosung on October 24, 2014, but that request was withdrawn on January 16, 2015.⁸ Department officials met with counsel to Petitioner on February 12, 2015. The Department also met jointly with counsel to Hyundai and Hyosung on February 19, 2015.⁹ On March 6, 2015, Department officials spoke with representatives from Senator Roy Blunt's staff and Senator Claire McCaskill's staff.¹⁰

² See *Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012–2013*, 79 FR 57046 (September 24, 2014) (*Preliminary Results*).

³ In instances where we or the parties refer to both HHI and its U.S. affiliate, Hyundai Corporation, U.S.A., we have referred to these companies collectively, as "Hyundai."

⁴ See Brief from Petitioner regarding Hyundai, (Petitioner's Hyundai Brief), Brief from Petitioner regarding Hyosung (Petitioner's Hyosung Brief), and Hyosung Brief, all dated December 19, 2014.

⁵ See Hyosung's Rebuttal Brief, Hyundai's Rebuttal Brief and Petitioner's Rebuttal Brief, all dated January 9, 2015. Petitioner requested an extension for rebuttal briefs to January 9, 2015, which the Department granted for all parties on December 8, 2014. See Letter to All Interested Parties dated December 8, 2014. Petitioner also requested a further extension for submission of the initial briefs, which the Department denied in its letter to all parties dated December 17, 2014.

⁶ See Letter to Hyundai from the Department, dated February 2, 2015.

⁷ After reviewing Hyundai's explanation, we have determined that the information cited to by Petitioner in its January 15, 2015, letter is not new factual information as Hyundai has demonstrated that such information is supported by the record. Accordingly, we are accepting this information and relying upon it for purposes of these final results of review.

⁸ See Letter from Hyosung to the Department, Withdrawal of Hearing Request, dated January 16, 2015.

⁹ See Memoranda to the File, dated February 13 and 20, 2015.

¹⁰ See Memorandum to the File, "Ex Parte Phone Call with Mr. Bo Prosch from Senator Blunt's (MO) Office and Ms. Elizabeth Herman of Senator McCaskill's (MO) Office," dated March 11, 2015.

IV. Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete.

Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs. The “active part” of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.

The product definition encompasses all such LPTs regardless of name designation, including but not limited to step-up transformers, step-down transformers, autotransformers, interconnection transformers, voltage regulator transformers, rectifier transformers, and power rectifier transformers.

The LPTs subject to this order are currently classifiable under subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, the written description of the scope of this order is dispositive.

V. Discussion of Interested Party Comments

A. General Issues

Comment 1: Whether the Department Treats Installation Expenses as Further Manufacturing Costs

Petitioner’s Comments

- With regard to Hyosung, Petitioner urges the Department to rely on further manufacturing cost data, with certain adjustments, for the final results.
- According to Petitioner, the assembly and installation activities in which Hyosung engaged during the POR are further manufacturing activities. To support its argument, Petitioner cites a description of the installation work to be performed contained in a sales contract between Hyosung and a customer. (Due to the proprietary nature of this contract, a discussion of this description is contained in the Hyosung Proprietary Memorandum.)
- Citing to *LNPP Review*,¹¹ Petitioner contends the Department normally considers assembly and installation costs involving “large complex machinery” as further manufacturing costs.

¹¹ See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Final Results of Antidumping Duty Administrative Review*, 66 FR 11557, (February 26, 2001) (*LNPP*

- Petitioner argues that installation and reassembly expenses for Hyundai should be treated as further manufacturing costs per section 772(d)(2) of the Tariff Act of 1930, as amended (the Act), rather than treated as selling expenses. Petitioner explains that Hyundai emphasizes that complete further manufacturing data is important to the calculation of an accurate dumping margin. However, Petitioner claims the reported further manufacturing costs data is deficient and the Department has grounds for applying total AFA with respect to Hyundai's further manufacturing data.

Hyosung's Comments

- In its rebuttal, Hyosung argues against incorporating further manufacturing cost data for the final results.
- Depending on the circumstances involved, Hyosung explains that the Department does not apply a blanket rule on installation expenses associated with large capital equipment and has in past cases categorized installation expenses as either assembly costs, circumstance of sale adjustments, or shipment expenses. Hyosung cites *LNPP LTFV*,¹² *MTPs LTFV*,¹³ *MTPs Review*,¹⁴ *EPGTS*,¹⁵ and, *Vector Supercomputers*¹⁶ to support its argument.
- The Department did not characterize installation expenses as further manufacturing costs in the underlying investigation of this case.¹⁷
- The Department did not treat installation expenses as further manufacturing costs in *LPTs from Japan*.¹⁸
- Similar to MTPs, LPTs need to be disassembled for shipment given the size and weight of the units and then reassembled at the customer's site, per *MTPs Review*.

Review), and accompanying Issues and Decision Memorandum, at Comment 9.

¹² See *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, From Germany: Notice of Final Determination of Sales at Less Than Fair Value*, 61 FR 38166, 38176-8 (July 23, 1996) (*LNPP LTFV*).

¹³ See *Mechanical Transfer Presses from Japan: Final Determination at Less Than Fair Value*, 55 FR 335 (January 4, 1990) (*MTPs LTFV*).

¹⁴ See *Mechanical Transfer Presses from Japan: Final Results of Antidumping Administrative Review*, 61 FR 52910, 52912 (October 9, 1996) (*MTPs Review*).

¹⁵ See *Engineered Process Gas Turbo-Compressor Systems, whether Assembled or Unassembled and whether Complete or Incomplete, from Japan: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 61 FR 65013 (December 10, 1996) (*EPGTS*).

¹⁶ See *Vector Supercomputers from Japan: Preliminary Determination of Sales at Less Than Fair Value*, 62 FR 16544 (April 7, 1997) (*Vector Supercomputers*).

¹⁷ See *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less than Fair Value*, 77 FR 40857 (July 11, 2012) (*LTFV Investigation*) and accompanying Issues and Decision Memorandum at Comment 11.

¹⁸ See *Large Power Transformers from Japan: Final Results of Administrative Review of Antidumping Finding*, 48 FR 26498, 26501 (June 8, 1983) (*LPTs from Japan*).

- The complexity of the installation process of LNPPs (which led the Department to treat the installation of LNPPs as further manufacturing activities) contrasts sharply with the installation of LPTs. For example, in *LNPP LTFV*, the respondent purchased integral parts in substantial quantities, value, and functional importance that are assembled in the United States, whereas the installation process to install LPTs is nothing more than mere reassembly of the original fully functioning LPT. In contrast, the assembly of the integral parts in LNPP is required for the press to actually function.
- In the *LNPP LTFV*, the Department contrasted LNPPs with MTPs and correctly determined that the high degree of complexity involved with the installation of LNPPs warranted treatment of installation expenses as further manufacturing costs whereas MTPs did not warrant such a treatment. Accordingly, the installation expenses in MTPs were treated as movement expenses. Similar to MTPs, LPTs do not warrant such a treatment. The Department correctly treated installation expenses as selling expenses in the *Preliminary Results*, and should continue to do the same for the final results.

Hyundai's Comments

- In its rebuttal, Hyundai notes that Petitioner failed to make, in its brief, any affirmative argument about whether to incorporate Hyundai's further manufacturing data for the final results.¹⁹ Therefore, Hyundai states that it has no relevant argument to rebut.

Department's Position

We agree with Hyosung. The reassembly and installation expenses for LPTs are typically set forth in the sales agreement and are generally specific to the unit. Section 772(d)(2) of the Act allows for the price used to establish constructed export price to be reduced by any further manufacture or assembly occurring in the United States. Additionally, section 773(a)(6)(C)(iii) of the Act allows for the increase or decrease of the home market price for differences between the home market price and the export price or constructed export price due to differences in their respective circumstances of sale. Whether we deduct the U.S. reassembly and installation expenses under section 772(d)(1) or (2) of the Act merely affects the mechanics of the deduction (*i.e.*, how the detailed elements are classified) as the reassembly and installation for each sale must be deducted from its respective price for a proper comparison. Furthermore, we agree with Hyosung that the Department has not applied a blanket rule on the treatment of installation expenses.²⁰

In *MTPs LTFV*, we determined that installation was a movement expense stating, “with respect to installation and installation supervision, however, we have determined that these expenses should be treated as movement charges. Due to their large size, it is necessary to disassemble MTPs for shipment and delivery to the customer’s facilities. Upon delivery to the customer’s

¹⁹ See Hyundai's Rebuttal Brief at page 50.

²⁰ See *LNPP LTFV, Certain Internal-Combustion, Industrial Forklift Trucks from Japan: Final Determination of Sales at Less Than Fair Value*, 53 FR 12552, 12565 (April 15, 1988) (*Forklifts*); and *Certain Small Business Telephone Systems and Subassemblies Thereof from Korea: Final Determination of Sales at Less Than Fair Value*, 54 FR 53141, 53151 (December 27, 1989) (*SBTS*).

premises, the presses must be reassembled (installed) in order to function. Because disassembly and reassemble are necessary to deliver the merchandise, we have determined that installation and related supervision expenses are movement expenses.”²¹

In *LNPP LTFV*, however, the installation of LNPPs involved the integration of subject and significant amounts of non-subject merchandise. In addition, the installation activities were complex and significant, and necessary for the LNPPs completion, often requiring “modification of LNPP components.”²² Accordingly, we treated LNPP installation expenses as further manufacturing costs. Further, we explained that the LNPP subassemblies require the addition and integration of non-subject elements prior to, or during, installation. We stated further that “{w}here...circumstances include the incorporation of integral, non-subject components during installation or complex installation operations that are more than mere assembly, the precedent clearly supports treatment of installation expenses as further manufacturing.”²³ In making our decision in *LNPP LTFV*, we distinguished our treatment from *MTPs LTFV*, “which was a ‘mere reassembly of subject parts.’” We stated that, “{u}nlike the equipment covered in MTPs, {or in the instant LPT case,} the respondents’ LNPPs were never fully assembled and fully tested in the country of production{.}” Moreover, we noted in *LNPP LTFV* that the installation “often requires modification of the LNPP components or the site itself for successful completion of the LNPP.” We agree with Hyosung that there is no record evidence to suggest that the installation activities involve anything more than the reassembly of subject parts or that any modification of the LPT unit is required at the site for successful completion of the unit in question. To the contrary, the record evidence in the instant case shows that the installation does not require such modifications.²⁴ Finally, the installation requirements of LPTs, as described in the sales contract and cited by Petitioner, are far less complex than that of LNPPs.²⁵ The record shows that the installation requirement of LPTs is more comparable to the installation described in *MTPs Review*.²⁶

The record for Hyundai shows that the installation requirements for Hyundai are comparable to that of Hyosung.²⁷ Therefore, our decision regarding this issue applies to both companies. Thus, for the final results, we have continued to treat installation expenses for both Hyosung and Hyundai as movement expenses rather than as further manufacturing costs.

²¹ See *MTPs LTFV* at page 339.

²² See *LNPP LTFV* at page 38177.

²³ *Id.*

²⁴ See Hyosung’s December 24, 2013, response to section A of the Department’s antidumping duty questionnaire (Hyosung’s AQR) at page 35 in answer to question 8a. See also Hyosung Proprietary Memorandum.

²⁵ See Hyosung’s AQR at page 35 (in answer to question 8a) and Hyosung Proprietary Memorandum.

²⁶ *Id.*

²⁷ See Hyundai’s December 18, 2013, response to section A of the Department’s antidumping duty questionnaire at 35-36 in answer to question 8a.

B. Hyosung-Specific Issues

Comment 2: Discrepancies Between Hyosung's Net U.S. Price (as Calculated by the Department) and Reported Entered Values

Petitioner's Comments

- Petitioner claims that there is a discrepancy between Hyosung's net U.S. price, as calculated by the Department, and Hyosung's reported entered values for identical U.S. sales, providing evidence of Hyosung's misreporting of gross unit U.S. prices and expenses.²⁸
- Due to the above, Hyosung's U.S. sales data are unreliable and therefore, for the final results, Petitioner urges the Department to apply AFA by relying on the highest calculated margin for any U.S. sale for all overlapping sales.²⁹
- Alternatively, Petitioner contends the Department should deny alleged price increases, rely on the originally-reported U.S. prices for these sales as facts available (FA) and correct errors in reported U.S. expenses.³⁰
- Due to the proprietary nature of Petitioner's arguments and the basis for Hyosung's price increases, *see* Hyosung's Proprietary Memorandum at "Discrepancies Between Hyosung's Net U.S. Price (as Calculated by the Department) and Reported Entered Values" for further discussion.

Hyosung's Comments

- In the *Preliminary Results*, Hyosung explains that the Department accepted its reported entered values, U.S. prices, and expenses reported for U.S. sales as they were substantiated by record evidence.³¹
- Petitioner has "repeatedly engaged in an ineffective exercise of comparing the entered values of Hyosung's U.S. entries to its reported net unit prices."³²

²⁸ See Petitioner's Hyosung Case Brief at 6-9.

²⁹ *Id.* at 8-9 citing to *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1344-45, 1348 n.13 (CIT 2005) (*Shanghai Taoen*) for use of AFA when inconsistent data exists on the record; also cites to *Washington Int'l Ins. Co. v. United States*, 33 CIT 1023, 1029-30, 2009 Ct. Int'l Trade LEXIS 93 at 14-17 (July 26, 2009) (not reported in F. Supp.), in a case involving discrepancy between questionnaire response and CBP entry documents, the Department may find that a party has not met its burden of proof and resort to FA. Additionally, as described in more detail below (*i.e.*, in the "Department's Position"), "overlapping sales" refers to U.S. sales of LPTs that were reported in the LTFV investigation as unshipped and examined at verification. Although these sales were examined and determined to be unshipped at verification, they were not used in the LTFV margin calculation. Subsequent to the completion of the LTFV investigation, these sales were shipped in the instant POR and sold in the United States.

³⁰ *Id.* at 9.

³¹ See Hyosung's Rebuttal Brief at page 7.

³² *Id.*

- The premise underlying Petitioner’s argument is that entered values should equal net U.S. prices. Hyosung argues that this premise is “incorrect and illustrates a fundamental lack of understanding on Petitioner’s part as to the inherent nature of these distinct values.”³³
- There is no requirement by law, nor has the Department ever, used entered values or net U.S. prices as a benchmark for each other because each is determined using different base values and incorporates different adjustments, and there is no requirement under the law to do so.³⁴
- Hyosung reiterates that entered values and net prices are determined using different base values and incorporate different adjustments. The Department has “never used either value as a benchmark for the other” and “there is no requirement under the law that entered value and U.S. prices be equivalent and, historically, the Department has never deemed them to be equivalent.”³⁵
- In *SS Wire Rod from Korea*,³⁶ petitioners urged the Department to compare entered values to net U.S. prices to determine the veracity of entered values, and the Department declined to do so as that is under the purview of U.S. Customs and Border Protection (CBP).³⁷
- The record demonstrates that Hyosung’s reported entered values are the actual values reported on Hyosung’s Customs 7501 entry forms, and U.S. prices and expenses are corroborated through ample source documents on the record.³⁸

Department’s Position

In its Case Brief, Petitioner claims that there is a discrepancy between Hyosung’s net U.S. Price (as calculated by the Department in the *Preliminary Results*) and the entered values Hyosung reported in its U.S. sales database. For this reason, Petitioner argues that the Department should apply AFA or rely on gross-unit prices reported in the underlying LTFV Investigation³⁹ for “overlapping” sales,⁴⁰ and refer this matter to the appropriate authorities (*i.e.*, CBP) to investigate whether Hyosung has accurately reported entered values. However, based on record evidence, we continue to find that Hyosung accurately reported its entered values to the Department.

