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March 9, 2018

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
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations
performing the duties of 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; 2015-2016

I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we continue to find that the application of total adverse facts available (AFA) is appropriate for 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:



II. LIST OF ISSUES

A. Hyundai-Specific Issues

Comment 1: Application of Total AFA

- A) Hyundai's Reporting of Accessories
- B) Hyundai's Understatement of Its Home Market Gross Unit Prices
- C) Hyundai's Undisclosed Affiliated Sales Agent
- D) Moot Issues

Comment 2: Selection of AFA Rate

Comment 3: Application of Hyundai's Margin to New Entity

B. Hyosung-Specific Issues

Comment 4: Application of Total AFA

- A) Hyosung's Reporting of Service-Related Revenue
- B) Invoice for Certain SEQUs Covering Multiple Sales over Multiple Review Periods
- C) Hyosung Failed to Report All Relevant Discounts and Price Adjustments
- D) Moot Issues

C. General Issues

Comment 5: Application of Total AFA to the Non-Selected Respondents

III. BACKGROUND

On September 7, 2017, the Department of Commerce (Commerce) published the preliminary results of the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) for the period August 1, 2015, through July 31, 2016.¹ 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 two manufacturers/exporters that were selected as mandatory respondents were Hyosung and Hyundai. Iljin, Iljin Electric, and LSIS were not selected for individual examination.

In the *Preliminary Results*, we preliminarily determined that both Hyosung and Hyundai failed to cooperate and act to the best of their abilities to provide Commerce with necessary requested information and, therefore, impeded the review by preventing Commerce from calculating an accurate antidumping duty margin. Therefore, we applied total AFA to Hyosung and Hyundai.

¹ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015–2016*, 82 FR 42289 (September 7, 2017) (*Preliminary Results*) and accompanying Memorandum, entitled “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2015-2016” (PDM).

On October 12, 2017, Hyosung, Hyundai, Iljin, and ABB Inc. (the petitioner), timely submitted case briefs commenting on the *Preliminary Results*. Hyosung, Hyundai, and the petitioner timely filed rebuttal briefs on October 19, 2017. Commerce officials conducted a public hearing on January 11, 2018.²

Based on our analysis of the comments received, we continue to find that the application of total AFA is warranted for both Hyundai and Hyosung. For the companies not selected for individual examination, Commerce continues to find that the rate assigned to these companies should be the average of the rates assigned to Hyosung and Hyundai.

IV. SCOPE OF THE ORDER

The scope of this order covers large liquid dielectric power transformers 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. APPLICATION OF TOTAL ADVERSE FACTS AVAILABLE WITH REGARD TO HYUNDAI AND HYOSUNG

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that Commerce, subject to section 782(d) of the Act, will apply “facts otherwise available” if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability

² See Transcript from Neal R. Gross and Co., Inc. to Commerce, “Public Hearing in the Matter of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from Korea,” dated January 11, 2018 (Hearing Transcript).

to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.

As discussed in Comment 1 below, we continue to find that Hyundai has withheld requested information and otherwise impeded this review by failing to provide Commerce with the prices and costs for “accessories,” which prevents Commerce from analyzing and determining whether: (1) product matches are based on accurate physical characteristics; (2) the difference in costs between similar products could be attributed to factors other than the physical characteristics; and (3) there is potential for manipulation of the dumping margin by inconsistent treatment of accessories between home market and U.S. sales. In addition, Hyundai’s inconsistent reporting of an identical component in different sales as foreign like and non-foreign like product calls into question the reliability of its reporting of home market sales. Finally, the record indicates that the sales agent at issue is affiliated with Hyundai pursuant to the affiliation criteria under 771(33)(D) and (E) of the Act. Collectively, these issues demonstrate how Hyundai has impeded this review. Furthermore, we also find that Hyundai has failed to cooperate to the best of its ability because it failed to comply with a request for information regarding the prices and costs for “accessories.” provide complete and accurate information requested by the Department, thereby raising issues as to whether Hyundai understated home market prices for certain sales, and disclose the relationship between Hyundai and its sales agent after requests to do so, which also questions the accuracy of its reporting. Taken together, Hyundai has failed to put forth its maximum effort to cooperate in this review.

Furthermore, as discussed in Comment 4 below, we continue to find that Hyosung has withheld requested information and otherwise impeded this review by failing to: (1) provide Commerce with complete and accurate information regarding the revenues earned in connection with the provision of services; (2) explain why one invoice was submitted for payment for a U.S. sale when the same invoice was used to demonstrate payment for a separate sale in a separate administrative review; and (3) report discounts and other adjustments which appear on the invoices for U.S. customers. Hyosung’s failure to report or explain these adjustments causes us to question the reliability of the information provided, which warrants application of an adverse inference when selecting from facts otherwise available.

For these reasons, and as discussed below in Comments 1 and 4, Commerce concludes that the application of total facts available with an adverse inference is warranted with respect to Hyundai and Hyosung, pursuant to sections 776(a)(2)(A) and (C), and 776(b) of the Act.

VI. DISCUSSION OF THE ISSUES

A. Hyundai-Specific Issues

Comment 1: Application of Total AFA

A) Hyundai's Reporting of Accessories

Hyundai's Comments:

Hyundai cooperated and reported “accessories” as instructed

- Upon realizing Commerce “changed” its definition of “accessories” in the final results of the 2014-2015 review, Hyundai requested clarification, and, as instructed by Commerce, Hyundai based reporting on its “understand{ing of} the scope of term ‘accessories.’”³
 - Because Hyundai did not sell any “accessories,” based on Hyundai’s definition, a value of “0” was reported.⁴
 - As Commerce did not define “accessories,” Commerce cannot find fault with Hyundai’s definition and reporting. Further, Commerce must provide Hyundai with a “meaningful opportunity” to respond to any alleged deficiencies.⁵
 - Hyundai responded to Commerce’s questionnaires, sought guidance/clarification regarding “accessories,” and provided prices and costs for each separately priced component.⁶

³ See Letter from Hyundai, “Large Power Transformers from Korea: Hyundai’s Case Brief,” dated October 12, 2017 (Hyundai Case Brief) at 8-9.

