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August 31, 2017

MEMORANDUM TO: Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance

FROM: James Maeder
Senior Director
performing the duties of Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Large Power Transformers from
the Republic of Korea; 2015-2016

I. SUMMARY

The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). The review covers five producers/exporters of the subject merchandise: Hyosung Corporation (Hyosung); Hyundai Heavy Industries Co., Ltd. (Hyundai); Iljin, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co., Ltd (LSIS). The Department selected two respondents, Hyosung and Hyundai, for individual examination. The period of review (POR) is August 1, 2015, through July 31, 2016. We preliminarily find that Hyosung and Hyundai¹ have sold subject merchandise at less than normal value during the period of review.

II. BACKGROUND

On August 31, 2016, Hyosung, Hyundai, and Iljin requested an administrative review of their imports of LPTs.² ABB, Inc. (the petitioner) also requested administrative reviews of Hyosung, Hyundai, Iljin, Iljin Electric, and LSIS on August 31, 2016. On October 14, 2016, in accordance

¹ Hyundai Heavy Industries Co., Ltd. and its U.S. affiliate, Hyundai Corporation, USA (Hyundai USA), are collectively referred to as “Hyundai” in this memorandum.

² The public record of the review, including all public or public versions of correspondence filed by parties or the Department, may be accessed electronically *via* Enforcement and Compliance’s Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to guest and registered users at <http://access.trade.gov> and is also available to the public in the Central Records Unit, room B8024 of the main Department of Commerce building.



with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order on LPTs from Korea.³

In the *Initiation Notice*, we stated our intention, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.⁴ We released the CBP data to interested parties under an administrative protective order on November 1, 2016, and invited interested parties to submit comments on the data as well as potential respondent selection. On November 8, 2016, we received comments from the petitioner, Hyosung, and Hyundai. Based on a consideration of the comments, the number of potential producers/exporters involved in this review, and the resources available to the Department, we determined that we could reasonably individually examine two producers/exporters in the current review (*i.e.*, Hyosung and Hyundai) as the producers/exporters accounting for the largest volume of the subject merchandise from Korea that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).⁵

On May 2, 2017, we extended the time limit for completion of the preliminary results of the review to July 14, 2017.⁶ On July 11, 2017, we further extended the time limit for completion of the preliminary results of the review until August 31, 2017.⁷

III. 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.

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 71061 (October 14, 2016) (*Initiation Notice*); see also *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 81 FR 78778, 78781 (November 9, 2016) (*Amended Initiation Notice*). We issued an amended *Federal Register* initiation notice on November 9, 2016, to reflect one company name that was missing from the October 14, 2016, *Initiation Notice*.

⁴ See *Initiation Notice* at 71061.

⁵ See Memorandum, “Antidumping Duty (AD) Administrative Review of Large Power Transformers (LPTs) from the Republic of Korea (Korea): Respondent Selection Memorandum,” dated January 3, 2017.

⁶ See Memorandum, “Large Power Transformers from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2015/2016,” dated May 2, 2017.

⁷ See Memorandum, “Large Power Transformers from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2015/2016,” dated July 11, 2017.

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.

IV. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A) Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by the Department; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, the Department shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that the Department shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: (1) the information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

Finally, where the Department determines that a response to a request for information does not comply with the request, section 782(d) of the Act provides that the Department will so inform the party submitting the response and will, to the extent practicable, provide that party an opportunity to remedy or explain the deficiency. If the party fails to remedy or satisfactorily explain the deficiency within the applicable time limits, subject to section 782(e) of the Act, the Department may disregard all or part of the original and subsequent responses, as appropriate.

As discussed in detail in the “Hyosung” and “Hyundai” sections below, we preliminarily find that both Hyosung and Hyundai have not acted to the best of their abilities to provide the Department with the requested information to calculate an accurate antidumping duty margin and have, therefore, impeded this administrative review.

Accordingly, pursuant to sections 776(a)(1), 776(a)(2)(A) and (C), and 782(e) of the Act, we are relying upon facts otherwise available to determine Hyosung’s and Hyundai’s preliminary dumping margins.

B) Use of Adverse Inference

Section 776(b) of the Act provides that, if the Department finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, the

Department may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁸ In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA),⁹ the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.¹⁰ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”¹¹ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.¹² It is the Department’s practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.¹³ We preliminarily find that Hyosung and Hyundai have not acted to the best of their ability to comply with the Department’s request for information.

As discussed in detail in the “Hyosung” section below, we preliminarily find that Hyosung has failed to cooperate by not acting to the best of its ability to comply with the request for information regarding the service-related revenues earned for U.S. sales which are dedicated to various service-related expenses, which prevents the Department from implementing its practice of capping service-related revenues by the underlying expense. In addition, we preliminarily find that Hyosung has failed to cooperate by not providing complete and accurate information concerning the invoices for certain sales, and by not disclosing certain price adjustments. In particular, Hyosung provided an invoice in support of a sale to the United States that it provided for a separate sale reported in the previous period of review, calling into question the accuracy of the value of sales reported. Additionally, Hyosung provided copies of invoices which contained sales adjustments that were not reported in the U.S. sales database, again calling into question the accuracy of the value of sales reported. This causes us to question the reliability of the information provided by Hyosung.

⁸ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

⁹ As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

¹⁰ See section 776(b)(1)(B) of the Act.

¹¹ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

¹² See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

¹³ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

As discussed in detail in the “Hyundai” section below, we preliminarily find that Hyundai has failed to cooperate by not acting to the best of its ability to comply with a request for information regarding the prices and costs for “accessories,” which prevents the Department from determining whether (1) product matches are accurate and (2) there is potential for manipulation by inconsistent treatment of accessories between home market and U.S. sales. In addition, we preliminarily find that Hyundai has failed to cooperate by not acting to the best of its ability to provide complete and accurate information requested by the Department, thereby raising issues as to whether Hyundai understated home market prices for certain sales. Also, by not disclosing the relationship between Hyundai and its sales agent, we preliminarily find that Hyundai failed to cooperate to the best of its ability to provide complete and accurate information regarding affiliated parties. This causes us to question the reliability of the information provided by Hyundai.