³³ *Id.*

³⁴ See 19 CFR 152.102(t); 19 USC 1401a; 19 CFR 152.100 et. seq., 19 USC 1677a; 19 CFR 351.401 and 351.402.

³⁵ See Hyosung’s Rebuttal Brief at page 8.

³⁶ See *Stainless Steel Wire Rod from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*, 69 FR 19153 (April 12, 2004) (*SS Wire Rod from Korea*) and accompanying Issues and Decision Memorandum at Comment 3.

³⁷ See Hyosung’s Rebuttal Brief at pages 8-9.

³⁸ *Id.* at 9.

³⁹ See *Large Power Transformers from the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 9204, 9206 (February 16, 2012) (*LTFV Investigation*).

⁴⁰ U.S. sales of LPTs that were reported and verified in the LTFV investigation as unshipped have now been reported in the instant POR as shipped and sold to the United States (hereafter, referred to as the “overlapping sales”).

Throughout its Case Brief, Petitioner has compared the entered values of Hyosung's U.S. entries to its U.S. per unit prices (net of selling expenses), as calculated by the Department, and has argued that differences between these prices suggests that Hyosung falsified its entered values, U.S. prices, and U.S. expenses. Specifically, the premise underlying Petitioner's argument is that entered values should equal net U.S. prices. Petitioner's statement is simply inaccurate. Entered value is determined in accordance with CBP regulations, regulations which are distinctly different from those pertaining to the Department's calculation of a net U.S. price for purposes of its dumping analysis. Specifically, regulations governing the Department's calculation of the net U.S. price require the Department to begin with the gross-unit price as the starting point and perform specific adjustments to account for respondent's various sales-related activities such as movement expenses, indirect selling expenses, profit amounts, *etc.*

Record evidence indicates that Hyosung did not improperly report its entered values to the Department because these reported values are in fact the actual values reported on Hyosung's CBP entry summary forms.⁴¹ The record also demonstrates that Hyosung correctly reported its U.S. prices and expenses to the Department as corroborated through ample source documents on the record.⁴² In fact, as noted by Hyosung in its Case Brief, in *SS Wire Rod from Korea*, petitioners in that case also urged the Department to compare a respondent's entered values to its net U.S. prices to determine whether entered values had been correctly reported to the Department. In that case, the Department also declined to do so because the respondent's reported entered values "reconcile{d} to the entered value reported to CBP on the entry summary form," and, therefore, the Department determined that they had been correctly reported. In the instant case, as Hyosung noted, Petitioner has adopted the opposite approach, claiming that the entered value amounts reported to CBP justifies the Department's rejection of Hyosung's reported gross unit prices. However, just as the Department found in *SS Wire Rod from Korea*, Petitioner's allegation fundamentally lacks merit.

Due to the proprietary nature of certain of Petitioner's arguments, *see* Hyosung's Proprietary Memorandum at "Discrepancies Between Hyosung's Net U.S. Price (as Calculated by the Department) and Reported Entered Values" for further Department analysis.

In sum, in the *Preliminary Results*, the Department accepted Hyosung's reported entered values, U.S. prices, and expenses for its reported U.S. sales because such information was substantiated by record evidence. For the reasons discussed above, for these final results, we continue to find that Hyosung accurately reported its entered values to the Department and we are therefore making no changes to the calculations with regard to this issue.

⁴¹ *See, e.g.*, Hyosung's January 13, 2014, response to section C of the Department's antidumping duty questionnaire (CQR) at Exhibit C-16; *see also* Hyosung's February 25, 2014, response to the Department's supplemental questionnaire (February 25th SQR) at Exhibit SA-10; *see also* Hyosung's April 10, 2014, response to the Department's supplemental questionnaire (April 10th SQR) at Exhibits S-30 and S-31; *see also* Hyosung's July 2, 2014, response to the Department's supplemental questionnaire (July 2nd SQR) at Exhibit S-15; *see also* Hyosung's August 21, 2014, response to the Department's supplemental questionnaire (August 21st SQR) at Exhibit 12; *see also* Hyosung's November 11th SQR at Exhibit 1.

⁴² *See, e.g.*, Hyosung's CQR at Exhibits C-10 to C-16; *see also* Hyosung's February 25th SQR at Exhibit SA-6; *see also* Hyosung's April 10th SQR at Exhibits S-29 and S-30; *see also* Hyosung's July 2nd SQR at Exhibits S-11 to S-13; *see also* Hyosung's November 11th SQR at Exhibits 1-2.

Comment 3: Hyosung Has Overstated Its Reported U.S. Prices and Understated/Omitted U.S. Expenses and Whether to Apply AFA

Hyosung Has Overstated Its Reported U.S. Prices and Understated/Omitted U.S. Expenses

Petitioner's Comments

- Hyosung has failed to provide evidence to substantiate the gross-unit price and U.S. expense increases and, in fact, the incomplete and/or unreconciled information submitted by Hyosung to the record highlights inconsistencies in its data.⁴³
- Certain sales that were “intensively examined by Commerce contain serious deficiencies, and less than credible explanations, that undermine the reliability of Hyosung’s data.”⁴⁴ According to Petitioner, “had the Department verified these certain sales and been given the same documentation at verification, the verification would have been deemed a failure.”⁴⁵
- Therefore, the Department should reject Hyosung’s unilateral price differences for overlapping sales.⁴⁶
- There exists case precedent for applying AFA in cases in which contradictory or unreliable information exists on the record.⁴⁷ As AFA, the Department should rely on the highest calculated margin for the overlapping U.S. sales.⁴⁸
- Alternatively, at the very least, as FA, the Department should disregard the reported price increases for overlapping sales and rely on Hyosung’s originally-reported U.S. prices for all overlapping U.S. sales.⁴⁹ According to Petitioner, this would be a “neutral application of facts available,” as the change relies on Hyosung’s data, and only affects certain of the overlapping sales.⁵⁰

⁴³ See Petitioner’s Hyosung Case Brief at pages 9-33.

⁴⁴ *Id.* at 9-33 for a summarization of the inconsistencies noted by Petitioner for each of the sales it describes in detail.

⁴⁵ *Id.* at 33.

⁴⁶ *Id.* at 32.

⁴⁷ *Id.* at 9-33 where Petitioner cites to *Certain Steel Grating from the People’s Republic of China; Final Affirmative Countervailing Duty Determination*, 75 FR 32362, 32364 (June 8, 2010) and accompanying Issues and Decision Memorandum at 6, 10-11, *affd.* *Yantai Xinke Steel Structure Co. v. United States*, 2012 CIT LEXIS 96 at 33-34 (July 18, 2012) (not reported in F. Supp.), *Since Hardware (Guangzhou) Co. v. United States*, 2010 CIT LEXIS 119 at 26, (September 27, 2010) (not reported in F. Supp.), *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1381-83 (Fed. Cir. 2003), *Shanghai Taoen* for use of AFA when inconsistent data exists on the record.

⁴⁸ See Petitioner’s Hyosung Case Brief at page 33.

⁴⁹ *Id.*

⁵⁰ *Id.* where Petitioner cites to *Washington Int’l Insur. Co. v. United States*, 33 C.I.T. 1023, 1029-30, 2009 CIT LEXIS 93 at 17 (July 26, 2009) (not reported in F. Supp.) (affirming the Department’s use of AFA even though “mere speculation surround{ed} much of the Department’s mustering” of AFA support since respondent failed to create an adequate record and respondent’s claim that CBP entry data were “mistaken” is not sufficient.).

Hyosung's Comments

- In the LTFV Investigation, as requested by the Department, Hyosung reported sales and expense data for period of investigation (POI) sales that had not yet shipped as of December 31, 2011.⁵¹ The Department also instructed Hyosung to report estimated sales and expense data for these transactions to the extent that the actual costs and expenses had not yet been finalized.⁵²
- Hyosung advised the Department that the estimated data reported for its unshipped sales would need to be updated with actual amounts for the first administrative review.⁵³
- The Department did not use the estimated data to calculate Hyosung's AD during the LTFV Investigation, with the understanding that correct data would be reported in the first administrative review as variations between estimated and actual amounts could and would exist.⁵⁴
- For this first administrative review, Hyosung reported actual data for all sales that entered the United States during the POR, including the above-noted overlapping sales that had been reported during the LTFV Investigation with estimated data, with business documentation substantiating the reported data.⁵⁵
- The "discrepancies" noted by Petitioner with respect to certain sales, identified in its Case Brief, demonstrate that Petitioner's analyses are "erroneous" and that "substantial record evidence in the form of purchase orders, invoices, payment records, and dozens of other documents attest to the completeness and accuracy of Hyosung's reported sales."⁵⁶
- If the Department had any remaining questions regarding the veracity of information provided by Hyosung, it would have issued a supplemental questionnaire pursuant to section 782 of the Act.⁵⁷
- The record establishes the corroborative value of the data Hyosung submitted during the course of this review.⁵⁸

⁵¹ See Hyosung's Rebuttal Brief at page 10.

⁵² *Id.*

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.* at 10-54 where Hyosung responds to each of that claims by Petitioner with regard to the certain sales which the Department examined in detail throughout the course of this administrative review.

⁵⁶ *Id.* at 11.

⁵⁷ *Id.* at 28.

⁵⁸ *Id.* at 11.

Application of Adverse Facts Available for Misreported U.S. Prices and Underreported/Omitted U.S. Expenses

Petitioner's Comments

- Citing various sections of the statute regarding the use of AFA, including sections 776 and 782 of the Act, Petitioner argues that the Department is required to resort to the facts otherwise available if the records lack verifiable information or if a party withholds information, among other reasons, most of which are relevant to this case.⁵⁹
- Furthermore, section 782 of the Act requires the Department to use deficient information where that information is submitted by the established deadline, can be verified, is not so incomplete that it cannot be used as the basis for the required determination, was provided by a party who acted to the best of its ability in providing the information and meeting applicable requirements, and can be used without undue difficulties.
- However, section 782 of the Act is inapplicable in situations where a party has failed to act to the best of its ability to provide information to the Department.⁶⁰
- The Court of International Trade (CIT) has found that purposefully withholding or providing misleading information is grounds for the application of both FA and AFA under section 776 of the Act.⁶¹
- The burden of preparing a complete and accurate record falls squarely on the respondent, and respondents are presumed to be familiar with their own records.⁶²
- As it is the respondent's responsibility to provide complete and accurate data, the Department should not be required to reconstruct the record.⁶³

Hyosung's Comments

- Petitioner fails to justify how the record in this administrative review meets the standards for which the application of AFA is warranted.⁶⁴
- Record evidence shows that Hyosung has exerted its utmost efforts to comply with the Department's requests for information and has provided the Department with accurate responses and supporting documentation of its expenses.⁶⁵

⁵⁹ See Petitioner's Hyosung Case Brief at 40-41.

⁶⁰ *Id.* at 41, citing *Borden v. United States*, 4 F. Supp. 2d 1221, 1245-46 (CIT 1998); see also *Shandong Huarong, Gen. Group Corp. v. United States*, 27 CIT 1568, 1581-82, 2003 CIT LEXIS 153 at 31-32 (2003) (not reported in F. Supp.) (*Shandong Huarong*).

⁶¹ *Id.* citing *Shanghai Taoen*, 360 F. Supp. 2d 1339, 1344-45, 1348 n.13.

⁶² *Id.* citing *China Steel Corp. v. United States*, 306 F. Supp. 2d 1291, 1306 (CIT 2004) and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003).

⁶³ *Id.* at 42, citing *Shandong Huarong*, 27 CIT at 1585, 2003 CIT LEXIS 153 at 41-42.

⁶⁴ See Hyosung's Rebuttal Brief at 60.

⁶⁵ *Id.* at 61.

- Facts otherwise available may not be used unless the Department first complies with section 782 of the Act, which provides that the Department must determine that a response to a request for information is deficient, and must then provide an opportunity to remedy the deficiency.
- There is no indication that the Department found Hyosung's supplemental responses to be unsatisfactory, nor has Hyosung failed to submit any of its responses beyond the timeframe requested by the Department.⁶⁶
- Petitioner relies on a small number of inadvertent errors in Hyosung's reporting as a basis for applying AFA; however, the CIT has found that an inadvertent error is an insufficient basis to justify AFA.⁶⁷
- Moreover, it is not the Department's practice to apply AFA for inadvertent errors that the respondent later rectifies.⁶⁸

Department's Position

In its Case Brief, Petitioner argued that Hyosung overstated its reported U.S. prices and understated or omitted U.S. expenses. Specifically, Petitioner claimed that Hyosung failed to provide evidence to substantiate the price increases for certain U.S. sales and that the "incomplete and/or unreconciled information" submitted by Hyosung to the record highlights inconsistencies in its data. For this reason, Petitioner argues that the Department should apply AFA to the Department's margin calculation for Hyosung. We disagree with Petitioner.

During the *LTFV Investigation*, we noted the following:

"In cases where the merchandise under consideration are large, complex, capital intensive custom made products that take many months to produce and install, the Department often is faced with the decision to balance the use of actual costs in their entirety with maximizing the population of sales to use to calculate a dumping margin. In the instant case, we recognize that if we followed our preferred approach of using only actual costs in their entirety, and excluded those POI sales which were not fully produced, shipped and fully installed by the end of the POI, we would end up excluding a significant quantity of home market and U.S. sales from the margin calculation. Therefore, to increase the population of useable sales, we extended the period for reporting actual costs incurred to cover six months beyond the end of the POI. This way, we allowed for more time for

⁶⁶ *Id.* at 63.

⁶⁷ See *Krupp Thyssen Niosta GmbH v. United States*, 25 C.I.T. 793,805 (CIT 2001) ("While the parties must exercise care in their submissions, it is unreasonable to require perfection.") (citing *NTN Bearing Corp.et. al. v. United States*, 74 F. 3d 1204, 1208 (CIT 1995)).

⁶⁸ See *Certain Steel Concrete Reinforcing Bars From Turkey; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082 (November 7, 2006) and accompanying Issues and Decision Memorandum at Comment 2.

the respondents to complete production and installation of those sales made during the POI. We reasonably limited the extended cost reporting period to 6 months after the POI because, as those unfinished sales continued to be produced, the data on the record continued to change, and we necessarily needed a cutoff point to allow sufficient time for the Department and outside parties to obtain and analyze the data.

In addition, we decided to use in our analysis only those POI sales that have been completed and shipped as of December 31, 2011, because for those sales all the reported manufacturing costs and the majority of selling expenses reflect actual costs. While this approach still requires the use of some estimated costs in order to capture more sales, it results in a significant increase in the number of usable sales. In addition, the vast majority of costs reflect actual and only minimal estimates for selling and installation expenses will be used in the margin calculation. The use of same estimates here results in a more representative data pool, does not systematically over- or underestimate expenses, and does not distort the overall margin calculation. The exclusion of the incomplete and unshipped sales does not adversely affect our analysis, as we still have a robust population of remaining home market and U.S. sales to use in our calculation, with the added benefit of using predominantly actual costs incurred which will not change, can be reconciled to the company's books, and provide for a more accurate results.”⁶⁹

Given the above, during the *LTFV Investigation*, the Department instructed Hyosung to report sales and expense data for POI sales that may not have shipped as of December 31, 2011.⁷⁰ The Department also instructed Hyosung to report estimated sales and expense data for these transactions to the extent that the actual costs and expenses had not yet been finalized.⁷¹ Hyosung complied with the Department's requests for information and provided the actual and estimated data for its unshipped (as well as shipped) POI sales.⁷² Hyosung also informed the Department that variations could and likely would exist between Hyosung's estimated and actual expenses.⁷³ Therefore, as the Department understood, the estimated data and initial gross-unit prices reported for its unshipped sales would need to be updated to reflect actual data for when these sales shipped during the first administrative review.