⁴ *Id.* at 9

⁵ *Id.* at 15-17; see also section 782(c)(2) of the Act; see also *Kawasaki Steel Corporation v. United States*, 110 F. Supp. 2d 1029, 1036, 684, 692 (CIT 2000); see also *Firth Rixson Special Steels Limited v. United States*, 27 CIT 873, 883-884, Slip Op. 03-70, 02-00273. (2003); see also *Kawasaki Steel*, 110 F. Supp. 2d at 691) (citing *World Finer foods, Inc. v. United States*, 24 CIT 541, 544-547 (2000).

⁶ *Id.* at 17, 36-37; see also *Allied-Signal Aerospace Company v. United States*, 996 F.2d 1185, 1192 (Fed. Cir. 1993); see also *Firth Rixson* 27 CIT at 884 (citing *China Steel Corporation v. United States*, 264 F. Supp. 2d 1339 (CIT 2003); *Am. Silicon Techs v. United States*, 24 CIT 612, 624-625 (2000); *Mitsui & Co. v. United States*, 18 CIT 185, 202 (1994)); see also *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 Final Results*) and accompanying Issues and Decision (2014-2015 IDM) at 2, 24; see also PDM at 17; see also *Bowe-Passat v. United States*, 17 CIT 335 (1993); see also *Borusan Mannesmann Boru Sanayi ve Ticaret A.S. v. United States* 61 F. Supp. 3d. 1306, 1345-1348 (CIT 2015); see also *Ta Chen Stainless Steel Pipe v. United States*, 23 CIT 804, 820 (1999); see also *Reiner Brach GmbH & Co. KG v. United States*, 26 CIT 549, 561 (2002).

Commerce failed to acknowledge its prior treatment of “accessories” and Hyundai’s efforts to respond to Commerce’s request in this review

- Prior to the issuance of the final results of the 2014-2015 administrative review, Commerce considered all transformer components to be part of the transformer.⁷
- Additionally, besides seeking clarification from Commerce regarding a definition of “accessories,” Hyundai submitted a nine-page document summarizing definitions,⁸ and requested a meeting with Commerce officials to discuss this issue.⁹
- Prior to this review, Commerce treated all parts that were “needed to assemble an incomplete transformer” as part of the transformer,¹⁰ and, as there was no mention of “accessories” in the preliminary results of the previous review, Hyundai had no reason to believe Commerce disagreed with its reporting.¹¹
- Therefore, Hyundai’s reporting of “accessories” in this review is consistent with prior analyses,¹² including Commerce’s analysis of Hyundai’s accessory costs.¹³

Commerce has an obligation to define product characteristics

- Commerce ultimately defines product characteristics, and, if control number (CONNUM)-related issues cannot be resolved early in a proceeding, they should be handled in a subsequent one.¹⁴
- To ensure consistency, Commerce must apply a uniform definition to all parties.¹⁵

⁷ See Hyundai Case Brief at 12; 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) (*Final Determination*) and accompanying Issues and Decision Memorandum at 28-30, 46-47 (Investigation IDM); see also *Large Power Transformers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) and accompanying Issues and Decision Memorandum (2013-2014 IDM) at 39-40.

⁸ See Hyundai Case Brief at 13-14.

⁹ *Id.* at 14.

¹⁰ *Id.* at 14-15, 18-19, and 20-24.

¹¹ *Id.*; see also *Large Power Transformers from the Republic of Korea: Preliminary Results of the Antidumping Duty Administrative Review; 2014-2015*, 81 FR 60672 (September 2, 2016) and accompanying Preliminary Decision Memorandum; see also 2014-2015 IDM at 27.

¹² See Hyundai Case Brief at 24-25; see also PDM at 16; see also 2014-2015 IDM at 48, 50-51.

¹³ See Hyundai Case Brief see also PDM at 16.

¹⁴ See Hyundai Case Brief at 20, 26-30; see also *Timken Company v. United States*, 630 F. Supp. 1327, 1339 (1986) (*Timken Company*); see also *Maverick Tube Corp. v. United States*, 107 F. Supp. 3d 1318, 1330 (CIT 2015); see also *JTEKT Corp. v. United States*, 37 F. Supp. 3d 1326, 1336 (CIT 2014); see also PDM at 12, 16; see also *Antifriction Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of Antidumping Administrative Reviews, Rescission of Administrative Reviews in Part, and Determination to Resolve Order in Part*, 69 FR 55574 (September 15, 2004), and accompanying Issues and Decision Memorandum at 16 (Comment 2); see also *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, Singapore, and the United Kingdom: Final Results of the Antidumping Administrative Reviews*, 70 FR 54711 (September 16, 2005), and accompanying Issues and Decision Memorandum at 13-26 (Comment 2).

¹⁵ See Hyundai Case Brief at 30-31 (citing *United Engineering and Forging v. United States*, 779 F. Supp. 1375, 1338 (CIT 1991) (quoting *Timken*, 630 F. Supp. at 1339; see also *Mittal Steel USA, Inc. v. United States*, Slip Op. 07-117, 138 (August 1, 2007) (citing *Lasko Metal Prods. Inc. v. United States*, 43 F. Supp. 3d 1442, 1446 (Fed. Cir.