Accordingly, the Department preliminarily concludes that Hyosung and Hyundai failed to cooperate to the best of their ability to comply with a request for information by the Department. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), the Department preliminarily determines to use an adverse inference when selecting from among the facts otherwise available.¹⁴

C) Selection and Corroboration of the Adverse Facts Available Rate

Section 776(b)(2) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.¹⁵ In selecting a rate based on adverse facts available (AFA), the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁶

When using facts otherwise available, section 776(c) of the Act provides that, in general, where the Department relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.¹⁷ The SAA clarifies that “corroborate” means that the Department will satisfy

¹⁴ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

¹⁵ See 19 CFR 351.308(c).

¹⁶ See SAA at 870.

¹⁷ *Id.*

itself that the secondary information to be used has probative value.¹⁸ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.¹⁹

Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.²⁰ The Act also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.²¹

As AFA, we preliminarily assign Hyosung and Hyundai a dumping margin of 60.81 percent, an AFA rate used in the previous review.²² This rate achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.²³ According to 776(c)(2) of the Act, this rate does not require corroboration.

When a respondent is not cooperative, such as Hyosung and Hyundai in this review, the Department has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.²⁴ If this were not the case, the party would have produced current information showing its rate to be less.²⁵ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

V. DISCUSSION OF THE ISSUES

(A) Hyosung-Specific Issues

(1) *Failure to Report Separately Service-Related Revenues*

The Department issued its initial antidumping duty questionnaire to Hyosung on January 5,

¹⁸ *Id.*; see also 19 CFR 351.308(d).

¹⁹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

²⁰ See section 776(d)(1)-(2) of the Act.

²¹ See sections 776(d)(3)(A) and (B) of the Act.

²² See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*2014-2015 LPT Korea Final*).

²³ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

²⁴ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*)).

²⁵ See *Rhone Poulenc*, 899 F.2d at 1190.

2017.²⁶ Section C of that questionnaire requested that Hyosung “{r}eport revenue in separate fields (*e.g.*, ocean freight revenue, inland freight revenue, oil revenue, installation, *etc.*) and identify the related expense(s) for each revenue.”²⁷ In its February 27, 2017, section C questionnaire response, Hyosung stated:

In the fields REV_OCNFRT, REV_USINLFT, REV_OIL, REV_INSTALL, and REV_STORAGE, Hyosung reports revenues associated with ocean freight, U.S. inland freight (inclusive of any storage charges incurred in the United States), oil, installation, and storage charges associated with storage services in Korea that are recorded separately on HICO America’s invoice to the customer.²⁸

Hyosung reported an additional field, which it stated contained the gross unit price “{o}nly for the main {LPT} body excluding the revenues related to spare parts, accessories, and services such as transportation, oiling, installation, and storage.”²⁹

Separately, as part of its description of the sales process, in the discussion of the distribution process, Hyosung reported that its U.S. affiliate, HICO America Sales and Technology, Inc. (HICO America), supplies an “Order Acknowledgment Form” (OAF) to Hyosung upon the receipt of a purchase order or sales contract from a customer.³⁰ The Department issued its first supplemental questionnaire to Hyosung on April 12, 2017, covering the section A response, within which the Department requested that Hyosung “{p}rovide the order acknowledgement form (OAF) issued by HICO America for each” of the U.S. sales reported by Hyosung during the POR.³¹ Hyosung responded to the Department’s request by providing copies of the first page of the OAFs for only a portion of the U.S. sales.³² And those that Hyosung did report were incomplete (*i.e.*, were missing a page). In addition, the vast majority of the OAFs submitted by Hyosung were illegible.³³

On May 26, 2017, the Department issued the second sales supplemental questionnaire to Hyosung requesting, in part, complete sales documentation for certain of Hyosung’s U.S. sales.³⁴

²⁶ See Letter from the Department to Hyosung, regarding Antidumping Duty Questionnaire, dated January 5, 2017 (Hyosung Initial Questionnaire).

²⁷ See Hyosung Initial Questionnaire at C-1.

²⁸ See Letter from Hyosung to the Department, “Response of Hyosung Corporation to the Department’s January 5, 2017 Section C Questionnaire,” dated February 27, 2017 (Hyosung Section C Response) at C-24.

²⁹ *Id.*, at C-21.

³⁰ See Letter from Hyosung to the Department, “Large Power Transformers from Korea: Section A Questionnaire Response,” dated February 2, 2017 (Hyosung Section A Response) at A-18.

³¹ See Letter from the Department to Hyosung, “Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2015-2016: First Sales Supplemental Questionnaire,” dated April 12, 2017 (First Supplemental Questionnaire) at question 43, page 10.

³² See Letter from Hyosung to the Department, “Large Power Transformers from Korea: Supplemental Questionnaire Response,” dated May 8, 2017 (Hyosung Supplemental Section A Response) at S-21 and Exhibit S-18.

³³ *Id.* The copies provided by Hyosung were dark in the fields containing many of the values for the various fields listed on the OAF. While it is possible to see that there is a field, many of the values or descriptions in the fields are not visible due to darkness.