In the instant administrative review and per the Department's request, Hyosung reported actual and/or updated data, including updated gross-unit prices, as applicable, for all transactions that were shipped, sold, and entered the United States during the POR. The reported sales included “overlapping” sales that had been reported in the *LTFV investigation* with estimated data but had subsequently shipped. As to be expected, and as acknowledged by the Department in the *LTFV Investigation*, the data submitted in the instant review, including gross-unit prices which were

⁶⁹ See *LTFV Investigation* and accompanying Issues and Decision Memorandum at Comment 14.

⁷⁰ *Id.* at Comment 9 (as it relates to Hyosung).

⁷¹ *Id.*

⁷² *Id.*

⁷³ *Id.* at Comment 14.

subject to change *via* amended or revised sales contracts/purchase orders, differed from the data submitted in the *LTFV Investigation* in certain instances.

Throughout the course of this review, Petitioner has consistently pointed to differences between estimated data and amendments to gross-unit prices reported in the LTFV investigation and actual or revised data reported in this instant administrative review for selected transactions. Specifically, in its Case Brief, Petitioner argued that the Department should not accept Hyosung's "changes" to U.S. prices for certain overlapping sales.⁷⁴ In support of its assertion, Petitioner points to certain sales that were "intensively examined" by the Department throughout the course of this administrative review.⁷⁵ Petitioner argues that the supporting documentation provided by Hyosung for these examined sales contain deficiencies that undermine the reliability of Hyosung's data. In addressing each of Petitioner's separate allegations regarding these specific overlapping sales, Hyosung demonstrates, as it has throughout the course of the administrative review, that Petitioner's analyses are misplaced and simply incorrect in each instance.⁷⁶ Substantial record evidence in the form of sales contracts/purchase orders, amended purchase orders, invoices, payment records, and numerous other documents confirm the completeness and accuracy of Hyosung's reported sales to the Department's satisfaction. Additionally, while the Department examined certain estimated data, and Hyosung's underlying reporting methodology for such data during the LTFV investigation, we understood and expected that such data, as it was estimated and not actual, could and/or would be subject to change. Therefore, just because these data was examined in the LTFV investigation, does not mean that these sales data could not reasonably be revised in this administrative review. In other words, the fact that the data changed alone would not necessarily call into question the reliability of the updated, actual data. Moreover, we also reiterate that the estimated data for the unshipped sales reported in the LTFV investigation were not used in our final dumping analysis in the final determination.

The Department confirms that it extensively examined each of Petitioner's concerns as well as Hyosung's responses. Each of the claims Petitioner makes regarding the "changes" between data reported in the LTFV investigation and actual/revised data for the overlapping sales it discusses in its Case Brief can be attributed to either Petitioner's own misrepresentation of record evidence or (1) the reporting of estimated values in the LTFV investigation and actual values in the instant administrative review, (2) consideration of amended or revised purchase orders issued by the U.S. customer, or (3) expanded scope of services requested by the U.S. customer for the sale (*e.g.*, the inclusion of inland freight and installation, which were stipulated in revised purchase orders).⁷⁷ Notwithstanding, it is important to reiterate that in the LTFV investigation, the Department itself understood that the estimated data, including initially reported gross-unit prices, reported for Hyosung's unshipped sales (*i.e.*, overlapping sales), would be subject to revision once these sales were reported as shipped and sold in the instant administrative review.

⁷⁴ See Petitioner's Hyosung Case Brief at 9-32.

⁷⁵ *Id.*

⁷⁶ See Hyosung's Case Brief at pages 11-51.

⁷⁷ See Hyosung's April 10th SQR at pages 23-24; *see also* Hyosung's July 2nd SQR at pages S-18 through S-22 and Exhibits S-8 through S-12; *see also* Hyosung's November 5th SQR at pages 1-3 and Exhibits 1 and 2A-2C.

Finally, it is also important to note that in the LTFV investigation, Petitioner itself argued that the Department should rely on the purchase order as the date of sale in this proceeding, a date prior to invoice date, which per the Department's normal practice, normally serves as the basis of the date of sale.⁷⁸ As a result of using a sale date earlier than the invoice date, sales information, including gross-unit prices, can and do change between purchase order date (*i.e.*, the date of sale for this proceeding) and the shipping of the final LPT. As noted above, the Department examined a number of amended sales contracts/purchase orders throughout the course of this administrative review, including amended sales contracts that *predate* both this administrative review and the filing of the Petition.⁷⁹ The Department further notes that in the *LTFV Investigation*, Petitioner itself specifically requested that the Department rely on Hyosung's home market reporting and not defer to constructed value.⁸⁰

In that same vein, with regard to Petitioner's claim that the Department should apply AFA, we disagree with Petitioner that "facts otherwise available" or an adverse inference with respect to Hyosung is warranted. Petitioner's argument that the Department should apply total AFA where there are inconsistencies on the record does not have merit. The facts of this instant administrative review can be distinguished from the facts in *Shanghai Taoen*, *Nippon Steel*, or *Shandong Huarong* cited by Petitioner in its Case Brief, because Hyosung has been fully cooperative and has provided satisfactory explanations to the Department's supplemental questions, as explained further below.⁸¹ Sections 776(a)(1) and (2) of the Act provide that the Department shall apply "facts otherwise available" if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) {w}ithholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

As explained in detail above, the Department issued supplemental questionnaires and went to great lengths to ensure the accuracy of Hyosung's reporting of actual or revised data in this administrative review. Additionally, Petitioner raised numerous questions throughout the course of this administrative review which the Department also went to great lengths to address. Hyosung responded to each of the Department's requests for additional information in a timely manner. Furthermore, the responses provided by Hyosung specifically satisfied any concerns the Department had throughout the course of the review. As noted above, the Department only relies on "adverse inferences" under section 776(b) of the Act if it 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 finds that Hyosung cooperated and responded to the best of its ability. Moreover, the Department finds no record evidence demonstrating that Hyosung

⁷⁸ See *LTFV Investigation*.

⁷⁹ See Hyosung's July 2nd SQR at Exhibit S-12.

⁸⁰ See *LTFV Investigation* and accompanying Issues and Decision Memorandum at Comment 10.

⁸¹ See Petitioner's Hyosung Case Brief at 3-4 and 40-42, citing to *Shanghai Taoen* 360 F. Supp. at 1344-45, *Shandong Huarong*, 27 CIT at 1581-82, and *Nippon Steel*, 337 F. 3d at 1382-3.

withheld material information in this proceeding. Therefore, for the reasons identified above, we continue to find Hyosung's reporting reliable and, therefore, have determined that reliance on facts otherwise available or adverse inferences with respect to Hyosung is not appropriate.

Comment 4: U.S. Commission Expenses

Petitioner's Comments

- Hyosung's reported U.S. commission expenses are not corroborated by the record.⁸² Specifically, a comparison of Hyosung's calculated commission expenses, as identified on the commission statement sent to its unaffiliated U.S. sales agent for this sale, with the corresponding expense, as reported by Hyosung in its U.S. sales database, yields a discrepancy.⁸³
- For every sale with a commission, the Department should, as AFA, deduct the highest commission in Hyosung's U.S. sales database.⁸⁴
- Due to the proprietary nature of these commission agreements, *see* Hyosung's Proprietary Memorandum at "U.S. Commission Expenses" for further discussion.

Hyosung's Comments

- Hyosung argues that Petitioner's claims with regard to its reporting of U.S. commission expenses ignores three fundamental facts: (1) Hyosung "accurately reported and fully supported its reported commission expenses," (2) Hyosung "explained and documented" the specific differences between the selling expenses reported to the Department in Hyosung's U.S. sales database and the selling expenses used to calculate the commissions for the transaction noted by Petitioner and (3) "the price used to calculate commission amounts, which is based in part on estimated selling expenses, will not always equal the net price calculated from the actual expenses reported in Hyosung's U.S. sales database."⁸⁵
- Hyosung provided supporting documentation for the sale specifically discussed by Petitioner in its Case Brief, as well as a number of sales, which demonstrates that Hyosung paid the commission amount listed on the commission statement and reported in Hyosung's U.S. sales database.⁸⁶
- With regard to Petitioner's claim that Hyosung's reporting is flawed because the selling expenses used to calculate commissions do not equal the selling expenses reported in Hyosung's U.S. sales listing, Hyosung states that it explained, and fully supported with record evidence, that it "occasionally uses estimated, rather than actual, selling expenses

⁸² See Petitioner's Hyosung Case Brief at pages 33-35.

⁸³ *Id.*

⁸⁴ *Id.* at 35.

⁸⁵ See Hyosung's Rebuttal Brief at page 54.

⁸⁶ *Id.* at 55.

to calculate the commission. Accordingly, ‘because the estimated expenses used in the... commission calculation can differ from the actual expenses, the {estimated} values shown in the commission expense calculation do not necessarily tie to the actual expenses reported in the U.S. sales database.’”⁸⁷

- Accordingly, the Department should not make any adjustment to Hyosung’s reported commissions for the final results.⁸⁸

Department’s Position

The Department disagrees with Petitioner with respect its claims that Hyosung misreported its U.S. commission expenses and asserts that the Department should, as AFA, deduct the highest reported commission expense from the gross unit price of each U.S. sale for which Hyosung paid a commission. Specifically, for these final results, the Department continues to find that Hyosung (1) accurately reported and fully supported its reported commission expenses and (2) explained/documented the specific differences between the selling expenses reported to the Department in Hyosung’s U.S. sales database and the selling expenses used to calculate the commissions for the sample transaction noted by Petitioner in its Case Brief.

With regard to the first point, the Department notes that Hyosung provided the Department with documentation demonstrating its reported commission for the sample sale discussed by Petitioner.⁸⁹ Specifically, Hyosung provided a copy of the commission statement sent to its U.S. sales agent for this sale, a worksheet demonstrating how the commission documentation reconciles to the U.S. sales listing, and documentation demonstrating that Hyosung paid the commission amount listed on the commission statement and reported in Hyosung’s U.S. sales database.⁹⁰ Furthermore, in complying with Department requests throughout this administrative review, Hyosung also provided complete sample documentation (*i.e.*, purchase order or sales contract, contract amendments (where applicable), customer invoice, customer payment, invoice from unaffiliated sales agent, commission agreement with the unaffiliated sales agent, and Hyosung’s payment to the unaffiliated sales agent) as well as a worksheet demonstrating how commissions were calculated for additional sample sales.⁹¹ The Department examined the supporting documentation for each of these sample sales and determined that Hyosung’s commissions expenses, as paid to the unaffiliated sales agents and reported to the Department, are accurate and supported by these source documents.

With regard to the second point, Petitioner asserts that Hyosung’s reporting of certain selling expenses is inaccurate because the selling expenses used to calculate commissions do not equal the selling expenses reported in Hyosung’s U.S. sales listing. The Department notes that it reviewed Petitioner’s claim extensively throughout the course of this segment of the proceeding.

⁸⁷ *Id.* at 55-56.

⁸⁸ *Id.* at 56-57.

⁸⁹ See Hyosung’s CQR at Exhibit C-19 and Hyosung’s April 10th SQR at Exhibit S-36.

⁹⁰ See Hyosung’s CQR at Exhibit C-19 (a copy of the commission statement sent to its sales agent for this U.S. sale as well as a worksheet demonstrating how the commission documentation reconciles to the U.S. sales listing) and April 10th SQR at Exhibit S-36 (documentation demonstrating that Hyosung paid the commission amount listed on the commission statement and reported in Hyosung’s U.S. sales database).

⁹¹ See Hyosung’s April 10th SQR at Exhibits S-36A through S-36C.

Specifically, in a supplemental questionnaire to Hyosung, the Department requested additional information/clarification regarding these very “discrepancies” as they relate specifically to the sample sale discussed by Petitioner in its Case Brief.⁹² In its response to the Department’s request, Hyosung explained the following with regard to how commission expenses are calculated:

“HICO America calculates commission amounts by first calculating the net sales value, which is calculated by deducting the sales expenses and HICO America’s profit from the sales value. For purposes of the commission expense calculation, Hyosung identifies the expenses to deduct from the gross unit price as follows:

- (1) Ocean Freight and HICO America’s profit are based on the estimated value presented in the OAF (Order Acknowledge Request Form) between HICO America and Hyosung (a copy of the OAF for this transaction is provided in Exhibit S-30); and
- (2) Duty, Oil, Installation, and U.S. Inland Freight: Higher value between the HICO America’s budget amount and actual cost incurred.”⁹³ (emphasis-added)

Hyosung explained that it had no way of knowing the final (*i.e.*, actual) transportation and installation expenses at the time at the time the OAF is generated.⁹⁴ Furthermore, Hyosung states that “because the estimated expenses used in the net price calculation for purposes of the commission calculation can differ from the actual expenses, the values shown in the commission expense calculation do not necessarily tie to the actual expenses reported in the U.S. sales database.”⁹⁵ Hyosung’s narrative description of its calculation of commission expenses (and the sales expenses it deducts to calculate the net sales value which is used to determine the commission to be paid) is fully supported by record evidence. Specifically, Hyosung provided complete sales documentation for the sample sale specifically discussed by Petitioner in its Case Brief, including supporting materials for both the actual reported selling expense amounts (*e.g.*, transportation, oil, and installation) reported to the Department and the estimated expenses used for determining the total commissions to be paid.⁹⁶ For example, for inland freight expenses, Hyosung provided the invoice from its unaffiliated freight provider supporting the freight amount reported in its U.S. sales database.⁹⁷ Along with the freight invoice, Hyosung provided an internal form, which is kept in the normal course of business, which lists Hyosung’s actual freight expense along with the initial estimated expense amount (*i.e.*, the amount used in the commission calculation).

In sum, the supporting documentation provided by Hyosung for its reporting of commission expenses for each of these sales *reconciles the commission expenses paid by Hyosung to its*

⁹² *Id.* at 27-28.

⁹³ *Id.*

⁹⁴ See Hyosung’s Rebuttal Brief at page 40.

⁹⁵ See Hyosung’s April 10th SQR at pages 27-28.

⁹⁶ *Id.* at Exhibit S-30.

⁹⁷ *Id.*

unaffiliated sales agents to the commission expenses Hyosung reported in its U.S. sales database. For the foregoing reasons, the Department continues to find that the record demonstrates that Hyosung (1) accurately reported and fully supported its reported commission expenses and (2) explained/documentated the specific differences between the selling expenses reported to the Department in Hyosung's U.S. sales database and the selling expenses used to calculate the commission expenses that Hyosung reported to the Department.

Comment 5: U.S. Ocean Freight Expenses

Petitioner's Comments

- Hyosung's reported U.S. expenses for ocean freight are not supported by other record data.⁹⁸
- The Department should rely on the highest calculated margin for the three sales identified in Petitioner's Case Brief or, at a minimum, rely on other record information regarding ocean freight for these sales if the Department determines not to make an adverse inference.⁹⁹
- Due to the proprietary nature of these expenses and Petitioner's arguments, *see* Hyosung's Proprietary Memorandum at "U.S. Ocean Freight Expenses" for further discussion.

Hyosung's Comments

- Hyosung has supported its reporting of ocean freight in its U.S. sales database with record evidence.¹⁰⁰
- Due to the proprietary nature of these expenses and Hyosung's rebuttal comments, *see* Hyosung's Proprietary Memorandum at "Ocean Freight Expenses" for further discussion.

Department's Position

In its Case Brief, Petitioner asserts that Hyosung misreported its ocean freight expenses. Specifically, Petitioner claims that the ocean freight amounts listed on certain documents do not reconcile with the ocean freight expenses reported by Hyosung in its U.S. sales listing. The Department disagrees with Petitioner.