- When Commerce changes its approach to settled issues, it is required to explain the change and afford respondents the opportunity to respond.¹⁶
- Hyundai attempted to define “accessories, in the 2015-2016 review,” and followed both Hyosung’s definition from the 2014-2015 review, and Hyosung’s revised definition from the 2015-2016 review.¹⁷

The assertion that Hyundai manipulated the gross unit price of “accessories” is baseless

- Commerce has uniformly confirmed that separately-priced parts that are merchandise under consideration must be included in the gross unit price. Therefore, the question is not whether “accessories” are optional or non-optional parts, but whether the part is attached to, imported/invoiced with LPTs.¹⁸
- Further, Hyundai has consistently included in its gross unit prices all parts attached, imported/invoiced with LPTs.¹⁹

Petitioner’s Rebuttal Comments:

Hyundai failed to report “accessories,” despite having adequate notice and clear instructions

- Commerce provided Hyundai with a clear definition of “accessories” during this proceeding.²⁰
- Hyundai ignored Commerce’s actual instructions regarding defining “accessories,” and instead pieced together its own definition in order to avoid reporting them.²¹
- Hyundai failed to use its own definition to report certain sales, which demonstrates Hyundai’s desire to utilize any definition available to serve its interests.²²
- Hyundai claimed it could not define “accessories,” because different customers and Hyundai treats “accessories” inconsistently in different contexts; and in doing so shifted this task to Commerce, which does not possess all of Hyundai’s information and, therefore, cannot define “accessories.”²³

1994)); *see also Stainless Steel Wire Rod from Korea*, 63 FR 10825, 10828 (March 5, 1998); *see also* 19 CFR 351.401(b)(1).

¹⁶ *See Citrosuco Paulista S.A. v. United States*, 12 CIT 1196, 1209 (1998); *see also Clearon Corp. v. United States*, (CIT 2015), *24 (quoting *Dongbu Steel Co., Ltd. v. United States*, 635 F. Supp. 3d 635, 1363, 1371-73 (Fed. Cir. 2011)).

¹⁷ *See* Hyundai Case Brief at 32-34; *see also* PDM at 16, 17.

¹⁸ *See* Hyundai’s Case Brief at 34-35; *see also* PDM at 16.

¹⁹ *See* Hyundai Case Brief at 35; *see also* PDM at 14.

²⁰ *See* Letter from the Petitioner, “Large Power Transformers from the Republic of Korea: Petitioner’s Rebuttal Brief to Hyundai’s Case Brief,” dated October 19, 2017 (Petitioner Rebuttal Brief for Hyundai), at 8, 16; *see also* Hyundai Case Brief at 1-2, 10, 13, 15-17, 20, 24, 26, 29-31; *see also* PDM at 16-17.

²¹ *See* Petitioner Rebuttal Brief for Hyundai, at 8-10; *see also* PDM at 16-17.

²² *See* Petitioner Rebuttal Brief for Hyundai at 16; *see also* Hyundai Case Brief at 38-40.

²³ *See* Petitioner Rebuttal Brief for Hyundai at 10-12.

Commerce specifically warned Hyundai in the 2014-2015 review that it could not rely on its reporting of “accessories” from prior segments.

- By using record information from prior segments, rather than its current sales and negotiation information, Hyundai failed to fully cooperate, even though Commerce provided clear instructions.²⁴
- In fact, as Hyundai possesses sales documents regarding its usage of the term “accessories,” Commerce acted reasonably in concluding Hyundai should be able to define “accessories,” as instructed.²⁵
- Moreover, rather than utilizing the definition of “accessories” Hyundai used in negotiations with customers, Hyundai, instead, complicated this matter by referring to every instance where it or a customer referred to an “accessory.”²⁶
- As Hyundai failed to provide cost and revenue information regarding “accessories,” needed for ensure the accuracy of its responses, Commerce was correct in applying AFA to Hyundai.²⁷

The issues of defining physical characteristics is irrelevant to Hyundai’s reporting of “accessories”

- Commerce set a uniform definition of the CONNUMs used for model matching; however, Commerce’s obligation to define the physical characteristics that make up the CONNUM is irrelevant to the issue of Hyundai’s reporting of “accessories.”²⁸
- Commerce sought information on “accessories” from a sale to sale basis, captured within the same CONNUM, in order to ensure that model matching, cost data, and difference-in-merchandise data were not being distorted.²⁹ However, Hyundai refused to provide these data.³⁰

Manipulation of gross unit price of “accessories”

- Commerce’s request regarding optional or non-optional parts is a significant element for the margin analysis, because if these parts are selectively included/excluded from Hyundai’s home market and U.S. sales, gross unit price would be distorted.³¹

²⁴ *Id.* at 11-15; *see also* Hyundai Case Brief at 2, 7-8, 15-17; *see also* PDM at 12-15, 16; *see also* *World Finer Foods v. United States*, 24 CIT 541, 544-45 (2002).

²⁵ *See* Petitioner Rebuttal Brief for Hyundai at 13-15; *see also* Hyundai Case Brief at 1-2, 10, 13, 15-17, 20, 24, 26, 29-31; *see also* PDM at 16-17.

²⁶ *See* Petitioner Rebuttal Brief for Hyundai at 13; *see also* PDM at 16-17.

²⁷ *See* Petitioner Rebuttal Brief for Hyundai at 16-17; *see also* Hyundai Case Brief at 38-40; *see also* *Fujian Lianfu Forestry Co. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001)).

²⁸ *See* Petitioner Rebuttal Brief for Hyundai at 10-11; *see also* PDM at 12; *see also* Hyundai Case Brief at 26-31.

²⁹ *See* Petitioner Rebuttal Brief for Hyundai at 11; *see also* PDM at 12.

³⁰ *See* Petitioner Rebuttal Brief for Hyundai at 11.

³¹ *See* Petitioner Rebuttal Brief for Hyundai at 4-5; *see also* PDM at 12, 16.