³⁴ See Letter from the Department to Hyosung, “Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2015-2016: Third Supplemental Questionnaire,” dated May 26,

In response, as part of the requested sales documentation, Hyosung provided a few legible first pages of the OAFs for certain sales.³⁵ However, Hyosung again did not provide complete OAFs (*i.e.*, they were still missing a page).³⁶

In the Third Supplemental Questionnaire, the Department also requested, in part, that Hyosung report “a net unit price which is inclusive of all parts and accessories, but net of service-related revenues” for U.S. sales and that

{f}or each of the reported net price variables, please describe how you calculated service-related revenues. If such revenue items are on the invoice to the customer, please provide an example. If not, please explain your calculation methodology and provide an example of the calculation. Please identify each service provided with its associated service revenue.³⁷

In response, Hyosung stated that it provided the requested information regarding gross unit price and the various components of the price as well as service-related revenues, and referenced Exhibit SBC-32(1) for specific details regarding each of the Department’s questions.³⁸ Exhibit SBC-32(1) contains a sales listing of all of Hyosung’s U.S. sales, but does not list service-related revenues for most U.S. sales.³⁹ The Department also requested in question 35 of the Third Supplemental Questionnaire that Hyosung report all ocean freight revenues, stating specifically that “{i}f such revenues are separately identified on any sales documents, please indicate the documents where these are located and provide copies of those documents. If your reported value is based upon an allocation, please explain that methodology.”⁴⁰ In response to question 35, Hyosung stated, in part, that “{f}or sales that did not separately specify an ocean freight revenue line item on the invoice, Hyosung has not reported separate ocean freight revenues, as no such revenues were charged to the customer as separate items.”⁴¹

However, an examination of the few legible, partial OAFs submitted by Hyosung indicates that HICO America dedicates a portion of the sales price charged to its U.S. customers to cover service-related expenses.⁴² An analysis of the reported service-related expenses as compared to the allocations by Hyosung of revenues to cover these expenses demonstrates that the service-related revenues exceed the expenses, and that Hyosung did not reduce the price charged to the customer for the revenues in excess of the services provided.⁴³ The allocation of revenues, as

2017 (Third Supplemental Questionnaire) at question 66, page 13. The Department issued a cost supplemental questionnaire between the First Supplemental Questionnaire and the Third Supplemental Questionnaire.

³⁵ See Letter from Hyosung to the Department, “Large Power Transformers from Korea: Third Supplemental Questionnaire Response,” dated June 21, 2017 (Hyosung Supplemental Section B-C Response) at 41 and Exhibit SBC-66.

³⁶ *Id.*

³⁷ See Third Supplemental Questionnaire at question 32, pages 8-9.

³⁸ See Hyosung Supplemental Section B-C Response at pages 23-24, and Exhibit SBC-32(1).

³⁹ *Id.*, at Exhibit SBC-32(1).

⁴⁰ See Third Supplemental Questionnaire at question 35, page 9.

⁴¹ See Hyosung Supplemental Section B-C Response at page 27.

⁴² See, *e.g.*, Hyosung Supplemental Section A Response at Exhibit S-18.

⁴³ See, *e.g.*, Letter from Petitioner to the Department, “Large Power Transformers from Korea – Petitioner’s Pre-Preliminary Comments and Deficiency Comments on Hyosung’s Supplemental Responses,” dated July 18, 2017, at page 6.

shown in the OAFs, are not reflected in the section C sales database/chart in Exhibit SBC-32(1).⁴⁴ Therefore, service-related revenues exceed the underlying service-related expenses and Hyosung neither reduced the revenues collected from its U.S. customers for these expenses nor reported them separately so that the Department could cap the revenues, thus distorting the Department's calculation of the antidumping duty margin by artificially increasing the net U.S. price, and thereby artificially decreasing the margin of dumping.

As the record indicates, despite multiple requests by the Department to provide information regarding service-related revenues for all of its U.S. sales, Hyosung failed to provide such information even though the information apparently was available on the OAF issued from HICO America to Hyosung. Thus, Hyosung had the ability to provide the requested information. The failure to report this information impedes the Department's attempts to calculate an accurate antidumping duty margin, specifically by preventing the Department from applying its standard revenue-capping methodology. In other words, the information on the record is unreliable.

Hyosung argues that the Department reviewed OAFs as part of the first administrative review on LPTs, and found that they contain estimated, or budgeted, amounts for expenses which have not yet been incurred.⁴⁵ Hyosung further argues that the Department specifically found, in the first administrative review, that the relevant documents establishing prices and expenses are the actual invoices issued to the customer by Hyosung, as well as the expense invoices from the service providers.⁴⁶ Hyosung denies that the amounts listed on the OAF are revenues, but instead claims that they are budgeted expense amounts.⁴⁷ However, as explained above, our preliminary analysis indicates that these are not budgeted expenses but instead represent revenues related to services.⁴⁸

Hyosung also asserts that the OAFs it submitted are legible, and that all of the "relevant information" is clearly visible.⁴⁹ We disagree. Our examination of the submitted OAFs indicates that most or all of the information on each OAF is illegible and we cannot discern the amounts listed. Hyosung also states that it submitted all of the pages for each OAF.⁵⁰ However, given that each OAF indicates that there are additional pages, we cannot conclude that all of the necessary, requested documentation is on the record. Nevertheless, even if the submitted OAFs are complete, they are illegible. In addition, Hyosung has not explained why it did not submit OAFs for all of the sales to the U.S. during the POR, as requested.

As such, we preliminarily determine that Hyosung impeded the review by failing to act to the best of its ability by withholding the requested information concerning service-related revenues. Hyosung's failure to provide this necessary information significantly impedes the Department's

⁴⁴ See Hyosung Supplemental Section B-C Response at Exhibit SBC-32(1).

⁴⁵ See Letter from Hyosung to the Department, "Large Power Transformers from Korea: Response to Petitioner's Comments," (Hyosung Prelim Rebuttal Comments) dated August 11, 2017, at page 2.

⁴⁶ *Id.*, at page 3.

⁴⁷ *Id.*

⁴⁸ For a detailed analysis, including discussion of business proprietary information, see the Preliminary Analysis Memorandum.

⁴⁹ See Letter from Hyosung to the Department, "Large Power Transformers from Korea: Response to Petitioner's Comments," dated August 11, 2017, at page 3.

⁵⁰ *Id.*, at 4.

ability to calculate accurate antidumping duty margins by overstating the revenue earned on the sale of LPTs and thus increasing the net U.S. price and lowering the dumping margin.