Hyosung provided complete source documentation supporting its reported ocean freight expenses for a number of sales. The supporting documentation provided by Hyosung for each of these sales *reconciles the ocean freight expenses paid by the customer to the ocean freight expenses Hyosung reported in its U.S. sales database.* Petitioner's reliance on other documents to substantiate or reconcile Hyosung's ocean freight expenses as reported in its U.S. sales

⁹⁸ See Petitioner's Hyosung Case Brief at pages 35-36 and 37-38.

⁹⁹ *Id.* at 38.

¹⁰⁰ See Hyosung's Rebuttal Brief at pages 57-58.

database is misplaced. The documents Petitioner refers to are relying on estimated amounts for ocean freight expenses per Hyosung's normal business practice, *e.g.*, to derive commission payments to selling agents. Additionally, the Department does not rely on expenses listed on the documents Petitioner refers to in order to verify the accuracy of a respondent's reporting of those expenses to the Department. Rather the Department relies on supporting documentation directly related to the expense itself (*i.e.*, invoices, payment documentation, *etc.*) to verify a respondent's reporting of actual expense data.

In sum, the Department continues to find that Hyosung correctly reported ocean freight expenses to the Department. Due to the proprietary nature of these expenses and source documents, *see* Hyosung's Proprietary Memorandum at "Ocean Freight Expenses" for further discussion.

Comment 6: Installation Expenses

Petitioner's Comments

- In its Case Brief, Petitioner argues that Hyosung's reported installation expenses are inaccurate because they do not reconcile to the installation expenses used as part of the calculation of Hyosung's commission payments owed to its sales agents.¹⁰¹
- Petitioner also claims that Hyosung's reported U.S. installation expenses may be understated because the reported expenses may not include certain additional expenses (*i.e.*, expenses that Hyosung has treated as indirect selling expenses in the United States).¹⁰²
- The Department should increase installation costs for all U.S. sales based on certain record evidence.
- Due to the proprietary nature of these expenses and Petitioner's arguments, *see* Hyosung's Proprietary Memorandum at "Installation Expenses" for further discussion.

Hyosung's Comments

- Hyosung calculates payments to its sales agents based on sales prices net of certain expenses.¹⁰³
- Hyosung has fully documented and substantiated its reported installation expenses and, therefore, the Department should not adjust Hyosung's reported installation expenses in the final results.¹⁰⁴

¹⁰¹ See Petitioner's Hyosung Case Brief at pages 35-37.

¹⁰² *Id.* at 38-40.

¹⁰³ See Hyosung's Rebuttal Brief at page 58.

¹⁰⁴ *Id.* at 59-60.

- Due to the proprietary nature of these expenses and Hyosung’s rebuttal comments, *see* Hyosung’s Proprietary Memorandum at “Installation Expenses” for further discussion.

Department’s Position

With respect to Petitioner’s arguments that (1) Hyosung’s reported installation expenses are inaccurate because they do not reconcile to the installation expenses used as part of the calculation of Hyosung’s commission payments owed to its sales agents and (2) Hyosung’s reported U.S. installation expenses may be understated because the reported expenses may not include certain additional expenses (*i.e.*, expenses that Hyosung has treated as indirect selling expenses in the United States), the Department disagrees with Petitioner.

With regard to the first point, the Department notes that Petitioner’s reliance on a comparison of the installation expenses used as part of the calculation of Hyosung’s commission payments, owed to its sales agents to Hyosung’s reported installation expenses, is misplaced and inaccurate. The Department does not rely on expenses listed on these types of documents or based on such comparisons to verify the accuracy of a respondent’s reporting of those expenses to the Department. Rather the Department relies on supporting documentation specific to a given expense (*e.g.*, invoices, payment documentation, *etc.*) to verify a respondent’s reporting. Moreover, the installation expenses used in the calculation of the commissions paid to Hyosung’s selling agents are understandably different from the actual commission expenses (COMMU) reported by Hyosung in the U.S. sales database as the expenses used in Hyosung’s commission payment calculations are based on estimated installation expenses, as the actual amounts are not known until later in the sales process. Therefore, this difference in data renders Petitioner’s suggested reconciliation to be unreasonable.

To this end, Petitioner ignores the fact that Hyosung has accurately reported and substantiated its reported installation expenses to the Department. Specifically, Hyosung provided source documentation demonstrating the accuracy of its reporting of installation expenses to the Department for U.S. sales specifically mentioned by Petitioner.¹⁰⁵ The supporting documentation provided by Hyosung for each of these sales substantiates the actual installation expenses incurred with the installation expenses Hyosung reported in its U.S. sales database.¹⁰⁶

Finally, with regard to Petitioner’s claim that Hyosung’s reported U.S. installation expenses may be understated because the reported expenses may not include certain additional expenses (*i.e.*, expenses that Hyosung has treated as indirect selling expenses in the United States), we note that Petitioner’s argument was already addressed by the Department. In the *Preliminary Results*, the Department explained that “while we are accepting Hyosung’s reporting of installation and warranty expenses for purposes of these preliminary results, in future administrative reviews, the Department expects Hyosung to be consistent with regard to its reporting of these expenses between the home and U.S. markets. With regard to Hyosung’s reporting of installation expenses, while Hyosung treats certain expenses related to installation as direct in the home market, these same expenses are treated as indirect in the United States.”¹⁰⁷ As we placed

¹⁰⁵ See Hyosung’s CQR at Exhibit C-24; *see also* Hyosung’s April 10th SQR at Exhibit S-29.

¹⁰⁶ *Id.*

¹⁰⁷ See *Preliminary Results* and accompanying Preliminary Decision Memorandum at page 9.

Hyosung on notice in the *Preliminary Results* that we expect it to be consistent with regard to its reporting between markets of these expenses, we will continue to rely on its reporting of installation expenses for these final results.

In sum, the Department continues to find that Hyosung accurately substantiated its reported installation expenses to the Department. We also find that Hyosung has reported all installation expenses incurred in the home and U.S. markets, although under different expense categories.

Comment 7: The Department Erred in Conducting the Differential Pricing Analysis

Petitioner's Comments

- The Department erred in conducting the differential pricing analysis in the *Preliminary Results*.¹⁰⁸
- In applying the Cohen's *d* test, the Department only "tested" a certain limited number of U.S. sales to determine whether there existed a pattern of prices that differ significantly. This resulted from the Department's reliance on only comparing prices for identical merchandise among purchasers, regions or time periods. For products for which export prices were not "tested," the Department should make comparisons to prices of similar products and apply a difference in merchandise adjustment to the prices being compared.¹⁰⁹
- Alternatively, Petitioner requests that the Department remove from the denominator of the ratio test the value of U.S. sales which were not "tested," and base the ratio test on the value of U.S. sales whose prices could be "tested" in the Cohen's *d* test.¹¹⁰
- Due to the proprietary nature of Petitioner's comments on this issue, *see* Hyosung's Proprietary Memorandum at "The Department Erred in Conducting the Differential Pricing Analysis" for further discussion.

Hyosung's Comments

- If the Department persists in conducting a differential pricing analysis, the Department must reject Petitioner's attempts to unreasonably inflate the calculated margins.¹¹¹
- Petitioner cites no authority or past case as support for either of its proposals.¹¹²
- The Department has only once modified the differential pricing test and did so under very narrow circumstances by only modifying the default time periods from a POR quarter-basis to a monthly-basis without changing the definition of the group or otherwise test

¹⁰⁸ See Petitioner's Hyosung Case Brief at pages 63-67.

¹⁰⁹ *Id.*

¹¹⁰ *Id.* Petitioner's reference to "tested" sales refers to sale(s) being tested by Cohen's *d* coefficient.

¹¹¹ See Hyosung's Rebuttal Brief at pages 82-89.

¹¹² *Id.* at 86.

other parameters by which the products could be found “differentially” priced.¹¹³

- In *Chinese Seamless Refined Copper Pipe and Tube*, the respondent suggested that the Department modify the time period component of the test to a monthly, rather than quarterly, basis because of contractually determined monthly fluctuations in copper prices; the Department agreed that because a major portion of the price changed monthly, there existed a logical basis to mirror these facts when examining whether their prices differed significantly among time periods.¹¹⁴
- While the Department modified the time period definitions accordingly in the above-referenced case, the facts do not apply to this review.¹¹⁵
- Regarding a difference in merchandise price adjustment, the Department’s approach to the sales data would, in effect, render the U.S. sales database into a single grouping for purposes of the differential pricing test, and such a test would ultimately render any analysis under the Cohen’s *d* test meaningless.¹¹⁶
- Regarding Petitioner’s suggestion that the Department base its ratio test only on “testable” sales, there is no basis in Department practice supporting this approach as the Department’s ratio test is intended to determine the extent of significant price differences over an entire review period, not isolated instances.¹¹⁷
- Petitioner’s suggested modification would essentially nullify this aspect of the Department’s test.¹¹⁸
- Petitioner’s request that the Department apply the mixed methodology as a result under this alternative would have no practical impact.¹¹⁹
- It is consistent with the nature of these products and this industry that the Department did not find that Hyosung differentially priced based on time periods, purchasers, or regions as subject merchandise is highly complex customized, expensive equipment with an extremely limited customer base.¹²⁰

¹¹³ *Id.* at 86-87.

¹¹⁴ *Id.* at 87 where Hyosung cites to *Seamless Refined Copper Pipe and Tube From the People’s Republic of China: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 23324 (April 28, 2014) and accompanying Issues and Decision Memorandum at Comment 6.

¹¹⁵ *Id.* at 87.

¹¹⁶ *Id.* at 87-88.

¹¹⁷ *Id.* at 88.

¹¹⁸ *Id.*

¹¹⁹ *Id.*

¹²⁰ *Id.* at 89.

Department's Position

With regard to Petitioner's argument that the Department erred in conducting the differential pricing analysis in the *Preliminary Results*, we disagree.

As an initial matter, Petitioner's arguments do not consider the plain language of the statute. Petitioner does not argue that the Department's reliance on the differential pricing analysis violates the statutory language of section 777A(d) of the Act. Rather, Petitioner puts forth arguments unrelated to the statutory or regulatory language as to why it believes that the Department should modify its approach from the *Preliminary Results*. However, there is nothing in the statute or the regulations that mandates how the Department measures whether there is a pattern of prices that differ significantly or explains why the average-to-average (A-to-A) method or the transaction-to-transaction (T-to-T) method cannot account for such differences. On the contrary, carrying out the purpose of the statute and the regulations here is a gap-filling exercise by the Department. As explained in the *Preliminary Results* and above, the Department's differential pricing analysis is reasonable.

Thus, we decline to modify our differential pricing analysis for the final results of this administrative review. As noted above, the statute does not define what the Department should regard as "comparable merchandise" for purposes of determining whether there is a pattern of prices that differ significantly among purchasers, regions, or time periods.¹²¹ In interpreting this ambiguous statutory provision, when using either a targeted dumping analysis or a differential pricing analysis, the Department has relied upon examining the difference in U.S. prices of identical merchandise.¹²² The Department has followed this practice to ensure that an apples-to-apples comparison is made between export sales such that differences are not found because of different pricing behaviors between different products.¹²³ Accordingly, we find this approach to be reasonable when examining where there exists a pattern of prices that differ significantly based on time periods, purchasers, or regions.

For the foregoing reasons, we have not changed our approach in conducting the differential pricing analysis from the *Preliminary Results*.

¹²¹ See section 777A(d)(1)(B) of the Act.

¹²² See, e.g., *Certain frozen fish fillets from the Socialist Republic of Vietnam: Preliminary Results of the Antidumping Duty Administrative Review and New Shipper Review; 2011-2012*, 78 FR 55676 (September 11, 2013), and accompanying Preliminary Decision Memorandum at 20 ("For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number." (footnote omitted)).

¹²³ See, e.g., *Welded Carbon Steel Standard Pipe and Tube Products From Turkey: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 79665 (December 31, 2013), and accompanying Issues and Decision Memorandum, at Comment 10.

Comment 8: Consideration of an Alternative Comparison Method in an Administrative Review

Hyosung's Comments

- The Department should not have conducted a differential pricing analysis in the first place and should eliminate this test from its analysis in its final results as the Department lacks the statutory authority to consider an alternative comparison method in administrative reviews.¹²⁴
- The statutory authority that the Department relies upon to conduct a differential pricing analysis, which is set forth at section 777A(d)(1)(B) of the Act, is limited to original investigations.¹²⁵
- The statute explicitly identifies the Department's authority to use an alternative comparison method as an exception to a standard comparison method in original LTFV investigations.¹²⁶
- The structure of section 777A(d) of the Act unequivocally shows Congress's intent that reliance on an alternative comparison method would function as an exception to the standard comparison method in original investigations and would not be applied in administrative reviews, and the Department does not have the authority to override this intent.¹²⁷

Petitioner's Comments

- Petitioner did not comment on this issue.

Department's Position

With regard to Hyosung's argument that the Department should not have conducted a differential pricing analysis in the first place and should eliminate this test from its analysis in its final results as the Department lacks the statutory authority to apply a differential pricing analysis in administrative reviews, because the Department is continuing to make comparisons for Hyosung using the A-to-A methodology, we find Hyosung's arguments to be moot for purposes of this administrative review.

¹²⁴ See Hyosung's Rebuttal Brief at pages 89-90.

¹²⁵ *Id.* at 83.

¹²⁶ *Id.*

¹²⁷ *Id.* where Hyosung cites to *FAG Italia S.p.A. v. United States*, 291 F. 3d 806,816 (Fed. Cir. 2002) (quoting *La. Pub. Serv. Comm'n v. FCC*, 476 U.S. 355, 374 (1986)).

Comment 9: Denial of Offsets for Non-Dumped U.S. Sales When Using the A-To-T Comparison Method In Administrative Reviews

Hyosung's Comments

- The Department is legally prohibited from zeroing when using the A-to-T comparison method in administrative reviews.¹²⁸

Petitioner's Comments

- Petitioner did not comment on this issue.

Department's Position

With regard to Hyosung's argument that the Department is legally prohibited from zeroing when using the A-to-T method in administrative reviews, we find this argument moot as we are continuing to use the A-to-A method, based on the results of our differential pricing analysis, to calculate Hyosung's weighted-average dumping margin for these final results.

Comment 10: Harbor Maintenance Fees

Petitioner's Comments

- The Department should correct errors in Hyosung's U.S. sales database regarding understated harbor maintenance fees.¹²⁹
- The Department should, as AFA, increase reported USDUTY amounts for all U.S. sales.¹³⁰
- Due to the proprietary nature of this issue and Petitioner's comments, *see* Hyosung's Proprietary Memorandum at "Harbor Maintenance Fees" for further discussion.

¹²⁸ *Id.* at 89-90 where Hyosung cites to *United States - Continued Existence and Application of Zeroing Methodology*, Report of the Appellate Body, WT/DS350/AB/R (February 4, 2009); *United States - Final Anti-Dumping Measures on Stainless Steel from Mexico*, Report of the Appellate Body, WT/DS344/AB/R (April 30, 2008) (*U.S. Stainless Steel (Mexico)*); *United States - Measures Relating to Zeroing and Sunset Reviews*, Report of the Appellate Body, WT/DS322/AB/R (January 9, 2007) (*U.S. - Zeroing (Japan)*); *United States - Laws, Regulations and Methodology for Calculating Dumping Margins*, Report of the Appellate Body, WT/DS294/AB/R (April 18, 2006) (*U.S. - Zeroing (EC)*); *United States - Continued Existence and Application of Zeroing Methodology*, Report of the Panel, WT/DS350/R (October 1, 2008); *see also United States- Anti-Dumping Measures on Certain Shrimp and Diamond Sawblades from China*, Report of the Panel, WT/DS422/R (June 8, 2012) (*U.S.- Shrimp/Sawblades*); *United States- Anti-Dumping Measures on Certain Shrimp from Vietnam*, Report of the Panel, WT/DS404/R (July 11, 2011) (*U.S. - Shrimp from Vietnam*); *United States- Use of Zeroing in Antidumping Measures Involving Products from Korea*, Report of the Panel, WT/DS402/R (January 18, 2011) (*U.S. Zeroing (Korea)*); *United States- Anti-Dumping Measures on Polyethylene Retail Carrier Bags from Thailand*, Report of the Panel, WT/DS383/R (January 22, 2010) (*U.S. - Bags from Thailand*).