- As Hyundai provided no cost or sales data for “accessories,” Commerce cannot confirm the accuracy of Hyundai’s information.³²

Commerce’s Position

In antidumping duty investigations or administrative reviews, we require respondents to report all U.S. and home market sales during the period of review (POR).³³ We then make a comparison between the U.S. and home market (*i.e.*, normal value) sales prices.³⁴ When comparing U.S. sales with home market sales, we may find that the product sold in the United States does not have the same physical characteristics as the merchandise sold in the home market, and that difference may have an effect on prices.³⁵ If we find that there is such a difference, Commerce will adjust for those differences in physical characteristics.³⁶ Often, the comparison methodology requires the use of weighted-average prices. To arrive at weighted-average prices, we will group comparable sales into an averaging group, which consists of subject merchandise that is identical or similar in all physical characteristics and that is sold to the United States at the same level of trade.³⁷ The averaging group for U.S. sales is then compared to the weighted-average of the normal value of similar averaging groups from the home market.³⁸

What makes an averaging group are the unique CONNUMs assigned to each reported sales transaction. A CONNUM is a number assigned to each unique product reported in the sales database based on a set of physical characteristics identified in the questionnaire issued to respondents (*i.e.*, model-matching criteria). This process generates a hierarchy of specified physical characteristics, and products sharing the identical/similar physical characteristics are assigned the same CONNUM for purposes of the price comparison.³⁹ This hierarchy of physical characteristics varies from case to case depending on the nature of the merchandise under review.⁴⁰ Once the CONNUMs are determined, we take the average normal value for the CONNUM and compare it to the average U.S. price to arrive ultimately at a weighted-average dumping margin.⁴¹

Since the investigation, we have considered whether there are components of an LPT that may amount to physical differences in the product such that we would make an adjustment based on the variance in costs of those components.⁴² In this review, we were trying to address our

³² See Petitioner Rebuttal Brief for Hyundai at 5-6, 7; *see also* PDM at 16; *see also* Hyundai Case Brief at 1-2, 36, 38.

³³ *See generally* section 751 of the Act and 19 CFR 351.414.

³⁴ *See* section 751(a)(2)(A)(i) of the Act.

³⁵ *See* 19 CFR 351.414(d)(2).

³⁶ *See* section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411(a).

³⁷ *See* 19 CFR 351.414(d)(2).

³⁸ *Id.*

³⁹ *See, e.g., Union Steel v. United States*, 823 F. Supp.2d 1346, 1349-50 (CIT 2012).

⁴⁰ *Id.*

⁴¹ *Id.* at 1350.

⁴² *See Final Determination* and accompanying Investigation IDM at 29 (“{Commerce} asked Hyundai to verify that for all sales, 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.”).

concern that there may be differences in costs between similar product CONNUMs reported by Hyundai based on certain components of an LPT that are considered “accessories,” and to ensure that product matches are based on accurate physical characteristics. We find that this issue is important, because Hyundai’s sales documentation displays the term “accessories.”⁴³ Because the term “accessories,” by nature, indicates that these parts may not be essential to LPTs that are subject to the scope of this proceeding, we are concerned that the same parts can be treated by Hyundai as accessories or not as accessories between sales both within each market and across markets, which can lead to manipulation. That is, because “accessories” could be selectively included/excluded from Hyundai’s home market and U.S. sales and reported gross unit prices at Hyundai’s discretion, this could lead to the over/understatement of gross unit prices, thereby enabling Hyundai to manipulate our calculations, resulting in a lower dumping margin. In other words, Hyundai could potentially add/remove certain parts from merchandise under review for the purposes of lowering its dumping margin when it negotiates its sales contracts with its customers.

Further, we find that such selective reporting of “accessories” could affect the costs of merchandise under review. Although the rest of physical characteristics are identical/similar for comparable merchandise under review, including/excluding “accessories” could affect the costs of merchandise under review. This, in turn, could lead to the distortion of Commerce’s model matching, which is based on the CONNUMs, because differences in variable costs associated with the physical differences in compared merchandise is a determining factor as to whether CONNUMs are similar or not.⁴⁴ Accordingly, to address our aforementioned concerns, we requested the information regarding the price and cost for “accessories” in order to analyze and determine whether the identified accessories should be properly included or excluded from the gross unit price.

However, despite our repeated requests as detailed in our PDM, Hyundai did not provide the requested information.⁴⁵ Instead, it argues that it has no particular understanding of the term “accessories” when negotiating with customers, as there is no set use of the term internally, its customers use this term differently, and there is inconsistent treatment even within the sale by its customer.⁴⁶ Despite claiming it has no particular understanding of accessories, Hyundai, nevertheless, argues that it properly reported “accessories” as non-subject merchandise, pursuant to the scope and Commerce’s prior treatment of “accessories,” and the definition employed by Commerce.⁴⁷ It asserts that it is Commerce’s responsibility to define “accessories” in a uniform way and that Commerce did not carry out its statutory obligation to assist a party experiencing difficulties in responding to Commerce’s request.⁴⁸ Hyundai adds that it had no way to know that Commerce had changed its treatment of “accessories” and that Commerce did not satisfy its

⁴³ See PDM at 17. See also, e.g., Hyundai’s June 19, 2017, Second Sales Supplemental Questionnaire Response (Hyundai June 19, 2017, SQR) at Attachment 2nd SS-13 and Hyundai’s June 26, 2017, Second Sales Supplemental Questionnaire Response (Hyundai June 26, 2017, SQR) at Attachment 2nd SS-94.

⁴⁴ See 19 CFR 351.411.

⁴⁵ See PDM at 12-17.

⁴⁶ See Hyundai Case Brief at 20-23.

⁴⁷ *Id.* at 1, 6-15 and 20-24.

⁴⁸ *Id.* at 2, 15-17, 20 and 24-31. See also section 782(c)(2) of the Act.

statutory requirement to notify a party of a deficiency and to provide an opportunity to explain or remedy the deficiency.⁴⁹ For the reasons detailed below, we disagree with Hyundai.

As an initial matter, we applied total AFA, in part, due to Hyundai's failure to report the price and cost for accessories in the previous review.⁵⁰ Hyundai should have known that Commerce needed to analyze and further examine the "accessories" issue based on the final results of the previous review and our questionnaires. Because our understanding of LPTs increases with each segment of this proceeding, we have become aware of the potential for manipulation based on the respondents' reporting. The accessories issue has become more developed in recent reviews, such that we have enhanced our questionnaires to address our concerns. Hyundai is fully aware of our concerns, yet failed to act and respond accordingly. Hyundai's failure to report the price and cost for accessories was part of the basis for the application of total AFA.