(2) Invoice Used in last POR Used in this POR for Different Sale

In its initial section C questionnaire response, regarding the invoice reported, Hyosung stated that “{t}he invoice number for each U.S. sale has been reported in the INVOICED field in the U.S. sales database. Certain sales are divided into multiple invoices, and those invoices are issued separately to its unaffiliated customer. In this case, Hyosung reported the last invoice number in the INVOICED field.”⁵¹ In response to a question from the Department in the First Supplemental Questionnaire, covering section A of the Department’s questionnaire, Hyosung provided a reconciliation of sales made to the United States during the POR.⁵² In the reconciliation, Hyosung provided a listing of all sales to the United States during the POR and the invoices associated with those sales. In certain instances, as part of the reconciliation submitted with the Hyosung Supplemental Section A Response, Hyosung reported the same invoice number for more than one sale.⁵³ The same single invoice number appears for the same multiple sales in the submitted database in the Hyosung Section C Response.

However, information on the record indicates that Hyosung reported the same invoice for a sale to the United States made during the previous POR.⁵⁴ Hyosung has not provided an explanation as to why one invoice could cover multiple sales in this review period, as well as a sale in the previous review period. Hyosung’s failure to explain how one invoice could involve multiple sales over multiple periods of review raises concerns as to the accuracy and reliability of the quantity and value of sales reported to the Department. The Department notes that Hyosung did not submit OAFs for the sales for which it also reported the same invoice number for payment; information which, as noted above, Hyosung was required to provide.⁵⁵

As such, we preliminarily determine that Hyosung impeded the review by failing to act to the best of its ability by submitting the same invoice on the record for multiple sales covering two periods of review. Hyosung’s failure to explain or clarify these submissions significantly impedes the Department’s ability to calculate accurate antidumping duty margins and raises questions regarding the reliability of Hyosung’s reporting.

(3) Unreported Sales Adjustments

In section C of the initial antidumping duty questionnaire, in fields 16 through 21, the Department instructs respondents to

{r}eport the information requested concerning the quantity sold and the price per

⁵¹ See Hyosung Section C Response at C-16.

⁵² See Hyosung Supplemental Section A Response at Exhibit S-1.

⁵³ *Id.* For a detailed analysis, including discussion of business proprietary information, see the Preliminary Analysis Memorandum.

⁵⁴ See Letter from Petitioner to the Department, “Large Power Transformers from Korea — Placement of Administrative Documents from the 2013/2014 and 2014/2015 Administrative Reviews onto the 2015/2016 Record,” dated February 10, 2017. See also Large Power Transformers from Korea – Petitioner’s Comments on Hyosung’s Supplemental Section A Response,” dated June 1, 2017, at pages 9-11 and Attachments 2 and 3.

⁵⁵ See Hyosung Supplemental Section A Response at S-21 and Exhibit S-18.

unit paid in each sale transaction. All **price adjustments** granted, including **discounts** and **rebates**, should be reported in these fields. The gross unit price less price adjustments should equal the net amount of revenue received from the sale.⁵⁶

In a supplemental questionnaire, the Department requested complete documentation for certain U.S. sales.⁵⁷ Hyosung provided documentation in its response, including invoices for certain U.S. sales.⁵⁸

Despite the instructions from the Department, however, Hyosung failed to report certain price adjustments and discounts. The Hyosung Supplemental Section B-C Response contains examples of such unreported price adjustments.⁵⁹

Hyosung states that certain price adjustments listed in the sales documentation are reflections of negotiations with the customer *at the time of the purchase order* and, therefore, that such adjustments do not fit the description of “price adjustments,” as defined by the Department.⁶⁰ We are not persuaded that Hyosung was excused from reporting and explaining these adjustments. Hyosung agrees that the date of sale should be the date of shipment, as the material terms of sale may change after the purchase order date.⁶¹ Thus, the price negotiations with customers at the time of the purchase order are not controlling if the material terms of sale change after the purchase order date (and can change up to the date of shipment) and necessitate the use of the shipment date as the date of sale.

Additionally, in this review, Hyosung has already first claimed not to have certain warehousing expenses for U.S. sales, only to report such expenses later as the result of a supplemental questionnaire.⁶² Therefore, the record indicates that Hyosung has reported expenses as a result of a supplemental questionnaire that it did not initially report. Therefore, it could have done so as well with respect to these unreported price adjustments and discounts.

Thus, we preliminarily determine that Hyosung impeded the review by failing to act to the best of its ability by failing to submit information regarding price adjustments and discounts for U.S. sales, which raises questions as to the reliability of the information Hyosung has reported. Hyosung’s failure to submit the requested information significantly impedes the Department’s ability to calculate accurate antidumping duty margins by overstating the revenue earned from the sale of the LPTs, and understating revenue earned from services.

⁵⁶ See Hyosung Initial Questionnaire at C-18.

⁵⁷ See Third Supplemental Questionnaire at question 66, pages 13-14.

⁵⁸ See Hyosung Supplemental Section B-C Response.

⁵⁹ *Id.*, at SBC-66 and SBC-9. For a detailed analysis, including discussion of business proprietary information, see the Hyosung Preliminary Analysis Memorandum.

⁶⁰ See Hyosung Prelim Rebuttal Comments at pages 24-25. Hyosung also lists a price adjustment, without explanation, in the Hyosung Prelim Rebuttal Comments. *Id.*, at Appendix 9.

⁶¹ See Hyosung Section A Response at A-30.

⁶² See Hyosung Section C Response at C-32, and Hyosung Supplemental Section B-C Response at 31.