¹²⁹ *See* Petitioner's Hyosung Case Brief at 67.

¹³⁰ *Id.*

Hyosung's Comments

- Hyosung states that there is no record evidence supporting Petitioner's claim with respect to the sale in question.¹³¹
- If the Department feels an adjustment is necessary, it should be limited to the sale in question.¹³²
- Due to the proprietary nature of this issue and Hyosung's rebuttal comments, *see* Hyosung's Proprietary Memorandum at "Harbor Maintenance Fees" for further discussion.

Department's Position

In its Case Brief, Petitioner argues that Hyosung incorrectly reported the harbor maintenance fee for one U.S. sale and that the Department should, as AFA, increase reported USDUTY amounts for all U.S. sales. The Department agrees with Petitioner, in part. The Department does not, however, agree with Petitioner that the underreported harbor maintenance fee for this sale is indicative of misreporting for additional U.S. sales and that, as AFA, the Department should increase reported USDUTY amounts for all U.S. sales. Based on record evidence, it appears that Hyosung's misreporting of harbor maintenance fees is an isolated incident. Furthermore, as Hyosung's reporting of field USDUTYU, including its correct reporting of harbor maintenance fees, has been fully documented for additional U.S. sales. For these final results, the Department is adjusting Hyosung's USDUTYU reporting for certain sales to account for harbor maintenance fees. Due to the proprietary nature of these expenses and our analysis thereof, *see* Hyosung's Proprietary Memorandum at "Harbor Maintenance Fees" for further discussion.

Comment 11: Oil Expenses

Petitioner's Comments

- The Department should correct errors in Hyosung's U.S. sales database regarding omitted oil expenses.¹³³
- The Department should, as AFA, apply the omitted oil expenses to certain U.S. sales.¹³⁴
- Due to the proprietary nature of these expenses and Petitioner's comments, *see* Hyosung's Proprietary Memorandum at "Oil Expenses" for further discussion.

¹³¹ *See* Hyosung's Rebuttal Brief at page 90.

¹³² *Id.* at 91.

¹³³ *See* Petitioner's Hyosung Case Brief at page 68.

¹³⁴ *Id.*

Hyosung's Comments

- The oil expenses “found” by Petitioner are not oil expenses; rather, the “expenses” are a reference to “gallons” of oil.¹³⁵
- Hyosung confirms that it correctly reported oil expenses for the sale in question.¹³⁶
- Due to the proprietary nature of these expenses and Hyosung’s rebuttal comments, *see* Hyosung’s Proprietary Memorandum at “Oil Expenses” for further discussion.

Department's Position

In its Case Brief, Petitioner argues that Hyosung incorrectly reported oil expenses for a particular U.S. sale. The Department disagrees with Petitioner. The Department examined the sales documentation discussed by Petitioner at length and it is clear from this record evidence that Hyosung, in fact, correctly reported oil expenses for this sale. Due to the proprietary nature of these expenses and our analysis, *see* Hyosung’s Proprietary Memorandum at “Oil Expenses” for further discussion.

Comment 12: Exclusion of Certain U.S. Freight Expenses for a Particular U.S. Sales Transaction

Hyosung's Comments

- Hyosung claims that the Department double counted its freight deductions by first eliminating from Hyosung’s reported gross unit price freight amounts it charged to its customer, then by deducting from the reported price these expenses in order to calculate a “net” unit price. Therefore, the Department consequently understated Hyosung’s net U.S. price.
- Substantial record evidence unequivocally demonstrates that Hyosung correctly and accurately included in its reported gross unit price the total freight amounts charged to, and paid by, its customer.¹³⁷
- Contrary to the Department’s claims otherwise, the record contradicts the notion that that there was any double-counting of freight charges in Hyosung’s reported gross unit price or that the record lacked evidence regarding the customer’s payment obligations.¹³⁸
- The Department’s deduction of freight charges from the gross unit price of this U.S. sales transaction contradicts the statute, which requires that the Department make single

¹³⁵ *See* Hyosung’s Rebuttal Brief at page 91

¹³⁶ *Id.*

¹³⁷ *See* Hyosung’s July 2nd SQR at Exhibit S-11.

¹³⁸ *Id.* at 1-2; *see also* Hyosung’s August 21, 2014 Supplemental Questionnaire Response at 18 (“The purchase order did not include the freight charges because Hyosung did not know what these charges would be at the time the purchase order was issued.”).

deductions from the starting price for expense elements that are included in the price and that are “attributable to any additional costs, charges, or expenses... which are incident to bringing the subject merchandise” from the point of shipment to the point of delivery in the United States.¹³⁹

- The Department should not penalize Hyosung for not providing documentation that the Department never requested.

Petitioner’s Comments

- Petitioner urges the Department to rely upon “facts available,” with an adverse inference, *i.e.*, use the highest transaction margin as set forth in its case brief,¹⁴⁰ with respect to the U.S. sales transaction Petitioner discusses in its Hyosung Case Brief, as well as other sales that were reported in the period of investigation, that evidenced unsupported, after-the-fact increases to U.S. prices.¹⁴¹
- According to Petitioner, the Department properly denied Hyosung’s double-counting of freight costs for the U.S. sale in question and should treat similar sales for which Hyosung submitted significantly increased gross U.S. prices that were established long after the issuance of the original signed sales contract and/or purchase order.
- Such increases, Petitioner explains, are contrary to LPT industry norms, where the material terms of sale, including the gross unit price, are determined at the outset in lengthy and detailed contracts.
- Petitioner points out that Hyosung did not submit these price changes to the Department until after the after-contract price and cost revisions were raised by Petitioner.
- In response to further questions from the Department, Petitioner states that Hyosung’s only record explanation for these price increases was the “inclusion of spare parts associated with the sales” in the review data and the provision of an “expanded scope of services” requested by the customer.¹⁴²
- Citing to the Department’s recent *Federal Register* request for comments on after-the-fact price adjustments, wherein the Department reiterated its long-held policy that it will not accept after-the-fact price adjustments not “known to the customer at the time of sale” due to the “potential for manipulation of the dumping margin,”¹⁴³ Petitioner claims that

¹³⁹ See section 772(c)(2)(A) of the Act. Hyosung also cites to the Department’s Antidumping Manual which calls for the parallel treatment of expenses and price elements to ensure that all charges included in the price, in accordance with the terms of sale of a particular transaction, are appropriately offset by any corresponding expenses when calculating a net U.S. price.

¹⁴⁰ See Petitioner’s Hyosung Case Brief at 32-22 and Attachment 1.

¹⁴¹ See Petitioner’s Hyosung Rebuttal Brief at 2 and Petitioner’s Hyosung Case Brief at 2 and Attachment 1.

¹⁴² See Petitioner’s Hyosung Rebuttal Brief in which it cites to Hyosung’s Case Brief at 4-5, Hyosung’s April 10th SQR at S-23, and Hyosung’s July 2nd SQR at S-19 to S-22.

¹⁴³ See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 79 FR 78742-43 (December 31, 2014).

Hyosung's alleged price increases to U.S. sales of million-dollar equipment, made months and years after-the-fact, and subsequent to open bidding processes, fall squarely within the type of post-sale manipulation that the Department has historically refused to countenance.

- Hyosung's claim that the delivery term for the U.S. sales transaction in question "establishes that Hyosung's customer agreed to pay for these freight charges," according to Petitioner, is unsupported by the record.¹⁴⁴ Petitioner also argues that the delivery term cited by Hyosung does not exist according to INCOTERMS, which provide a common set of rules to clarify responsibilities of sellers and buyers for the delivery of goods under sales contracts.
- Petitioner argues that the *Apex Exports* case¹⁴⁵ cited by Hyosung is inapposite and undermines Hyosung's position that per the delivery term for the U.S. sales transaction in question, Hyosung's customer agreed to pay for these freight charges.
- Petitioner explains that a review of the purchase orders related to the U.S. sales transaction in question undermines Hyosung's claims regarding its interpretation of the terms of sale.¹⁴⁶
- Petitioner points out that Hyosung reported the identical terms of sale in its U.S. sales listing for the original investigation, when the gross unit price was not increased as a result of the circumstances claimed by Hyosung regarding freight costs related to the U.S. sales transaction in question. Petitioner also calls into question the timing of when this U.S. sales transaction and any related sales were sold and shipped.¹⁴⁷
- Petitioner also contends that, as noted by the Department,¹⁴⁸ Hyosung provided no documented proof that the customer agreed to pay the charges, contrary to the delivery terms in the purchase order, and Hyosung has provided no evidence that the customer did, in fact, pay the freight (*e.g.*, bank statements or payments slips from the U.S. customer to Hyosung).
- Petitioner further points out that while Hyosung argues that the Department did not ask it for any payment documents, it later concedes that the Department requested "evidence" in support of the price increases to Hyosung's U.S. sales.¹⁴⁹

¹⁴⁴ See Petitioner's Hyosung Rebuttal Brief at 9-10.

¹⁴⁵ See Hyosung's Case Brief at 7-8, and footnote 19, citing *Apex Exports v. United States*, CIT, Slip Op. 13-158 (December 31, 2013).

¹⁴⁶ See Petitioner's Hyosung Rebuttal Brief at 10-12.

¹⁴⁷ *Id.* at 12-14.

¹⁴⁸ See Hyosung's Case Brief at 13, citing Memorandum to the File from Brian C. Davis, "Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated September 18, 2014 (Hyosung's Preliminary Analysis Memo) at 9-10.

¹⁴⁹ *Id.*

- Notwithstanding the request for any “evidence” in support of claimed price increases, Hyosung argues that because the Department did not request any payment documentation it “reasonably believed” none were required. Petitioner takes issue with this reasoning for several reasons: 1) respondent bears the burden of creating a complete and accurate record to support its claims;¹⁵⁰ 2) Hyosung was put on notice that payment information or other proof would be needed when Petitioner questioned in detail the claimed price increases in its July 24, 2014, comments, and yet failed to do so in its August 21, 2014, supplemental questionnaire response; and 3) yet again in a post-Preliminary Results supplemental questionnaire response, Hyosung failed to provide any such documentation when it was fully cognizant that the Department required a bank statement or payment slip or some similar evidence of payment from the U.S. customer to support its claim.
- Petitioner argues that this is precisely the type of information commonly required by the Department to demonstrate that after-sale changes to price are in fact legitimate, and Hyosung had every opportunity to provide such evidence for the record. Therefore, Petitioner avers that it is reasonable for the Department to reject Hyosung’s claim that it “reasonably believe that such documents were not needed.”
- Contrary to Hyosung’s claim that the Department in its rejection of the price increase for this sale must have concluded that Hyosung simply created an invoice that it did not issue to its customer, Petitioner contends that the Department made no such determination and found only that Hyosung had not properly documented and supported its reported data.
- Petitioner contends that Hyosung’s argument that the delivery costs for the U.S. sale in question were not included in the gross unit price because it did not know what the actual freight delivery charges would be, is not plausible or accurate. To support its argument, Petitioner explains that in the investigation the Department required Hyosung to add fields to its U.S. sales listing that identified the type of data reported, such as “INTNFRU_ESTIMATU,” for international freight and given its experience of shipping LPTs to the United States Hyosung would have had the ability to estimate freight expenses.
- Citing to record evidence, Petitioner argues that Hyosung’s claims concerning the circumstances regarding the increase in the gross unit price for the U.S. sale in questions also does not match with the sales data Hyosung provided for the record and raises other inconsistencies in Hyosung’s responses.¹⁵¹
- Lastly, Petitioner submits that in addition to relying on either (1) the highest transaction margin or (2) the lowest reported gross unit price for overlapping sales, the Department should also deduct a set percentage from all U.S. sales based upon Petitioner’s review of items appearing on the invoice summarized by Hyosung for the U.S. sales transaction in question.¹⁵²

¹⁵⁰ See Petitioner’s Hyosung Rebuttal Brief at page 14, citing *Tianjin Machinery Imp. & Exp. Corp. v. United States*, 806 F. Supp. at 1008, 1015 (CIT 1992).

¹⁵¹ *Id.* at 17-21.

¹⁵² *Id.* at 21-22 for additional information regarding this proposed adjustment.

Department's Position

After consideration of parties' comments and record information, the Department has determined to rely upon the gross unit price reported by Hyosung in its U.S. sales database (hyous04_a). The Department has adjusted this reported gross unit price for international freight expenses incurred by Hyosung in shipping this particular LPT to the United States during the POR. Moreover, we have not made any changes to our calculation of net U.S. price for related sales as suggested by Petitioner. Accordingly, and as discussed further below, the Department finds Petitioner's suggestions, to rely on the highest transaction margin or the lowest reported gross unit price for overlapping sales, where the Department should also deduct a set percentage from all U.S. sales based upon Petitioner's review of items appearing on the invoice summarized by Hyosung for the U.S. sales transaction in question, are not warranted.¹⁵³

Contrary to Petitioner's claim that Hyosung provided no documented proof that the customer agreed to pay the freight charges at issue, record evidence indicates that the delivery term on the customer's purchase order matches the delivery arrangements noted in the long-term contract (alliance agreement) with this customer, which is dated prior to the filing of the Petition for this order.¹⁵⁴ The delivery expenses and additional charges are reflected in HICO America's invoice to the U.S. customer.¹⁵⁵ Therefore, it stands to reason that the customer expected the freight charges to be included on the final invoice from HICO America per the terms specified in the alliance agreement and the freight terms identified on the purchase orders associated with this sale.

With respect to Petitioner's arguments that the differences between the estimated freight charges reported for this transaction in the LTFV investigation call into question the accuracy of the freight charges reported in the instant review, we disagree. As explained throughout this memorandum and in the LTFV investigation, to minimize the use of estimated costs and other charges, rather than include in our analyses all products sold during the relevant period, the Department examined, for the most part, only those POI/POR sales that were fully produced, shipped and entered the United States. In the instant administrative review, and per the Department's request, Hyosung reported actual data (revised through March 31, 2014), as available, for all transactions that entered the United States during the POR. The reported sales included "overlapping" sales that had been reported in the LTFV investigation as "unshipped" sales with estimated data but had subsequently shipped in the instant POR. As to be expected and as explained by Hyosung, the actual data reported in the instant administrative review for these sales differed from the estimated data submitted in the LTFV investigation in certain instances.¹⁵⁶

We also do not find that the changes to the material terms of sale, including gross unit price, to be "contrary to LPT industry norms" as suggested by Petitioner. The actual price for the LPT in

¹⁵³ See Hyosung's July 2nd SQR at S-20 and S-21.

¹⁵⁴ *Id.* at Exhibit S-11 at 2 and *see also* Hyosung's February 25th SQR at Exhibit SA-29 at 6.

¹⁵⁵ See Hyosung's July 2nd SQR at Exhibit S-11 at 7-8.