Additionally, regarding Commerce's statutory obligation under section 782 of the Act to notify a party of a deficiency and to provide an opportunity to explain or remedy the deficiency, as detailed in our PDM, we made multiple attempts to obtain information regarding "accessories" from Hyundai.⁵¹ Despite our requests, Hyundai failed to provide the requested information and, instead, defaulted to the scope language and Commerce's historical treatment of "accessories."⁵² Hyundai claims it does not know what accessories are, yet claims it already reported accessories as subject merchandise. In light of this reporting strategy, we followed up with numerous supplemental questionnaires seeking further explanation, as detailed in the PDM.⁵³ As evinced by these supplemental questionnaires, Commerce satisfied its obligation to inform Hyundai of the nature of its deficiencies regarding its reporting of accessories and provided Hyundai with several opportunities to remedy or explain its deficient and conflicting responses. Hyundai failed to address which components in its reporting constitute the accessories Hyundai considers in its normal course of business, regardless of the scope language and Commerce's prior treatment of accessories, and despite repeated opportunities to do so. Accordingly, we find that Hyundai's argument regarding Commerce's statutory obligation under section 782(d) is not supported.

Hyundai also argues that Commerce did not provide any other assistance, pursuant to 782(c)(2) of the Act, in response to Hyundai's request for clarification.⁵⁴ We disagree. As an initial matter, on May 19, 2017, in response to Hyundai's March 29, 2017 Clarification Request on separate reporting for prices and costs of accessories and a definition of accessories, we issued a questionnaire stating that

"in light of this request, {Commerce} is asking you to provide the following information . . ." including a request that Hyundai "provide a definition of how you use and/or understand the scope of the term accessories when negotiating with our customers, . . . explain your basis for such usage and/or understanding in

⁴⁹ See Hyundai Case Brief at 2-3 and 18-20. See also section 782(d) of the Act.

⁵⁰ See 2014-2015 LPT Korea Final and accompanying 2014-2015 IDM at 26-27.

⁵¹ See PDM at 12-16.

⁵² *Id.* at 12 and 14-16.

⁵³ *Id.* at 12-16.

⁵⁴ See Hyundai Case Brief at 2 and 15-16.

detail,” and “describe in detail what constitutes “main bodies,’ ‘spare parts,’ and ‘accessories’”⁵⁵

As the record shows, we did respond to Hyundai’s request for clarification. Had Hyundai provided the requested information, we could have conducted our own analyses, as stated below, and engaged in a discussion with Hyundai, which was not the case here. Moreover, Hyundai misunderstands the obligation under section 782(c)(2). This section requires Commerce “to take into account any difficulties experienced by interested parties, particularly small companies { which Hyundai is not}, in *supplying* information requested by {Commerce},” and “shall provide . . . any assistance that is practicable in supplying such information.” (emphasis added). Hyundai is not arguing that it experienced difficulties in *supplying* the information requested. In fact, as discussed below, during a hearing with Commerce officials, Hyundai stated that it never argued that it could not provide the information requested.⁵⁶ Section 782(c)(2) of the Act was intended to address situations where parties struggle to give Commerce information in the form and manner requested. For example, the Statement of Administrative Action (SAA) contemplates scenarios where Commerce has requested data “in a particular computer medium or language, and the interested party . . . notifies {Commerce} that it does not maintain its records in such a medium or language, and demonstrates that providing the information in the requested manner would result in an unreasonable extra burden”⁵⁷ Reporting the prices and costs of accessories does not fall within this type of scenario that would invoke the obligation under section 782(c)(2) of the Act for Commerce to assist Hyundai in supplying the requested information. Rather, Hyundai’s inconsistent argument is that, again, it does not know what accessories are and, for that reason, it cannot supply the information; however, it, nonetheless, reported accessories as subject merchandise. Hyundai’s conflicting explanation falls outside the meaning and purpose of section 782(c)(2) of the Act and is one that the statute does not require Commerce to clear up for Hyundai. The type of assistance Hyundai claims to seek is not what is contemplated by section 782(c)(2) of the Act. Lastly, Hyundai cites to *Kawasaki Steel Corp. v. United States* to support its position, though the Court of International Trade’s (CIT) finding suggests otherwise.⁵⁸ In *Kawasaki*, the CIT held that “KSC, . . . a sophisticated and continuing player in the market, never suggested alternatives, never requested help from Commerce, and provided an unconvincing account of why it could not comply fully.”⁵⁹ Further, “KSC wanted Commerce to accept at face value that it could not obtain the information”⁶⁰ Likewise, although Hyundai submitted a Request for Clarification, Hyundai never suggested an alternative

⁵⁵ See Hyundai’s March 29, 2017, Request for Clarification (Hyundai’s March 29, Clarification Request). See Letter from Commerce to Hyundai, “Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: Second Sales Supplemental Questionnaire,” dated May 19, 2017 (Commerce’s May 19, 2017, Supplemental Questionnaire for Hyundai) at 9 and 10.

⁵⁶ See Hearing Transcript at 82 (A Commerce official stated that “... that is an interested though {sic} because one company is completely able to identify what an accessory is and give pricing information for it and another is saying it can’t.” In response, counsel for Hyundai stated that “...we didn’t say that we couldn’t” and “{w}e didn’t say we’re unable to provide what you’ve requested.”).

⁵⁷ See Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, 865, *reprinted* in 1994 U.S.C.C.A.N. 4040, 4199 (1994).

⁵⁸ Hyundai Case Brief at 16; See also *Kawasaki Steel Corp. v. United States*, 110 F. Supp. 2d 1029, 1036-39 (CIT 2003).

⁵⁹ *Kawasaki*, 110 F. Supp. 2d at 1036.

⁶⁰ *Id.*

and, instead, claimed it had no particular understanding of accessories, while alleging that it had reported accessories as subject merchandise. Therefore, Hyundai's plea for assistance is without merit.