(B) Hyundai-Specific Issues

(1) *Failure to Separately Report the Prices and Costs for Accessories*

In the most recently-completed administrative review covering the period August 1, 2014, through July 31, 2015, to ensure that product matches are based on accurate physical characteristics of the LPTs and determine whether cost differences between similar products could be due to (1) the differences in the products' physical characteristics within the product matching control numbers (*i.e.*, CONNUMs), or (2) factors other than the physical characteristics, the Department requested that parties separately report the prices and costs for accessories. In the prior administrative review, due in part to Hyundai's failure to cooperate with respect to this issue, we applied total AFA.⁶³

In this instant administrative review, we requested information similar to that which we requested in the prior review. Specifically, in our January 5, 2017, Initial Antidumping Duty Questionnaire to Hyundai, we requested that Hyundai "separately report the price and cost for . . . accessories to ensure that product matches are based on accurate physical characteristics of the LPTs."⁶⁴ On February 28, 2017, Hyundai filed its response stating that "there is no definition of what constitutes 'accessories,'" citing the Department's Issues and Decision Memorandum from the original investigation where the Department stated that "the gross unit price only reflects the actual large power transformer, and not any spare parts, unless such parts are needed to assemble an incomplete large power transformer."⁶⁵ Hyundai also stated that "{i}n accordance with the definition of the scope of subject merchandise, Hyundai has included the costs of all parts that are attached to, imported with or invoiced with the active parts of large power transformers."⁶⁶

On March 29, 2017, Hyundai filed a letter, including its request for clarification of a definition of "accessories" for the purpose of the questionnaire response and the method to calculate prices and costs for such components.⁶⁷ In other words, Hyundai requested that the Department define "accessories" and to provide a method to calculate the prices and costs of such "accessories."

On April 12, 2017, we issued a sales supplemental questionnaire and requested that Hyundai explain whether its sales documentation separately lists or itemizes the price/revenues for accessories, and report separately the revenues and associated expenses for accessories whose revenues are separately reported in its sales documentation.⁶⁸ On May 1, 2017, prior to responding to the sales supplemental questionnaire, Hyundai submitted another letter reviewing

⁶³ See *2014-2015 LPT Korea Final* and accompanying IDM.

⁶⁴ See Letter from the Department to Hyundai, regarding Antidumping Duty Questionnaire, dated January 5, 2017 (January 5, 2017, Initial Antidumping Duty Questionnaire to Hyundai) at D-1.

⁶⁵ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Sections B-D Response," dated February 27, 2017 (Hyundai's February 27, 2017, Sections B to D Questionnaire Responses) at D-2 and D-3.

⁶⁶ *Id.*, at D-3; see also *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) and accompanying Issues and Decision Memorandum at Comment 4.

⁶⁷ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Request for Clarification," dated March 29, 2017 (Hyundai's March 29, 2017, Clarification Request).

⁶⁸ See Letter from the Department to Hyundai, regarding "Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: First Sales Supplemental Questionnaire," dated April 12, 2017 (April 12, 2017, First Sales Supplemental Questionnaire to Hyundai) at 14-15.

the timeline of the development of the “accessories” issue since the investigation, including Hyundai’s treatment of accessories, the petitioner’s arguments, and the Department’s position regarding the difference-in-merchandise (DIFMER) adjustment, and further provided its rebuttal of the petitioner’s proposed definition of accessories.⁶⁹ On May 3, 2017, Hyundai filed its response to the Department’s April 12, 2017, First Sales Supplemental Questionnaire, (1) stating that it provided worksheets at Exhibit SA-46 indicating whether any of its sales documentation separately lists or itemizes values for accessories and the corresponding expenses for the separately-listed values, and (2) renewing its March 29, 2017, Clarification Request, seeking a definition of accessories from the Department.⁷⁰ Exhibit SA-46 in Hyundai’s May 3, 2017, Supplemental Section A Questionnaire Response provides separate line items for various parts and expenses, but does not identify which parts of the LPT Hyundai defines and treats as accessories. Hyundai, thus, left the Department only able to guess at what may constitute accessories, and otherwise failed to provide the information in the form and manner requested by the Department.⁷¹

On May 19, 2017, in response to Hyundai’s March 29, 2017, Clarification Request, we requested that Hyundai “provide a definition of how you use and/or understand the scope of the term accessories when negotiating with your customers, . . . explain your basis for such usage and/or understanding in detail,” and “describe in detail what constitutes ‘main bodies,’ ‘spare parts,’ and ‘accessories’”⁷² The Department further requested, “{i}n other words, what have you treated as main bodies, spare parts, and accessories since the investigation?”⁷³

Hyundai responded to the Department’s May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai on June 16, 2017.⁷⁴ In responding to the May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai, it stated that Hyundai requested the Department to provide the definition of accessories and that:

Hyundai has no particular understanding of the scope of the term accessories when negotiating with customers. Internally, Hyundai does not have a definition of accessories. Moreover, there is no particular use of the term accessories by Hyundai’s customers. Indeed, even with respect to the same sale, Hyundai and the customer can and do use the term accessories inconsistently.⁷⁵

⁶⁹ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Comments on ABB’s April 3, 2017 Response to Hyundai’s Request for Clarification of the Definitions of “Separate Revenue for Sales-Related Services” and “Accessories,” dated May 1, 2017 (Hyundai’s May 1, 2017, Comments).

⁷⁰ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Supplemental A Questionnaire Response,” dated May 3, 2017 (Hyundai’s May 3, 2017, Supplemental Section A Questionnaire Response) at 41.

⁷¹ *Id.*, at 41 and Attachment SA-46.

⁷² See Letter from the Department to Hyundai, regarding “Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: Second Sales Supplemental Questionnaire,” dated May 19, 2017 (May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai) at 9 and 10.

⁷³ *Id.*, at 10.

⁷⁴ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: 2nd Supplemental Sales Response (Q29 and Q30) and Supplemental D Questionnaire Response (Q14),” dated June 16, 2017 (Hyundai’s June 16, 2017, Sales and Cost Supplemental Questionnaire Response).

⁷⁵ *Id.* at response to Question 29.