¹⁵⁶ *Id.* at S-20 and S-21.

question did not change from the original purchase order.¹⁵⁷ However, subsequent to the original purchase order, the U.S. customer requested changes to the original purchase order (*e.g.*, an expanded scope of services).¹⁵⁸ The expanded scope of services understandably resulted in an increase to the build-up of the total reported gross unit price for this transaction.¹⁵⁹ Hyosung's explanation for these price increases is supported by record documentation, *e.g.*, revised purchase orders and HICO America's invoice to the U.S. customer,¹⁶⁰ contrary to Petitioner's assertions otherwise. Notwithstanding that one of the revised purchase orders was not signed by the U.S. customer (whereas the original purchase order and other revised purchase order were), these additional items are reflected in HICO America's invoice to the U.S. customer. Moreover, setting the unsigned revised purchase order in question aside, all other signed documents, *i.e.*, the alliance agreement, original purchase order, and first revised purchase order, for this U.S. sale identify consistently the same delivery term whereby the freight expenses were included in the gross unit price and the U.S. customer was obligated to pay such expenses.¹⁶¹ Petitioner claims that the fact that Hyosung could not estimate delivery costs in reporting the gross unit price for this U.S. sale in the LTFV investigation is not plausible or accurate. However, in its July 2nd SQR, Hyosung explains how it derived the gross unit price in the LTFV investigation for this U.S. sale which included estimated amounts for freight charges.¹⁶²

Petitioner also takes issue with the fact that Hyosung did not submit these price changes to the Department until after such changes were questioned by Petitioner. As explained above, the Department expected that sales information not used in the LFTV investigation and included in the "unshipped sales" database would differ from the shipped sales data reported in the instant review as such information was now based on actual data, where applicable. Therefore, it is reasonable that Hyosung reported the actual shipped sales data per the Department's request¹⁶³ without providing a line-by-line explanation of the changes between the databases in its initial responses. Hyosung responded to our subsequent requests for clarification regarding the price changes and cost revisions in its July 2nd SQR.¹⁶⁴

While it is correct that the record does not contain evidence that the customer did, in fact, pay the freight charges (*i.e.*, bank statements or payments slips from the U.S. customer to Hyosung), the Department in its requests for additional information did not explicitly request such documentation from Hyosung. And while Hyosung was not precluded from providing this documentation in response to the Department's requests for information and understood that the Department sought "evidence" to support the price increases to this particular sale, we do not find that the absence of such documentation renders the alliance agreement and invoice inadequate for purposes of demonstrating the mutual understanding between the HICO America and the U.S. customer with regard to the payment of such freight charges. Also, the fact that Hyosung did not provide payment information or other proof in response to Petitioner's July 24,

¹⁵⁷ *Id.* at Exhibit S-11 at 2-4; *see also* Hyosung's February 25th SQR at Exhibit SA-29.

¹⁵⁸ *See* Hyosung's July 2nd SQR Exhibit S-11 at 5-6 and Hyosung's February 25th SQR at Exhibit SA-29.

¹⁵⁹ *See* Hyosung's July 2nd SQR at Exhibit S-11 and Hyosung's February 25th SQR at Exhibit SA-29.

¹⁶⁰ *Id.* at Exhibit S-11 at 4-8.

¹⁶¹ *Id.* at S-11 at 2 and Hyosung's February 25th SQR at Exhibit SA-29.

¹⁶² *See* Hyosung's July 2nd SQR at S-20 and S-21.

¹⁶³ *See* the Department's antidumping duty questionnaire, dated November 13, 2014, at pages B-1 through B-2 and C-1 through C-2.

¹⁶⁴ *See* Hyosung's July 2nd SQR at S-20 and S-21.

2014, comments or in its post-Preliminary Results supplemental questionnaire response is immaterial, as such information would not be specifically responsive to a request by the Department.

Petitioner points out that Hyosung reported the identical terms of sale in its U.S. sales listing for the original investigation, when the gross unit price was not increased as a result of the circumstances claimed by Hyosung regarding freight costs related to the U.S. sales transaction in question. Petitioner also calls into question the timing of when this U.S. sales transaction and any related sales were sold and shipped.¹⁶⁵ As explained above, Hyosung did increase the gross unit price of this sale when reporting such information in the LTFV investigation; however, it was based on estimated data because the actual expenses were not known until later.¹⁶⁶

Petitioner also cites to the Department's recent request for comments on after-the-fact price adjustments,¹⁶⁷ wherein Petitioner claims that Hyosung's alleged price increases to U.S. sales, fall squarely within the type of post-sale manipulation that the Department has historically refused to countenance. However, in its request for comments, the Department states that it "generally will not consider a price adjustment that reduces or eliminates a dumping margin unless the party claiming such price adjustment demonstrates, to the satisfaction of the Department, through documentation that the terms and conditions of the adjustment were established and known to the customer at the time of sale."¹⁶⁸ In the instant case, the Department is satisfied that Hyosung has demonstrated that such price adjustments were established and known to the customer at the time of sale *via* the alliance agreement, purchase orders, and HICO America's invoice to the U.S. customer.

Petitioner asserts that Hyosung has not provided the language of the INCOTERM used for the delivery term cited by Hyosung. Petitioner further argues that the definition of the INCOTERM used in the *Apex Exports* case¹⁶⁹ cited by Hyosung is inapposite and undermines Hyosung's position that per the delivery term for the U.S. sales transaction in question, Hyosung's customer agreed to pay for these freight charges. However, the record supports the distinction between the term as defined in *Apex Exports* and the delivery term used by Hyosung. While it may be true that the specific INCOTERM language does not exist for Hyosung's delivery term, we note that the INCOTERMS have not been updated since 2010 and, therefore, may not reflect all possible delivery terms agreed to by buyers and sellers. Also, as noted by Petitioner, INCOTERMS provide a common set of rules to clarify responsibilities of sellers and buyers for the delivery of goods under sales contracts; thus, it stands to reason that such delivery terms are for general guidance purposes, and are not all inclusive.¹⁷⁰ What matters here is that it is clear from the alliance agreement that the U.S. customer was aware of the delivery term and its meaning, and its payment obligations for this particular U.S. sale.¹⁷¹

¹⁶⁵ See Petitioner's Hyosung Rebuttal Brief at 12-14.

¹⁶⁶ See Hyosung's July 2nd SQR at S-20 and S-21.

¹⁶⁷ See *Modification of Regulations Regarding Price Adjustments in Antidumping Duty Proceedings*, 79 FR 78742-43 (December 31, 2014).

¹⁶⁸ *Id.* at 79 FR 78742.

¹⁶⁹ See Hyosung's Case Brief at 7-8, and footnote 19, citing *Apex Exports v. United States*, CIT, Slip Op. 13-158 (December 31, 2013).

¹⁷⁰ See Petitioner's Hyosung Rebuttal Brief at page 8, footnote 16.

¹⁷¹ See Hyosung's February 25th SQR at Exhibit SA-29 at 6.

For the reasons explained above, the Department has relied upon the gross unit price reported in field GRSUPRU which includes amounts for freight charges associated with this U.S. sale. Further, in accordance with section 772(c)(2)(A) of the Act and its practice, the Department made a single deduction from the starting price for the freight expense elements that were included in the price and that are “attributable to any additional costs, charges, or expenses ... which are incident to bringing the subject merchandise” from the point of shipment to the point of delivery in the United States. Because much of this information is proprietary in nature, *see* the accompanying Hyosung Proprietary Memorandum dated concurrently with this memorandum at the “Exclusion of Certain U.S. Freight Expenses for a Particular U.S. Sales Transaction” section for further discussion.

Comment 13: Calculation of Importer-Specific Assessment Rate

Hyosung’s Comments

- The Department should adjust its assessment rate calculations to include the entered value of one subject LPT unit that initially entered during the POR in order to appropriately collect antidumping duties from the U.S. importer of record for the sale in question.
- Citing to record evidence, Hyosung explains that because the initially entered LPT unit is not captured in the total entered value denominator in the Department’s importer-specific assessment rate calculation, liquidating all of the importer’s entries at the rate determined in the *Preliminary Results* would lead to an over-collection of duties.¹⁷²
- Adjusting the Department’s importer-assessment rate calculation, as suggested by Hyosung, is consistent with 19 CFR 351.212(b)(1), which provides that the Department “normally will calculate an assessment rate for each importer of subject merchandise covered by the review.”
- Hyosung explains that pursuant to 19 CFR 351.212(b)(1) the Department calculates this rate “by dividing the dumping margin found on the subject merchandise examined by the entered value of such merchandise for normal custom duty purposes.” Accordingly, Hyosung contends that the Department should modify its calculations to include the entered value of the subject unit to ensure that it divides the dumping margin by the total entered value of all subject merchandise imported by its U.S. importer.

¹⁷² See Memorandum from Brian Davis to the File, regarding “Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated September 18, 2014 (Hyosung Preliminary Analysis Memorandum) at Attachment IV (U.S. Margin Program Output) at 241. *See also* Hyosung’s Case Brief at page 17 and at the Attachment to its Case Brief.

- Hyosung argues that the Department has recognized this logic with respect to sample sales, and has included such sales in the calculation of its assessment rates, while excluding them from the cash deposit calculations.¹⁷³
- In sum, Hyosung states that similar to sample sales the subject LPT at issue was not sold during the POR and is properly excluded from the Department's margin calculations. However, Hyosung explains that because this unit was entered during the POR and will be subject to any antidumping duty assessments assigned in this administrative review, the Department must account for it in its assessment rate calculations.

Petitioner's Comments

- Petitioner argues that the Department should not include the entered value for the LPT in question as suggested by Hyosung.
- Petitioner contends that the entered value for this LPT was not included in the calculation of the weighted-average dumping margin, and therefore, including it for assessment purposes would improperly inflate the denominator for the assessment calculation and result in a lower and incorrect assessment rate.¹⁷⁴

Department's Position

After considering the parties' comments, the Department has determined to include the entered value of the unit that entered during the POR in our calculation of the assessment rates for Hyosung's entries of LPTs during the POR. We have done this because CBP will collect the *ad valorem* (or per-unit, where applicable) duty-assessment rate on all entries of subject merchandise, and, as discussed in more detail in Hyosung's Proprietary Memorandum at section "Calculation of Importer-Specific Assessment Rate," we continue to determine that no antidumping duties are due on this entry. As explained by Hyosung, in similar situations, *e.g.*, with sample sale transactions, the Department has similarly accounted for such transactions in its assessment rates calculations but not its dumping margin.¹⁷⁵ Therefore, given the facts and circumstances surrounding this particular LPT, we find it appropriate to account for this transaction in our calculation of Hyosung's assessment rates by including the entered value of this sale in our assessment rate calculation. We disagree with Petitioner's contention that because the entered value for this LPT was not included in the calculation of the weighted-average dumping margin, including it for assessment purposes would improperly inflate the denominator for the assessment calculation and result in a lower and incorrect assessment rate. In order to ensure the assessment calculation is correct, we must include the entered value of this unit in our calculations.

¹⁷³ See *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof From France, Germany, Italy, Japan, Romania, Singapore, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Review*, 63 FR 33320, 33342-43 (June 18, 1998) (*AFBs Final Results of 96-97 Review*) ("With regard to assessment rates, in order to ensure that we collect duties only on sales of subject merchandise, we included the entered values and quantities of the sample transactions in our calculation of the assessment rates, and we set the dumping duties due for such transactions to zero.").

¹⁷⁴ See Petitioner's Hyosung Rebuttal Brief at page 23.

¹⁷⁵ See *AFBs Final Results of 96-97 Review* at 63 FR 33343.

Comment 14: Incomplete Further Manufacturing Cost Data

Petitioner's Comments

- Petitioner argues that, in the event that the Department determines to rely on further manufacturing data for the final results, the Department should adjust Hyosung's submitted further manufacturing data.¹⁷⁶
- Petitioner argues that Hyosung's further manufacturing data is incomplete, *i.e.*, alleging omissions and understatements of Hyosung's submitted FURGNA and the alternative indirect selling expenses calculation.¹⁷⁷
- Petitioner argues that, given Hyosung's exclusion of expense accounts from FURGNA and Hyosung's reliance on its trial balance, rather than the audited financial statements, Hyosung has failed to cooperate to the best of its ability to comply with the requested information. Accordingly, Petitioner argues that the Department has grounds for applying total AFA with respect to Hyosung's FURGNA.¹⁷⁸

Hyosung's Comments

- Hyosung argues that it reported complete FURGNA and alternate indirect selling expense information and that no adjustments to the reported expenses are warranted.¹⁷⁹
- Hyosung argues that it responded to the Department's section E questionnaire and it submitted complete data. Accordingly, Hyosung argues that an application of total AFA is unfounded.¹⁸⁰

Department's Position

The Department requested Hyosung to complete a section E questionnaire and provide an alternative U.S. database which treats installation expenses as further manufacturing costs.¹⁸¹ Upon responding to the section E questionnaire, Hyosung provided an alternative U.S. database, a calculation of further manufacturing general and administrative expenses (FURGNA) and an alternative calculation of the indirect selling expenses.¹⁸² Hyosung relied on its detailed underlying accounting records (*i.e.*, trial balance) and other documents in calculating FURGNA and the alternative indirect selling expenses.¹⁸³

¹⁷⁶ See Petitioner's Hyosung Case Brief at 42-63.

¹⁷⁷ *Id.*

¹⁷⁸ *Id.*

¹⁷⁹ See Hyosung's Rebuttal Brief at 65-82.

¹⁸⁰ *Id.*

¹⁸¹ See the Department's supplemental section B and C questionnaire, dated July 31, 2014, to Hyosung; *see also* the Department's supplemental E questionnaire, dated October 16, 2014 to Hyosung.

¹⁸² See Hyosung's August 25, 2014, response to the Department's supplemental questionnaire; *see also* Hyosung's November 4, 2014, response to the Department's supplemental questionnaire (November 4th SQR).

¹⁸³ See Hyosung's November 4th SQR at exhibit 8-A.

In the *Preliminary Results* the Department made a decision not to use section E further manufacturing data for the margin calculation.¹⁸⁴ For the final results, we continue to treat all post-shipment reassembly and installation expenses as movement expenses, rather than further manufacturing costs.¹⁸⁵ Thus, because the Department did not use Hyosung's reported further manufacturing costs for the final results, Petitioner's arguments with regard to proposed adjustments to Hyosung's further manufacturing database are moot.

C. Hyundai-Specific Issues

Comment 15: Hyundai's U.S. Sales Data are Not Reliable or Verifiable Because of Certain Submissions and Should Not Be Used in the Final Results

Petitioner's Comments

- Because much of this information is proprietary in nature, *see* the accompanying Hyundai Proprietary Memorandum dated concurrently with this memorandum at the "U.S. sales data are not reliable or verifiable because of certain submissions { } and should not be used in the final results" section for further discussion.¹⁸⁶
- Petitioner claims that the Department cannot accept the accuracy of Hyundai's data or the documentation submitted.¹⁸⁷
- Petitioner explains the issue only came to light late in the proceeding and that based on the record, it believes Hyundai's U.S. sales database, as reported, is unreliable and cannot be used as the basis for the final results.¹⁸⁸
- Petitioner also claims that Hyundai has failed to report or document certain expenses. In other cases, Petitioner alleges that other expenses have been underreported.¹⁸⁹
- Petitioner claims it timely requested verification in this review. Given that this is a first review, Petitioner claims the Department should have conducted verification of the respondents, and the Department announced it would not verify Hyundai's responses due to resource constraints.¹⁹⁰

¹⁸⁴ *See* Hyosung's Preliminary Analysis Memorandum at page 13; *see also* Preliminary Decision Memorandum at page 9.