Most importantly, however, Hyundai's main argument is that Commerce, not Hyundai, is obligated to define accessories.⁶¹ We disagree. In making its claim, Hyundai fails to cite a statutory provision or other legal authority requiring such an obligation.⁶² Rather, Hyundai defaults to its position that section 782(c)(2) of the Act requires Commerce to provide assistance to Hyundai. However, as articulated above, no such obligation arose. Hyundai also cites to *Timken Co. v. United States* to support its position that, because Commerce has the legal authority to define the physical characteristics of a product for purposes of model matching at the outset of an investigation, this same legal authority also gives rise to Commerce's obligation to define accessories.⁶³ However, Hyundai conflates these issues. Although Commerce seeks a definition of accessories from Hyundai, it is for the purpose of testing whether the model matching criteria, *i.e.*, the product characteristics, as currently established, are working, not to redefine the product characteristics themselves. In other words, based on the information interested parties provide regarding accessories, which inherently requires a definition of accessories from interested parties, Commerce can then assess whether sales in the U.S. and home market are properly matched. Thus, a different purpose is served than that articulated in *Timken Co. v. United States*. Second, to the extent that Commerce had any obligation to define accessories, which it did not, Commerce could not have met that obligation without any information from Hyundai that would aid Commerce's effort to define accessories. Simply, without information regarding what may or may not constitute an "accessory" from interested parties, Commerce is foreclosed from analyzing that information and reaching any "unified" definition. As stated above, Hyundai's sales documentation uses the term "accessories." This fact, at minimum, connotes that Hyundai understands the term "accessories" and the types of components that constitute "accessories" when it negotiates and completes sales with customers who identify or request such components. Notably, Hyundai acknowledges that it is not incapable of providing such information. Specifically, counsel for Hyundai implied that Hyundai could have done so.⁶⁴ Notwithstanding these statements, Hyundai's sales documentation reflects Hyundai's awareness and understanding of the types of components that constitute accessories. Furthermore, Hyosung, the other mandatory respondent, provided its own definition of what may constitute accessories.⁶⁵

Although, as Hyundai claims, its treatment of "accessories" may not be consistent,⁶⁶ record evidence suggests that Hyundai could have provided the ranges/types of components which it believes constitute accessories based on its technical knowledge and experience in the industry. We then could have further analyzed/evaluated whether such reporting is reasonable while

⁶¹ Hyundai Case Brief at 15.

⁶² *Id.*

⁶³ Hyundai Case Brief at 26; *See Timken Co. v. United States*, 630 F. Supp. 1327, 1339 (CIT 1986).

⁶⁴ Hearing Transcript at 82.

⁶⁵ *See* 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. *See also* Hyosung's July 21, 2017, Third Supplemental Questionnaire Response) at 5.

⁶⁶ *See* Hyundai Case Brief at 20-23.

examining the scope language of this proceeding to determine whether there is potential distortion of model matching and potential manipulation of dumping margins. Such concern reveals why we requested that Hyundai “provide a definition of how you use and/or understand the scope of the term accessories when negotiating with our customers, . . . explain your basis for such usage and/or understanding in detail,” and “describe in detail what constitutes “main bodies,” ‘spare parts,’ and ‘accessories’”⁶⁷ We also requested information regarding what Hyundai has “treated as main bodies, spare parts, and accessories since investigation.”⁶⁸ If there exists a difference between how Hyundai uses/understands the term “accessories” in the normal course of business and how it has treated accessories in this proceeding, we could have then engaged in further analyses to determine whether the current reporting of such components is appropriate for the purpose of calculating a margin. Hyundai, however, responded to our request, claiming that it “has no particular understanding of the scope of the term accessories when negotiating with customers.”⁶⁹ Additionally, it stated that there is no established use of such a term, requested Commerce clarify the meaning of such a term, and assigned the value of “0” to revenues and costs for accessories.⁷⁰ Hyundai defaulted back to the scope language/the historical treatment of accessories, arguing that it reported as it was instructed,⁷¹ thereby preventing Commerce from conducting further analyses despite the fact that it could have provided such requested information, as stated above.

For the reasons stated above, in these final results, we continue to find that Hyundai withheld necessary information and otherwise impeded this review. Furthermore, we continue to find that Hyundai failed to cooperate to the best of its ability to provide the requested information regarding accessories. As such, we determine that the application of total AFA is warranted.

B) Hyundai’s Understatement of Its Home Market Gross Unit Prices

Hyundai’s Comments:

- Commerce’s assertion that there was a change in gross unit price for certain home market sequence numbers is incorrect, as any changes concerned non-subject merchandise only.⁷²
- Further, Commerce never provided Hyundai with an opportunity to remedy any deficiencies.⁷³

⁶⁷ See Commerce’s May 19, 2017, Supplemental Questionnaire for Hyundai at 9 and 10.

⁶⁸ *Id.*, at 10.

⁶⁹ See Hyundai’s June 16, 2017, Second Supplemental Sales Questionnaire Response and Supplemental Section D Questionnaire Response (Hyundai’s 2016, 2017, SQR) at 2nd SS-1.

⁷⁰ *Id.*, at 2nd SS-2, 2nd SS-6 and 2nd SS-7. See also Hyundai’s Case Brief at 9.

⁷¹ See Hyundai Case Brief at 7-15.

⁷² See Hyundai Case Brief at 38-40.

⁷³ *Id.* at 40-43; see also *Mukand, Ltd. v. United States* 767 F. Supp. 3d 1300, 1308 (Fed. Cir. 2014); see also *Zhejiang DunAn Hetian Metal Co. v. United States* 652 F. Supp. 3d 1333, 1348 (Fed. Cir. 2011); see also *Fujian Machinery and Equipment Import and Export corporation, et al. v. United States*, 27 CIT 1059, 1061 (2003); see also *Washington International Insurance Co. v. United States*, 33 CIT 1023, 1035-1036 (2009); see also *Nippon Steel Corp. v. United States*, 146 F. Supp. 2d 835, 841 (CIT 2001), *rev’d on other grounds*, 337 F. Supp. 3d 1373, 1382 (Fed. Cir. 2003); see also PDM at 17-18.