Hyundai further stated:

During negotiations with customers, Hyundai does not give the term accessories a particular meaning. In sales negotiations, Hyundai itself does not follow any definition for accessories, . . . does not insist that particular types of components be identified as accessories, or distinguish components that are accessories from those that are not accessories. Rather, Hyundai normally mirrors the terminology used by a customer in its request for quotation⁷⁶

Further, Hyundai states that there exist indefinite references to accessories by customers, the components listed as accessories differ customer-by-customer, and some customers do not apply the same definition of accessories even within the same sale.⁷⁷ Hyundai continues that “[i]n most instances where the customer identifies a component as an ‘accessory,’ the customer does not require Hyundai to provide a price for the ‘accessory.’”⁷⁸ Hyundai further states that it “renews its request for clarification of the meaning of the term ‘accessories’” and, as a result of the above statements, “Hyundai has followed the definition of ‘accessories’ from the prior review.”⁷⁹ Specifically, Hyundai claims that the Department defined accessories as non-subject merchandise, and claims that “under this definition, if a transformer component is non-subject merchandise due to the fact that it is not attached to, imported with, or invoiced with the active parts of LPTs, the component is an accessory.”⁸⁰ Hyundai, thus, stated that it will report any components not attached to, imported with or invoiced with the active parts of LPTs as accessories.⁸¹ Notably, however, Hyundai did not report any components as accessories, because according to it what it believes is the Department’s definition of accessories, Hyundai claims it did not sell any transformer components that are not attached to, imported with or invoiced with the active parts of the LPTs.⁸² Nevertheless, similar to Hyundai’s initial response to this request for information, Hyundai failed to provide the requested information.

We also requested that Hyundai provide a chart identifying each component, including main bodies, spare parts, and accessories for the LPTs sold for certain sales and explain how prices are determined for each component, including accessories.⁸³ On June 19, 2017, Hyundai responded to this request.⁸⁴ However, Hyundai failed to provide the requested information concerning

⁷⁶ *Id.*, at response to Question 29 and 2nd SS-1 -through 2nd SS-3 (internal quotations omitted).

⁷⁷ *Id.*, at response to Question 29 and 2nd SS-3 through 2nd SS-5.

⁷⁸ *Id.*, at 2nd SS-6.

⁷⁹ See Letter from the Department, regarding “Supplemental Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corporation USA’s Questionnaire Responses,” dated October 7, 2016 (October 7, 2016, Supplemental Questionnaire to Hyundai). In question 26 of the Department’s October 7, 2016, Supplemental Questionnaire to Hyundai in the prior review, we asked “Please confirm your product-specific costs do not include the costs or spare parts and accessories (*i.e.*, non-subject merchandise).” From this question, Hyundai argues that the Department states accessories are non-subject merchandise and will apply this definition to report accessories in this review. See also Hyundai’s June 16, 2017, Sales and Cost Supplemental Questionnaire Response at 2nd SS-6 and 2nd SS-7.

⁸⁰ *Id.*, at 2nd SS-7.

⁸¹ *Id.*

⁸² *Id.*, at 2nd SS-6 and 2nd SS-7.

⁸³ See May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai at 10.

⁸⁴ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Second Sales Supplemental Response,” dated June 19, 2017 (Hyundai’s June 19, 2017, Second Sales Supplemental Questionnaire Response) at 22-23 and Attachment 2nd SS-21.

accessories. Without identifying accessories in the requested chart, it states that all components are attached to and assembled with the merchandise under review and that it treats any component required by the customer as essential.⁸⁵

On July 10, 2017, Hyundai filed a letter requesting a meeting with the Department to discuss, among other items, the “accessory” issue.⁸⁶ On July 11, 2017, we issued a supplemental questionnaire requesting that Hyundai report accessories in a separate field in the cost database to the extent that it has reported accessories in its revised sales database.⁸⁷ On July 14, 2017, Hyundai met with Department officials to discuss, among other items, the “accessory” issue.⁸⁸ On July 24, 2017, Hyundai filed its response to the Department’s July 11, 2017, Second Cost Supplemental Questionnaire to Hyundai, in which Hyundai stated that despite its requests for clarification, “the Department still is considering the meaning of the term ‘accessories’” and in which it reiterated that because the Department defined “accessories” as non-subject merchandise in the Department’s October 7, 2016, Supplemental Questionnaire to Hyundai in the prior review, “[p]ursuant to this definition,” it reported “any component that is not attached to, imported with or invoiced with the active parts of LPTs as ‘accessory.’”⁸⁹ However, while providing costs for a list of parts for which a separate revenue was listed in its sales documentation, Hyundai did not identify whether such parts are accessories and instead claims that “[b]ecause the Department is still considering the definition of an ‘accessory,’ it is unclear whether some of these items will ultimately be considered to be parts.”⁹⁰ It adds that since it did not have any sales of a component that is not “attached to, imported with or invoiced with the active parts of LPTs,” it reported no costs for accessories.⁹¹

On July 25, 2017, Hyundai filed comments regarding various issues, including “accessories,” reiterating that there is no consistent commercially meaningful definition of the term “accessories” and stating that it continues to seek clarification on “accessories.”⁹² Also, it asked the Department to articulate the role that “accessories” will play in the calculation of the dumping margins and to issue supplemental questionnaires to Hyundai in advance of the

⁸⁵ *Id.*, at 23 and Attachment 2nd SS-21.

⁸⁶ See Letter from Hyundai to the Department, regarding “Large Power Transformers from Korea: Request for Meeting,” dated July 10, 2017.

⁸⁷ See Letter from the Department to Hyundai, regarding “Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea,” dated July 11, 2017 (July 11, 2017, Second Cost Supplemental Questionnaire to Hyundai) at 4.

⁸⁸ See Memorandum to the File, “2015/2016 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea: Meeting with Counsel for Hyundai Heavy Industries Co., Ltd.,” dated July 21, 2017.

⁸⁹ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Second Cost Supplemental Response,” dated July 24, 2017 (Hyundai’s July 24, 2017, Second Cost Supplemental Questionnaire Response) at 9-10.

⁹⁰ *Id.*, at 10 and Attachment 2SD-9.