¹⁸⁵ *See* Comment 1 (Whether the Department Treats Installation Expenses as Further Manufacturing Costs), above.

¹⁸⁶ *See* Hyundai Proprietary Memorandum at 1-6.

¹⁸⁷ *See* Petitioner's Hyundai Brief at 9.

¹⁸⁸ *Id.* at 5.

¹⁸⁹ *Id.* at 17 to 29.

¹⁹⁰ *Id.* at 9.

Hyundai's Comments

- Hyundai believes that Petitioner misreports the facts and misconstrues the evidence on the record and challenges Petitioner's assertions that its data is not reliable.¹⁹¹
- Hyundai disputes Petitioner's allegation with respect to expenses. For example, Hyundai disputes that it "understated ocean freight expenses" and citing to record evidence shows that the freight invoices at issue tie directly to the shipments in question.¹⁹² Hyundai also cites to record evidence to rebut Petitioner's claims with respect to other expenses.¹⁹³
- Hyundai also cites to record evidence to show that it correctly reported the U.S. gross unit prices on entries with spare parts and that it reported accurate entered values.¹⁹⁴
- Hyundai states that Petitioner's assertion of missing documentation is erroneous. Because much of this information is proprietary in nature, *see* the accompanying Hyundai Proprietary Memorandum dated concurrently with this memorandum at the "U.S. sales data are not reliable or verifiable because of certain submissions { ... } and should not be used in the final results" section for further discussion.

Department's Position

The Department disputes Petitioner's claim that "given that this is a first review, the Department should have conducted verification of the respondents, but the Department announced to the parties that it would not verify Hyundai's responses due to resource constraints." The regulations require verification in an administrative review only when no verification has been conducted in either of the two immediately preceding administrative reviews and a domestic interested party has timely requested verification.¹⁹⁵

The Department also questions Petitioner's claim that the Department announced to the parties that "it would not verify Hyundai's responses due to resource constraints." Petitioner does not cite to any document in which the Department announced to parties that it would not verify because of resource constraints. In fact, the record shows that only Petitioner requested verification, and then only of Hyundai and not with respect to Hyosung. Finally, the Department notes that it requested supporting documentation throughout the proceeding and Hyundai provided all of the requested information, including many support documents that would typically be examined at verification.

With respect to Petitioner's other claims as to the reliability of the information, because much of this information is proprietary in nature, *see* the accompanying Hyundai Proprietary Memorandum dated concurrently with this memorandum at the "U.S. sales data are not reliable

¹⁹¹ *See* Hyundai Rebuttal Brief at 5.

¹⁹² *Id.* at 10.

¹⁹³ *Id.* at 15-25.

¹⁹⁴ *Id.* at 25-26.

¹⁹⁵ *See* Section 351.307(b)(5)(A) and (B) of the Department's regulations.

or verifiable because of certain submissions { ... } and should not be used in the final results” section for further discussion.

Comment 16: AFA with respect to Comment 15 (Above)

Petitioner’s Comments

- Petitioner claims that a party that withholds information purposefully or misleads the Department is not putting forth a “maximum effort” to cooperate with the Department. Citing to business proprietary information, Petitioner claims that “the Department is fully justified in applying total adverse facts available to Hyundai in this review.”¹⁹⁶ Petitioner claims that the data in question calls into questions the accuracy and authenticity of the data submitted to the Department.
- Petitioner contends Hyundai’s information is unverifiable and argues “application of facts available is warranted under 19 USC 1677e(a)(1) and (2)(A) and (D) {section 776 of the Act}.”¹⁹⁷
- Petitioner also claims that Hyundai’s “actions have also significantly impeded the investigation warranting application of facts available under 19 USC 677e(a)(2)(C) {section 776 of the Act}.”¹⁹⁸
- Petitioner asserts that the Department would be abdicating its responsibility for effective enforcement of the law if it does not apply AFA to Hyundai in this case.
- Petitioner believes applying AFA to Hyundai is consistent with prior decisions of the Department, and it is only outcome that would protect the integrity of the administrative review process.
- Petitioner states that if the Department elects to base the final results on Hyundai’s sales listing despite the flaws pointed out by Petitioner, it offers several options as to how the Department can apply partial facts available. Specifically, Petitioner states the Department should “make the necessary corrections to the extent the record allows and should otherwise assign the higher of the petition rate or the highest calculated margin as facts available, because record data confirms that the information reported to the Department are unreliable, inaccurate and not verifiable.”¹⁹⁹

¹⁹⁶ See Petitioner’s Hyundai Brief at page 36.

¹⁹⁷ *Id.* at 37.

¹⁹⁸ *Id.*

¹⁹⁹ *Id.* at 41

Hyundai's Comments

- Hyundai disputes Petitioner's claims and cites to record evidence to dispute the notion that AFA is warranted. Hyundai claims Petitioner's leap toward AFA lacks a factual, legal, or logical basis.²⁰⁰

Department's Position

We disagree with Petitioners that “facts otherwise available” or an adverse inference with respect to Hyundai is warranted. Sections 776(a)(1) and (2) of the Act provide that the Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) {w}ithholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in applying the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.

While there may have been instances where the Department put the respondents on notice that certain initial responses or information required clarification, we found that the respondents subsequently provided such information in the manner requested through supplemental questionnaires. Petitioner raised numerous issues in the course of the review, many of which resulted in additional requests by the Department for information (*i.e.*, supplemental questionnaires). Hyundai responded to these numerous requests. The Department may only use an “adverse inference” under section 776(b) of the Act in selecting the information to use as facts available if it 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.” Although Petitioner may not agree with the respondent's presentation of the facts, the Department finds that the respondent cooperated, and to the best of its ability, in responding to the Department's numerous supplemental questionnaires. Moreover, the Department finds no record evidence demonstrating that Hyundai withheld material information in this proceeding. The Department notes the complexity of the issues involved in this case and determines that Hyundai cooperated throughout the proceeding. Therefore, we have determined that reliance on facts otherwise available with respect to Hyundai is not necessary for the Department to make its determination in this review.

Comment 17: Overlapping Sales between Investigation and This Review

Petitioner's Comments

- Petitioner states the Department must “address the issues associated with reported changes in prices, costs and expenses associated with certain sales in the home and U.S.

²⁰⁰ See Hyundai Rebuttal Brief at 3.

markets in this review that Hyundai also reported in its *verified* home market and U.S. sales databases in the original investigation.”²⁰¹

- Petitioner claims that Hyundai has withheld from the record specific information with regard to overlapping sales that was requested by the Department in initial and supplemental questionnaires.
- Petitioner believes that Hyundai has “failed to develop a complete and accurate record in this proceeding regarding the reported changes in data for the overlapping sales and has impeded the Department’s ability to calculate an accurate margin in this review.”²⁰²
- Petitioner alleges the Department instructed Hyundai to identify “each instance” in which data were changed between the original investigation and the current review for overlapping sales in the U.S. and home markets. Petitioner claims Hyundai was also instructed to explain in detail why it changed its allocation methodology.
- Petitioner believes there were multiple data changes to almost every overlapping sale in every different submission Hyundai made to the Department. Petitioner asserts Hyundai failed to identify or document these changes to the data on the record.
- Petitioner alleges that Hyundai failed to document the changed quantity for one home market sale that overlapped the investigation and the review.²⁰³
- Petitioner alleges that Hyundai failed to document INSUREH, PACKH, VCOMH, Korean Inland Freight, and changes with the date of sale for a number of home market sales.²⁰⁴
- Petitioner claims that where data are inconsistently reported or insufficiently documented, Hyundai should be found to have not met its burden of creating a complete and accurate record.
- Petitioner claims Hyundai has not explained or documented changes to the cost data between the original investigation and this review, where the Department verified the data in the original investigation.
- Petitioner avers that in the original investigation, the Department developed an adjustment to the costs to correct an improper allocation methodology for home market installation expenses. Petitioner contends that Hyundai, however, has relied on different values for the adjustment in this review that do not comport with the methodology that the Department had applied in the original investigation. Petitioner identified one product for which in this review Hyundai reported material costs that were different from that calculated by the Department at verification in the original investigation.

²⁰¹ See Petitioner’s Hyundai Brief at 41.

²⁰² *Id.* at 42.

²⁰³ *Id.* at 44.

²⁰⁴ *Id.* at 44-46.

- Petitioner believes these unexplained and undocumented differences in the reported costs confirm that the cost data provided in this review for the overlapping sales, and indeed for all sales, cannot be relied upon by the Department.
- Petitioner believes, based on the seven sales and cost questionnaire responses, that the Department should conclude that “Hyundai has failed to develop an accurate record regarding the overlapping sales, expense and cost data in this review.”²⁰⁵ Moreover, given the significance of the problems with the overlapping sales, Petitioner argues “the Department should further conclude that Hyundai has impeded the Department’s ability to calculate an accurate margin as possible by failing to cooperate to the best of its ability” and is therefore warranted in applying total facts available to Hyundai.
- Petitioner states “Hyundai’s deliberate failure to provide all of the documentation requested, its failure to identify and explain all of the changes to its data and reporting methodologies and the inaccuracies in the reported data demonstrate that Hyundai has not acted to the best of its ability to provide a complete and accurate record for this review.”²⁰⁶
- Petitioner believes the Department should, with respect to the overlapping sales, assign the higher of the petition rate or the highest calculated margin for non-overlapping sales to (1) all U.S. overlapping sales; and (2) any U.S. sale (whether or not it is an overlapping sale) that is compared with a home market overlapping sale in the margin program.

Hyundai’s Comments

- Hyundai rebuts Petitioner’s claims by stating that it responded fully to the Department’s request for information. Hyundai challenges Petitioner’s assertion that the Department required Hyundai to “identify each instance” in which data changed in the databases submitted during this review and to “provide sample documentation to substantiate the reason for the changes.” Citing to the supplemental questionnaires, Hyundai states that the question asked that “{i}n each instance, in which the differences were not due to changes in documentation, and in which data was corrected between the investigation and this review, please provide sample supporting documentation to substantiate the reason for the change for certain of these sales. For those expenses where you revised your allocation methodology please explain in detail why the revision was necessary and provide documentation to support your response.”²⁰⁷ Hyundai argues that Petitioner is seeking to expand the scope of information requested by the Department by twisting and selectively quoting the Department’s question. Hyundai cites to record evidence where it claims it responded to questions on the changes to the sales that overlapped the investigation and the first review and to where it provided supporting documentation for these changes.²⁰⁸ Hyundai concludes by stating that while it “may not have responded to

²⁰⁵ *Id.* at 42.

²⁰⁶ *Id.* at 51 and 52.

²⁰⁷ See Hyundai Rebuttal Brief at 29 citing the Department’s third supplemental response at 6.

²⁰⁸ *Id.* at 30-31.

the question as {p}etitioner would have asked it (or imagines the Department to have asked it), Hyundai responded in full to the question that the Department asked.”²⁰⁹

- Hyundai provides a point-by-point rebuttal on specific arguments raised by Petitioner. In particular, Hyundai cites to record evidence that it provided sufficient documentation to support its reported data and that in many cases such differences are miniscule in nature.
- With respect to Petitioner’s claims that Hyundai failed to document the changed quantity for one home market sale that overlapped the investigation and the review, Hyundai cites to record evidence to show that the same number of LPTs have been reported in the investigation and review, but that the difference is the project codes under which they were reported. In sum, Hyundai explains that there was no net change to the quantity reported in this review, contrary to Petitioner’s allegation.²¹⁰
- Hyundai rebuts Petitioner’s argument that Hyundai failed to provide supporting documentation for changes in INSUREH by not providing original documentation from what was reported in the investigation. Hyundai notes the INSUREH amounts reported for the cited sales in the original investigation were “estimates” because the expense had not yet been incurred. Hyundai point out that it has provided the requested sample supporting documentation demonstrating the actual expenses reported in the current review. Hyundai also notes that “the differences about which Petitioner complains are as small as four Korean Won (approximately US \$0.003721), which is smaller than the lowest denominated coin still issued in Korea (*i.e.*, ten Won coin).”²¹¹
- Hyundai also disputes Petitioner’s allegations with respect to PACKH. Hyundai notes that “after adjusting for spare parts, there is no difference between the actual PACKH expenses reported in this review and the original investigation.”²¹² With respect to other PACKH differences, Hyundai claims that the observations cited by Petitioner relate to instances where the packing expenses in the original investigation were estimated, but have now been reported as actual expenses. Hyundai also explains that contrary to Petitioner’s assertion, Hyundai did, in fact, provide “supporting documentation” demonstrating the calculation of the actual packing expense for a sample sale. Hyundai cites to record evidence that demonstrates that Petitioner’s allegation that “{n}o original contemporaneous documentation documents were provided for that sale” is false.²¹³
- Contrary to Petitioner’s claims, Hyundai believes it has provided detailed explanations and documentation with respect to the reported costs and all the changes to the costs from the original investigation.
- Hyundai claims Petitioner overlooks in its entirety the worksheets and supporting documentation submitted by Hyundai showing the corrected allocations of the home

²⁰⁹ *Id.* at 32.

²¹⁰ *Id.*

²¹¹ *Id.* at 33.

²¹² *Id.* at 34.

²¹³ *Id.* at 34-35.

market installation expenses according to the Department's verification findings in the original investigation.

- Hyundai claims it has fully responded to the Department's questions concerning inland freight and has reported it correctly. Hyundai also cites to specific examples to show that the Department's request of Hyundai to report the spare parts price separately from the LPT price necessitated corresponding adjustments to the reported selling expenses. These adjustments included the reporting of inland freight.²¹⁴

Department's Position

The Department notes the concerns raised by Petitioner with respect to the overlapping sales. The Petitioner focuses on its claim that these sales were examined in the investigation and therefore data should not have changed between the investigation and this review. However, Petitioner itself had argued in the investigation that the Department should use the earliest reference point, *i.e.*, a long-term contract or other document prior to the purchase order as the date of sale in this case.²¹⁵ As a result of using a sale date earlier than the invoice date, sales information can and does change between purchase order date, which the Department used as the date of sale, and the shipping of the final LPT. Hyundai responded to the Department's numerous questions on the reasons for these changes and noted that (i) nearly all of the differences can be attributed to the use of estimated values in the original investigation, in contrast to the use of actual values in this review; (ii) changes arising from the fact there is a different reporting period in this review (*e.g.*, indirect selling expense ratio, credit expense ratio, changes in available documentation, and documentation format); (iii) changes in allocation methodologies based on changes made by the Department in the final determination of the original investigation; and (iv) change orders issued by the customer.²¹⁶ Hyundai provided detailed responses and documentation in response to the Department's questions. The Department acknowledges that because there is a lag time between the purchase order and the completion of the LPTs, it is reasonable that estimated expenses would be different from actual expenses. The Department also notes that, as Petitioner noted, some sale dates changed from the LTFV Investigation to the instant review, but Hyundai provided an explanation for these sales date changes in its supplemental response.²¹⁷ The Department also notes that it is possible, as Hyundai has shown, that change orders can result in different requirements and therefore different prices.

With respect to the issues on cost, the Department believes that, contrary to Petitioner's claims, Hyundai has provided detailed explanations and documentation with respect to the reported costs and all the changes to the costs from the original investigation. Petitioner overlooks in its entirety the worksheets and supporting documentation submitted by Hyundai showing the corrected allocations of the home market installation expenses according to the Department's verification findings in the original investigation.²¹⁸ With regard to the one product identified by

²¹⁴ *Id.* at 36-37

²¹⁵ See *LTFV Investigation* Issues and Decision Memorandum at Comment 1.

²¹⁶ See April 11 2014 SQR at 3-4.

²¹⁷ See Hyundai's April 11, 2014, response at 42-43 and SC-4.