Petitioner's Rebuttal Comments:

- Commerce correctly found that Hyundai understated gross unit price, and that no record evidence demonstrated that a revised contract amount did not affect Hyundai's reported gross unit prices for certain sales.⁷⁴
- Specifically, Hyundai excluded certain items that are components of the LPT. Further, even if these items were non-subject merchandise, based on Hyundai's definition of "accessories," these items would be considered "accessories."⁷⁵
- As Commerce discovered this discrepancy, and Hyundai failed to provide complete sales documents and English translations, despite being given multiple opportunities to clarify the record, Commerce is correct in applying AFA to Hyundai.⁷⁶

Commerce's Position

For the *Preliminary Results*, we found that Hyundai improperly reported its home market gross unit prices for certain home market sales (*i.e.*, understated home market prices). Specifically, for reporting purposes, Hyundai continued to use the values of the line items from the initial contract to report its gross unit prices for certain home market sales, although the total contract amount, which includes the values for these sales, subsequently changed in revised contracts.⁷⁷

According to Hyundai, record evidence (*i.e.*, the revised contract and its attachments) shows that the total contract value change in effect between its initial contract and later-revised contracts is only related to a certain non-foreign like product.⁷⁸ The petitioner alleges that the initial contract for the home market sales at issue indicates that this certain part, which is supposed to be treated as a non-foreign like product, may be indeed a foreign like product.⁷⁹ In particular, the petitioner argues that the initial contract for the home market sales at issue shows that this particular part (*i.e.*, the supposed non-foreign like product) is *included* within the contract under the "Main Transformer" description, which indicates that this supposed non-foreign like product may be indeed a foreign like product.⁸⁰ This evidence contradicts Hyundai's claims that the total contract value change between its initial contract and later-revised contracts is only related to a non-foreign like product. Other than Hyundai's annotation claiming that this part is a non-foreign like product, the record does not demonstrate whether it is *indeed* non-foreign like product.

Additionally, due to Hyundai's failure to provide the requested information regarding accessories, as detailed in Comment 1 above, we are unable to determine whether this item would be an accessory. As explained above, other than Hyundai's annotation which categorized

⁷⁴ See Petitioner Rebuttal Brief for Hyundai at 17-19; *see also* Hyundai Case Brief at 37, 39

⁷⁵ See Petitioner Rebuttal Brief for Hyundai at 19-23; *see also* Hyundai Case Brief at 38, 41.

⁷⁶ See Petitioner Rebuttal Brief for Hyundai at 4, 20-23; *see also* Hyundai Case Brief at 41; *see also* *Fujian Lianfu Forestry Co. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001); *see also* *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339, 1343, 1344-1345, 1348 (CIT 2005); *see also* section 782(d) and (e) of the Act.

⁷⁷ See PDM at 18.

⁷⁸ See Hyundai June 19, 2017, SQR at Attachment 2nd SS-22. *See also* Hyundai Case Brief at 38-40.

⁷⁹ See Petitioner Rebuttal Brief for Hyundai at 19. *See also* Hyundai June 19, 2017, SQR at Attachment 2nd SS-22.

⁸⁰ *Id.*

this item as non-foreign like product in its contract, Hyundai did not provide any additional details concerning the nature of this item and how it interacts with merchandise under review. Therefore, we find that the record is ambiguous and there continues to be concern that the gross unit prices may be understated.

Further, we believe that there is still a concern that Hyundai might be understating its home market gross unit price, because it treated the same/similar part differently. The record indicates that the same item is treated differently between different home market sales. Specifically, by comparing one home market sale, which is included in the contract at issue, with a second home market sale on the record (which treats a certain item as part of a foreign like product), we discovered that Hyundai excluded this certain item in its aforementioned contract as a non-foreign like product and, thus, understated its home market prices.⁸¹ While the item names between the two sales are not identical, they indicate that the item name appears in the second sale as merchandise within the scope (*i.e.*, treated as a foreign like product in the second sale while its treated as non-subject merchandise in the first sale).⁸² The petitioner argues that under no classification system would this particular item be “non-subject merchandise,” other than the annotation that Hyundai added to the contract for the purpose of this review.⁸³ We agree. In the absence of clear information and explanation, we find that: (1) Hyundai’s reporting of non-foreign like products is inaccurate; (2) there is inconsistent treatment of a certain item in its home market sales; and (3) by excluding this item, this could lead to the understatement of the home market gross unit price for certain sales. For these reasons, we find that the continued application of facts available is warranted. Furthermore, because such inaccurate and incomplete reporting gives rise to concerns of the manipulation of gross unit prices, and Hyundai’s continued careless reporting, we also find that Hyundai failed to put forth its maximum effort to cooperate to the best of its ability, thereby warranting the application of adverse inferences.

Regarding Hyundai’s argument that Commerce did not fulfill its statutory obligations to inform Hyundai of the nature of the deficiencies and provide an opportunity to explain/remedy these deficiencies pursuant to section 782(d) of the Act, we disagree. Again, section 782(d) of the Act requires Commerce to inform promptly the person submitting the response of the nature of the deficiency and, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of the review. On January 5, 2017, we requested Hyundai to “{p}rovide . . . all sales-related documentation generated in the sales process . . . for a sample sale in the foreign market and U.S. market during the POR.”⁸⁴ On February 2, 2017, Hyundai provided the requested information.⁸⁵ On May 19, 2017, for the purpose of determining whether Hyundai reported accurate gross unit prices, service-related revenues, and expenses, we requested Hyundai to provide “complete sales and

⁸¹ See Petitioner Rebuttal Brief for Hyundai at 19-20.

⁸² See Hyundai June 19, 2017, SQR at Attachment 2nd SS-21. See also Petitioner’s Rebuttal Brief for Hyundai at 19-20.

⁸³ See Petitioner Rebuttal Brief for Hyundai at 19-20.