⁹¹ *Id.*

⁹² See Letter from Hyundai to the Department, regarding “Large Power Transformers from Korea: July 14, 2017 Meeting with Department and Response to ABB July 12, 2017 Comments on Hyundai’s Supplemental Sections B-D Questionnaire Response,” dated July 25, 2017 (Hyundai’s July 25, 2017, Comments) at 2-4. Citing the Issues and Decision Memorandum (IDM) in the previous review where the Department stated that Hyundai could have contacted the Department to request clarification, Hyundai notes that it has sought clarification to the Department. See also 2014-2015 LPT Korea Final and accompanying IDM at 27.

verifications while asking the Department to issue a supplemental questionnaire to the petitioner to provide the definition of “accessories.”⁹³

On August 15, 2017, Hyundai filed comments, including comments regarding “accessories,” arguing that it reported the revenues and costs incurred on “accessories” as non-subject merchandise by utilizing “the definition of ‘accessories’ employed by the Department in the prior administrative review.”⁹⁴ Hyundai also requested that the Department (1) arrange a technical meeting with Hyundai’s representatives to discuss the definition of the term “accessories,” (2) provide a definition, (3) direct the petitioner to provide a definition employed in the petitioner’s normal course of business, and (4) direct the petitioner to explain the reason for requesting separate accessories reporting.⁹⁵

Given all of the above, as the record indicates, despite multiple requests by the Department to provide information regarding “accessories,” Hyundai continues to refuse to provide such information. Instead, it attempts to place the burden on the Department to define the term “accessories.”⁹⁶ Hyundai claims that its sales documentation indicates that there is no consistent use of the term accessories between its different customers, and that the same customers refer to the term accessories differently.⁹⁷ However, because the same parts can be treated as optional or non-optional (*i.e.*, as accessories or not as accessories), there is a serious concern that certain parts could be selectively included/excluded from Hyundai’s home market and U.S. sales and reported gross unit prices at Hyundai’s discretion, which could lead to manipulation of the gross unit price (*i.e.*, could lead to the over/understatement of gross unit prices, thereby manipulating the margin).

To address this concern, we requested this information in order to analyze and determine whether the identified accessories should be properly included in, or excluded from, the gross unit price. In addition, to determine whether product matches are based on accurate physical characteristics, we have attempted to obtain the cost information for such accessories because knowing such information would have enabled us to analyze more effectively whether the differences in costs between similar products could be attributed to factors other than the physical characteristics of LPTs. However, despite our multiple attempts detailed above, Hyundai repeatedly failed to provide such requested information, thereby impeding further analysis of this issue by the Department.

Not only did Hyundai fail to provide the requested information, but Hyundai also attempted to shift the burden on the Department to determine how Hyundai treats accessories and negotiates the prices for such parts with its customers. It is not the Department’s responsibility to provide the definition of what constitutes “accessories” since Hyundai’s own sales documentation contains the repeated usage of the term. Further, sales documentation between Hyundai and its

⁹³ See Hyundai’s July 25, 2017, Comments at 6 and 8-9.

⁹⁴ See Letter from Hyundai to the Department, regarding “Large Power Transformers from Korea: Additional Response to ABB Comments on Hyundai Supplemental Section B-D Questionnaire Responses,” dated August 15, 2017 (Hyundai’s August 15, 2017, Comments) at 3-.

⁹⁵ *Id.*, at 74.

⁹⁶ See 2014-2015 LPT Korea Final IDM at 26.

⁹⁷ See Hyundai’s June 16, 2017, Sales and Cost Supplemental Questionnaire Response at 2nd SS-4, 2nd SS-5, Attachment 2nd SS-4, and Attachment 2nd SS-4.

customers displays the term “accessories.”⁹⁸ This documentation, at a minimum, connotes that Hyundai understands the term “accessories” and the types of such components when it negotiates and completes its sales with customers who may identify or request such components. Even though the definition of such a term might occasionally differ among customers, it is reasonable for us to conclude that Hyundai should have been able to distinguish components that are “accessories” from those that are not “accessories” because accessories are identified in its own sales documentation and Hyundai produces/sells such components. Through its technical knowledge and sales experience, Hyundai, not the Department, should have an understanding of the ranges/types of accessories for LPTs. Importantly, the other respondent, Hyosung, attempted to convey what it understands accessories to be and reported such components.⁹⁹ Specifically, Hyosung states that “{a}ccessories are devices not *per se* essential to LPT’s function, but instead add to the convenience or effectiveness of a feature of the LPT” and that “{a}ccessories include, for example, fiber optics, dissolved gas monitors, electric temperature monitors, AEP auxiliary panels, dynamic rating-site commissioning, and other devices not essential to the core function of the transformers.”¹⁰⁰ Further, Hyosung adds that “{t}hese accessories, generally provided to the customer on special request, help the customer in checking and monitoring the LPT.”¹⁰¹ It is unclear to the Department why Hyosung was able to provide such requested information with respect to accessories, while Hyundai claims it is unable to do so. In addition, Hyundai should have known that the Department would be asking for information concerning “accessories” in this administrative review as it knew that this was a significant issue during the prior administrative review. More importantly, with repeated supplemental questionnaires and Hyundai’s failure to provide such information, Hyundai’s responses illustrate its refusal to cooperate with the Department. Hyundai’s failure to cooperate thus hindered the Department’s ability to complete its analysis. As such, we preliminarily determine that Hyundai impeded the review by failing to act to the best of its ability by withholding the requested information concerning “accessories.”

(2) Understatement of the Home Market Gross Unit Price

For the purpose of determining whether Hyundai reported accurate gross unit prices, service-related revenues, and expenses, we requested that Hyundai provide complete sales and expense documentation for certain home market and U.S. sales.¹⁰² On June 26, 2017, Hyundai filed its questionnaire response to the Department’s request.¹⁰³ While reviewing the documentation for

⁹⁸ See, e.g., Hyundai’s June 19, 2017, Second Sales Supplemental Questionnaire Response at Attachment 2nd SS-13 and Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: 2nd Supplemental Sales Response to Questions, 42, 47-50, 52, 54, 55, and 77,” dated June 26, 2017 (Hyundai’s June 26, 2017, Second Sales Supplemental Questionnaire Response) at Exhibit 94.

⁹⁹ See, e.g., Letter from Hyosung to the Department, regarding “Large Power Transformers from Korea: Sections B-D Questionnaire Responses,” dated February 27, 2017 (Hyosung’s February 27, 2017, Sections B thru D Questionnaire Response) at D-38. Hyosung states that it reported the cost of spare parts and accessories.