²¹⁸ *Id.* at 8-10 and Exhibit SB-12; see also Hyundai's June 30, 2014, response at 5-6 and Exhibits SSD-4 and SSD-5.

petitioner for which Hyundai reported costs that were different from those calculated by the Department at verification in the original investigation, we note that in the original investigation the reported cost of this product was based on estimates, as it had not yet been completed at the time Hyundai responded to our section D questionnaire. At the cost verification in the investigation, we observed that the product had subsequently been completed. The Department reviewed the recorded cost data for this product per the company's books, but only for purposes of comparing it to the reported corresponding estimated cost.²¹⁹ These recorded costs, however, had not been adjusted to conform to the Department's reporting requirements. Therefore, we would not expect the costs reported for this product in the current review to match directly with the amounts used in the verification step of the original investigation, where the step was performed only to test the reasonableness of the cost estimates made by the company.

In sum, the Department has continued to rely upon Hyundai's reported sales data and expenses for overlapping sales in the final results.

Comment 18: Alleged Underreported U.S. Movement and Selling Expenses

Petitioner's Comments

- Petitioner alleges that Hyundai has understated certain U.S. expenses by wrongly assigning a portion of these expenses to spare parts.
- Petitioner believes none of these expenses are associated with the provision of spare parts and should not have been assigned any portion of the associated expenses.
- Petitioner disputes that the amount allocated to spare parts is insignificant and argues spare parts are not integral to the start-up or operation of an LPT.
- For these reasons, Petitioner argues that the Department should, as AFA, make certain adjustments to Hyundai's reported U.S. movement and selling expenses.

Hyundai's Comments

- Hyundai disputes Petitioner's claims that Hyundai "understated certain U.S. expenses by wrongly assigning a portion of these expenses to spare parts." Hyundai argues that with that even if the Department were to partially accept Petitioner's claim, the miniscule difference does not warrant the application of AFA.
- Hyundai argues that the Department has the discretion to ignore such issues in their entirety. Hyundai claims the statute provides that "{f}or purposes of determining the . . . constructed export price . . . in carrying out reviews under section 751, the administering authority may . . . decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise." Hyundai continues by stating that the

²¹⁹ See Petitioner's January 8, 2014, letter to the Department, "First Administrative Review of Large Power Transformers from Korea - Submission of Hyundai Verification Reports from the Original Investigation" at Attachment I (Hyundai's Cost Verification Report, dated May 2, 2012, at page 22 and Cost Verification Exhibit 15).

Department has defined an “insignificant adjustment” as “any individual adjustment having an ad valorem effect of less than 0.33 percent, or any group of adjustments having an ad valorem effect of less than 1.0 percent, of the export price, constructed export price, or normal value, as the case may be.”²²⁰

- Hyundai also disputes Petitioner’s claims with respect to other discounts (OTHDISU), inland freight in the United States (INLFWCU_USD) and U.S. brokerage (USBROKU), Hyundai claims there is nothing in the vendor’s invoice that would require that the expenses be assigned only to the LPT. Thus, with respect the freight expenses, Hyundai argues its allocation methodology was reasonable, and contrary to Petitioner’s assertion, Hyundai believes it did not “wrongly assign a portion {of the freight expense} to spare parts.”²²¹
- With respect to reporting USOTHRU_OIL, Hyundai claims Petitioner argues that oil expenses should be assigned only to the main body of LPTs and demands the wholesale application of AFA to all sales because Hyundai failed to do this. Hyundai believes Petitioner’s demand for the application of AFA is unwarranted even if the Department ultimately finds the methodology for reporting USOTHRU_OIL was in error. Hyundai cites to record evidence that there is sufficient record evidence for the Department to make an adjustment and notes the overall effect is minimal. Hyundai also argues the same is true with respect to SUPERVISIONU, SUPERVISIONU_KRW, and INSTALLATIONU and cites to record evidence that if the Department so chooses, it can make an adjustment to these expense fields. Hyundai also argues the supervision expense includes instructions on how to install the spare parts and therefore it is reasonable to allocate supervision to spare parts.

Department’s Position

The Department disagrees with many of Petitioner’s arguments with respect to the reporting of U.S. movement and selling expenses. As Hyundai correctly pointed out, most of the arguments made by Petitioner would result in adjustments that are insignificant. Nevertheless, as described below, we determined to make an adjustment to Hyundai’s allocation of oil expenses, *i.e.*, we will allocate these expenses solely based on the LPT and any accompanying spare parts. With respect to the freight expenses, the Department agrees with Hyundai that there is nothing in the vendor’s invoice that would suggest that the expenses only be assigned to the LPT. Absent documentary evidence that such expenses should only be assigned to the LPT, the Department believes Hyundai has made a reasonable allocation of such expenses between the LPT itself and the spare parts. With respect to the supervision and installation expenses, the record is not as clear, and the Department accepts Hyundai’s explanation that its methodology is reasonable as Hyundai has provided a justification why supervision relates to the overall assembly and installation of the LPT. The Department agrees with Hyundai that “[a]lthough spare parts themselves might not be installed during the installation, instructions on how to install the parts are typically provided during the assembly process”²²² and that there is supervision of the

²²⁰ See Hyundai Rebuttal Brief at 41 citing 19 CFR 351.413.

²²¹ *Id.* at 42.

²²² *Id.* at 44.

installation of the parts, which the spare parts would replace. As such, the Department agrees that the instructions during the supervision apply equally to the original parts and spare parts and therefore, it is reasonable to allocate supervision to spare parts. In the case of the oil expenses, the Department agrees with Petitioner that there is no reasonable explanation on why oil expenses should be allocated between the LPT and the spare parts. However, the Department finds that the requirements for using AFA have not been met, and therefore, such application is unwarranted in this instance. Instead, we have used the record evidence²²³ to correct the misreporting of this expense.

Comment 19: Hyundai's Reporting of Home Market Sales

Petitioner's Comments

- Petitioner claims Hyundai failed to accurately report its home market sales. Petitioner cites proprietary information to assert that without “full and accurate reporting of home market sales the Department cannot calculate accurate dumping margins.”
- Petitioner further alleges, citing business proprietary information that Hyundai failed to report certain associated expenses accurately.

Hyundai's Comments

- Hyundai claims that Petitioner is misunderstanding Hyundai's project codes which are not determinative of the specification of any LPT and that the home market sales have been properly reported.

Department's Position

The evidence on the record of this review indicates that Hyundai has correctly reported the home market sales in question, as described in the Hyundai Proprietary Memorandum. For further discussion of this issue, *see* Hyundai Proprietary Memorandum at section “Petitioner alleges problems with Hyundai's reporting of home market sales.”

Comment 20: Indirect Selling Expenses

Petitioner's Comments

- Petitioner claims Hyundai overstated the amount of HHI's indirect selling expenses for home market sales, while understating HHI's indirect selling expenses for export (U.S.) sales.
- Petitioner claims Hyundai's allocation methodology distorts the actual costs associated with domestic and export sales. Petitioner contends the result is that HHI's domestic

²²³ *Id.* at 43-44 and Exhibit 15. *See* also Justification for Exhibit 15 in Hyundai's February 5, 2015, response to the Department's February 2, 2015, letter.

indirect selling expenses are overstated, which in turn understates normal value. Similarly, the export indirect selling expenses are understated, which in turn overstates the constructed export price. As a result, Petitioner alleges there is an understatement of potential dumping duties owed by Hyundai.

Hyundai's Comments

- Hyundai responds that Petitioner's claims are no more than speculative questions. As an example, Hyundai references Petitioner's complaints about the power and utility expenses incurred by HHI's domestic sales section and Petitioner's complaints that these expenses were not reported with respect to export sales. Hyundai claims that Petitioner is assuming that HHI does not have a stand-alone domestic sales office for which such expenses are incurred. Hyundai also says that Petitioner is assuming the expenses that are common to both domestic and export sales are not reflected in other categories in the indirect selling expenses. In any case, Hyundai claims that Petitioner should have raised these issues at an earlier time in the proceeding, and that "speculation is not substantial evidence on the record to support the application of facts available."²²⁴

Department's Position

Petitioner assumes that the expenses in question are common to both domestic and export sales but the evidence on the record does not support that claim. Hyundai has provided a reasonable explanation as to why indirect selling expenses may be different in home and export sales offices and we find their allocation methodology to be reasonable and non-distortive. As a result, the Department cannot apply facts available based on a speculative interpretation of how the indirect selling expenses have been reported.

Comment 21: Section E Response Was Not Complete

Petitioner's Comments

- Petitioner claims the use of the Section E further manufacturing data is important to the calculation of accurate dumping margin.
- Petitioner believes Hyundai has artificially limited the reported assembly costs by failing to report any movement costs from the U.S. port to the customer's assembly site, any further manufacturing overhead expenses associated with the material and labor costs, any general and administrative and financial expenses, and certain other proprietary costs.
- Given Hyundai's failure to fully and accurately report all further manufacturing costs in the Section E response, Petitioner argues the Department is warranted in applying adverse facts available to Hyundai.

²²⁴ See Hyundai Rebuttal Brief at 48.

- If the Department decides not to apply AFA with regard to Hyundai's further manufacturing costs, the Department should, at a minimum, rely on the partial facts available adjustments for the Section E response as provided in Petitioner's Case Brief.

Hyundai's Comments

- Hyundai claims Petitioner has not made any argument against the Department's preliminary decision not to base Hyundai's margin on a further manufacturing calculation, and as such, Petitioner has offered no affirmative relevant argument for Hyundai to rebut.
- Hyundai argues Petitioner's assertions are undocumented and distorted, because Hyundai's Section E response was complete and in accordance with the Department's requirements.
- Hyundai believes Petitioner has not provided any evidence suggesting unreported movement costs that are not already reported in the US sales listing. Similarly, Hyundai claims Petitioner has not pointed to any evidence suggesting any unreported material costs or labor used in the assembly process, any missing overhead, general and administrative expenses, and interest expenses.
- Finally, Hyundai argues that Petitioner demands the application of AFA despite the fact that Petitioner did not submit record evidence to support its claim, or even argue that the Department should use further manufacturing costs for the margin calculation. Therefore, Hyundai believes Petitioner's demand is without merit and should be rejected.

Department's Position:

In its July 30, 2014 supplemental questionnaire, the Department observed that it may be appropriate to treat post-shipment assembly and installation expenses incurred by Hyundai in the United States as a cost of manufacturing, rather than selling expenses. Accordingly, the Department requested that Hyundai respond to the section E questionnaire. The Department also requested that Hyundai provide alternate sales and cost databases to be used "in the event it is determined that it is appropriate to treat these costs as a cost of manufacturing." Hyundai submitted its response to the section E questionnaire on August 25, 2014.

In the *Preliminary Results*, the Department made a decision not to use section E further manufacturing data for the purposes of Hyundai's preliminary margin calculation. For the final results, we continue to treat all post-shipment assembly and installation expenses as movement expenses, rather than further manufacturing costs. We note that, contrary to Petitioner's assertion, there is no evidence on the record suggesting any unreported material costs, labor, overhead, general expenses or movement costs associated with Hyundai's U.S. and home market sales. Thus, because the Department did not use Hyundai's reported further manufacturing costs for the final results, Petitioner's arguments with regard to proposed adjustments to Hyundai's further manufacturing database are moot.

Comment 22: Whether Total AFA is Warranted Based on the Totality of Hyundai's Responses

Petitioner's Comments

- Petitioner alleges there is almost no element of Hyundai's responses that can be used as submitted to calculate the dumping margins for the final results of this case.
- Petitioner claims "{v}erified data been changed between the original investigation and this review for sales and costs reported in both segments. Allocations remain unexplained and undocumented, and Hyundai failed to answer many of the requests for additional documentation made by the Department."²²⁵
- Petitioner cites to other BPI information and asserts that "{w}orse than simply failing to cooperate by filing nothing in this proceeding, Hyundai has filed thousands upon thousands of pages for the record, {and} forced the petitioners and the Department to go through multiple rounds of deficiencies."
- Petitioner avers that ignoring such behavior would mean that the provisions of the law would only be in place in cases in which the respondent does not submit any data and the result would be that respondents would engage in the resource wasting that Hyundai has employed in this review to the detriment of the law and the Department's resources.
- Petitioner believes the Department should assign Hyundai the higher of the petition rate or the highest calculated margin for any respondent, as total AFA and should take certain other action referenced as BPI information.

Hyundai's Comments

- Hyundai, throughout the rebuttal brief, argues that AFA is not warranted and that the reported data is correct. Hyundai disputes Petitioner's characterization of its record information as inconsistent and distinguishes the cases cited by Petitioner.²²⁶

Department's Position:

We disagree with Petitioner that "facts otherwise available" or an adverse inference with respect to Hyundai is warranted. Petitioner's argument that the Department should apply total AFA where there are inconsistencies on the record does not have merit. The facts of this instant administrative review can be distinguished from the facts in *Shanghai Taoen*, *Nippon Steel*, or *Shandong Huarong* cited by Petitioner in its Case Brief, because we find that Hyundai has cooperated to the best of its ability and has provided satisfactory explanations to the Department's supplemental questions.²²⁷ Sections 776(a)(1) and (2) of the Act provide that the

²²⁵ See Petitioner's Hyundai Brief at 67.

²²⁶ Hyundai Rebuttal Brief at 3.

²²⁷ See Petitioner's Hyundai Case Brief at 4, 14, 35, 36, 38, 40 and 51, citing to *Shanghai Taoen* 360 F. Supp. at 1344-45, *Shandong Huarong*, 27 CIT at 1581-82, and *Nippon Steel*, 337 F. 3d at 1382-3.

Department shall apply “facts otherwise available” if, *inter alia*, necessary information is not on the record or an interested party or any other person: (A) {w}ithholds information that has been requested; (B) fails to provide information within the deadlines established, or in the form and manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; (C) significantly impedes a proceeding; or (D) provides information that cannot be verified as provided by section 782(i) of the Act. Section 776(b) of the Act further provides that the Department may use an adverse inference in selecting from the facts otherwise available when a party has failed to cooperate by not acting to the best of its ability to comply with a request for information.


The Department disagrees with Petitioner that there is almost no element of Hyundai’s responses that can be used as submitted to calculate the dumping margins. With respect to the claims about examined data changing between the investigation and this review, Petitioner ignores the record evidence that explains why changes in fact took place. Furthermore, HHI reported estimated prices and expenses in the investigation and it is important to reiterate that in the LTFV Investigation, the Department itself understood that the estimated data, including initially reported gross-unit prices, reported for Hyundai’s unshipped sales (*i.e.*, overlapping sales), would be subject to revision once these sales were reported as shipped and sold in the instant administrative review. In other words, while the Department examined certain estimated data, and Hyundai’s underlying reporting methodology for such data during the LTFV Investigation, we also understood and expected that such data, as it was estimated and not actual, could and/or would be subject to change. Therefore, the examination of this data in the LTFV Investigation, did not mean that any revision to the sales data would be unreasonable and therefore prohibited in the context of this administrative review. Given the estimated nature of the data, the fact that the data changed would not, by itself, call into question the reliability of the updated, actual data. Moreover, we also reiterate that the estimated data for the unshipped sales reported in the LTFV Investigation were not used in our final dumping analysis in the final determination. Finally, we note Hyundai provided a reasoned explanation as to why changes occurred and answered the Department’s inquiries and questions throughout the proceeding.

VI. Recommendation

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If these recommendations are accepted, we will publish the final results of review, including the final dumping margins, for all companies subject to this administrative review in the *Federal Register*.

Agree ✓

Disagree _____


Paul Piquado
Assistant Secretary
for Enforcement and Compliance

23 MARCH 2015
Date