¹⁰⁰ See Letter from Hyosung to the Department, regarding “Large Power Transformers from Korea: Third Supplemental Questionnaire Response,” dated July 21, 2017 (Hyosung’s July 21, 2017, Third Supplemental Questionnaire Response) at 5.

¹⁰¹ *Id.*

¹⁰² See May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai. In question 42, we requested Hyundai “provide complete sales and expenses documentation.”

¹⁰³ See Hyundai’s June 26, 2017, Second Sales Supplemental Questionnaire Response.

one of the home market sales requested by the Department, we found that Hyundai improperly reported its home market gross unit prices for certain home market sales.

Specifically, the record indicates that even though later-revised contracts identify different contract values, Hyundai continued to use the values from its initial contract to report its gross unit prices for certain sales, thereby understating its home market sales for certain home market sales.¹⁰⁴ As a result, we preliminarily find that Hyundai's reporting of its gross unit prices for its home market sales is not reliable. Therefore, we preliminarily determine that Hyundai failed to cooperate to its best of its ability to provide complete and accurate information, thereby preventing the Department from calculating an accurate margin and calling into question the accuracy of Hyundai's reporting.¹⁰⁵

(3) Undisclosed Relationship with Hyundai's Sales Agent

To identify Hyundai's offices and affiliated parties that are involved in the development, production, sale, and/or distribution of the merchandise under review, and to determine whether Hyundai's transactions with its affiliated parties were conducted at arm's length, we requested that Hyundai provide a complete list of affiliates involved in development, production, sale, and/or distribution related to merchandise under review.¹⁰⁶ However, despite our multiple requests and Hyundai's claim that it provided a complete list of its affiliated parties concerning merchandise under review,¹⁰⁷ we find that record evidence indicates that Hyundai did not disclose its relationship with a sales agent. This record evidence calls into question the reliability of Hyundai's reported commission and indirect selling expenses (*i.e.*, they could be understated).

By failing to disclose the nature of the relationship between Hyundai and its sales agent, Hyundai failed to cooperate to the best of its ability.¹⁰⁸ Specifically, Hyundai failed to cooperate to its best of its ability to provide complete and accurate information regarding its affiliation and transactions with its affiliated parties, thereby preventing the Department from (1) conducting further analyses to determine whether such affiliated party transactions were conducted at arm's length and (2) calculating an accurate margin (*i.e.*, because the U.S. commission expenses involving this agent and Hyundai's indirect selling expenses could be understated).¹⁰⁹

VI. RATE FOR NON-SELECTED COMPANIES

¹⁰⁴ *Id.*, at Exhibit 94.

¹⁰⁵ Due to the proprietary nature of this issue, *see* Memorandum to the File, "Analysis of Data/Questionnaire Responses Submitted by Hyundai Heavy Industries Co., Ltd. in the Preliminary Result of the 2015-2016 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated August 31, 2017 (Hyundai's Preliminary Analysis Memorandum).

¹⁰⁶ *See* Letter from the Department to Hyundai, regarding Antidumping Duty Questionnaire, dated January 5, 2017 (January 5, 2017, Initial Questionnaire to Hyundai) at A-4; *see also* April 12, 2017, First Sales Supplemental Questionnaire to Hyundai at 4; *see also* Letter from the Department, regarding "Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: Second Sales Supplemental Questionnaire," dated May 19, 2017 (May 19, 2017, Second Sales Supplemental Questionnaire to Hyundai) at 4 and 5.

¹⁰⁷ *See* Hyundai's June 19, 2017, Second Sales Supplemental Questionnaire Response at 5 and Attachment 2nd SS-6.

¹⁰⁸ *See* Hyundai's May 3, 2017, Supplemental Section A Questionnaire Response at Attachment SA-15.

¹⁰⁹ Due to the proprietary nature of this issue, *see* Hyundai's Preliminary Analysis Memorandum.

The Department did not select Iljin, Iljin Electric, or LSIS for individual examination. The statute and the Department's regulations do not directly address the establishment of a rate to be applied to individual companies not selected for examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. The Department's practice in calculating a rate for non-examined companies in cases involving limited selection based on exporters or producers accounting for the largest volumes of trade has been to look to section 735(c)(5) of the Act for guidance, which provides instructions for calculating the all-others rate in an administrative review.¹¹⁰ Section 735(c)(5)(B) of the Act also provides that, where all rates are zero, *de minimis*, or based entirely on facts available, we may use "any reasonable method" for assigning the rate to all other respondents.

Consistent with the Court of Appeals for the Federal Circuit's decision in *Albemarle Corp. v. United States*,¹¹¹ in this review, we have preliminarily determined that a reasonable method for determining the rate for the non-selected companies is to use the rate applied to the mandatory respondents (*i.e.*, Hyosung and Hyundai) in this administrative review.¹¹² This is the only rate determined in this review for individual respondents and, thus, should be applied to the three non-selected companies under section 735(c)(5)(B) of the Act. Accordingly, we preliminarily assign to the non-selected companies the dumping margin of 60.81 percent.

¹¹⁰ See, e.g., *Longkou Haimeng Mach. Co. v. United States*, 581 F.Supp.2d 1344, 1357-60 (CIT 2008).

¹¹¹ See *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. 2016).

¹¹² See, e.g., *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Preliminary Results of Antidumping Duty Administrative Review and Preliminary Determination of No Shipments; 2014-2015*, 81 FR 45124, 45124 (July 12, 2016), unchanged in *Certain Small Diameter Carbon and Alloy Seamless Standard, Line, and Pressure Pipe (Under 4 1/2 Inches) from Japan: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 81 FR 80640, 80641 (November 16, 2016).

VII. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

8/31/2017

X



Signed by: GARY TAVERMAN

Gary Taverman
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations,
performing the non-exclusive functions and duties of the
Assistant Secretary for Enforcement and Compliance