⁸⁴ See Letter from Commerce to Hyundai, regarding Antidumping Duty Questionnaire, dated January 5, 2017 (Commerce’s Initial AD Questionnaire) at A-10.

⁸⁵ See Hyundai’s February 2, 2017, Section A Questionnaire Response (Hyundai February 2, 2017, AQR) at Attachments A-13 to A-15.

expense documentation,” for certain U.S. and home market sales.⁸⁶ We also requested Hyundai to provide documents that include “a complete break-down between foreign like product and non-foreign like product” along with “a detailed narrative explanation and supporting documentation demonstrating why you categorized such products shown in the identified document as foreign like product and non-foreign like product, respectively.”⁸⁷ On June 19, 2017, and on June 26, 2017, Hyundai filed its questionnaire response regarding the requested information.⁸⁸ However, we find that the record is unclear regarding the identified issues above. While we were analyzing other issues (*e.g.*, accessories), as the fully extended deadline for the *Preliminary Results* was August 31, 2017, it was not practicable for Commerce to request additional information for this sale along with complete documentation for significantly more home market sales to engage in a thorough analysis to determine whether Hyundai understated Hyundai’s home market gross unit prices. It is Hyundai’s responsibility to demonstrate the extent to which its reported gross unit prices have or have not been affected by contract changes, and that if any changes did occur, Hyundai is responsible for explaining and documenting whether these changes were limited to non-subject merchandise, other than merely adding annotations. Hyundai bears the burden to build the record by reporting accurate and complete responses to Commerce’s initial and supplemental questionnaires.⁸⁹ Furthermore, Hyundai was under an obligation to be forthcoming regarding any potential discrepancies on the record.⁹⁰ Also, while Commerce does not require perfection in reporting, the standard for acting to best of one’s ability “does not condone inattentiveness, carelessness, or inadequate record keeping.”⁹¹ After the *Preliminary Results*, while dealing with Hyundai’s home market sales reporting issue with regard to the effect on its gross unit prices due to the total contract values, as detailed above, Commerce discovered these discrepancies regarding conflicting treatment of certain LPT components late in the review stage. At this point in time, in light of our statutory deadlines to complete the review, it became impracticable to send yet another supplemental questionnaire to Hyundai to resolve an issue for which Hyundai was already under obligation to correctly report.

Concerning Hyundai’s argument that the application of AFA based on Commerce’s review of a limited number of home market sales is inappropriate, we disagree.⁹² We requested information related to certain sample sales to confirm the accuracy of Hyundai’s reporting. As explained above, our review of this documentation, and the fact that Hyundai failed to cooperate to the best of its ability by not providing the requested information regarding accessories, raises serious concerns with respect to the accuracy of Hyundai’s reporting of its home market gross unit prices

⁸⁶ See Commerce’s May 19, 2017, Supplemental Questionnaire for Hyundai at 13. In question 42, we requested Hyundai “provide complete sales and expenses documentation.”

⁸⁷ See Commerce’s May 19, 2017, Supplemental Questionnaire for Hyundai at 10-11.

⁸⁸ See Hyundai June 19, 2017, SQR at Attachment 2nd-22 and Hyundai June 26, 2017, SQR at Attachment 2nd SS-94.

⁸⁹ *Fujian Lianfu Forestry Co. Ltd. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) (“A respondent has a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.”) (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001)).

⁹⁰ See *Asociated Colombiana de Exportadores de Flores v. United States*, 704 F.supp. 1114, 1124 (CIT 1989), *aff’d* 901 F.2d 1089 (Fed. Cir. 1990). (“{P}arties must submit data promptly, and be very clear as to what the data indicates.”).

⁹¹ *Hyundai Steel Co. v. United States*, 279 F. Supp. 3d 1349 (CIT 2017) (citing *Papierfabrik Aug. Koehler SE v. United States*, 843 F.3d 1373, 1379 (Fed. Cir. 2016) (quoting *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003))).

⁹² See Hyundai Case Brief at 42-43.

and calls into question of its treatment/reporting of components consisting of merchandise under review, *e.g.*, “accessories.” Therefore, we find Hyundai’s argument has no merit.

Thus, for the reasons above, in these final results of this review, we continue to find that Hyundai impeded this review by misreporting certain information according to its sales documentation such that Hyundai has improperly understated its home market gross unit prices. Thus, the reported information is inaccurate and unreliable warranting the application of facts available. Furthermore, through its consistent reporting behavior as explained above, we also find that Hyundai has failed to cooperate to the best of its ability, warranting the application facts available with adverse inferences.

C) Hyundai’s Undisclosed Affiliated Sales Agent

Hyundai’s Comments:

- There is no record evidence that indicates Hyundai and the sales agent in question share an affiliation.⁹³ Further, no evidence satisfies the statutory criteria for “affiliated person.”⁹⁴
- Commerce rejected Hyundai’s post-preliminary comments, because they contained new factual information. However, Hyundai submitted this information to clarify/rebut information placed on the record following Commerce’s preliminary results.⁹⁵

Petitioner’s Rebuttal Comments:

- Commerce’s finding that Hyundai did not disclose its affiliation with a certain sales agent, is supported by record evidence.⁹⁶
- In addition, Hyundai cannot place new factual information on the record following a preliminary decision to rebut a finding based on record evidence.⁹⁷

Commerce’s Position

For the *Preliminary Results*, we found that Hyundai failed to disclose its relationship with a 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, we requested that Hyundai provide a complete list of affiliates involved in development, production, sale, and/or distribution related to merchandise under review.⁹⁸ However, despite our multiple

⁹³ See Hyundai Case Brief at 44-47; *see also* PDM at 18.

⁹⁴ See Hyundai Case Brief at 44-47 at 47; *see also* *Maverick Tube Corp. v. United States*, 107 F. Supp 3d. 1318, 1331 (CIT 2015).

⁹⁵ See Hyundai Case Brief at 44-47. at 47-48; *see also* 19 CFR 351.304(c)(4).

⁹⁶ See Petitioner Rebuttal Brief for Hyundai at 23-25; *see also* Hyundai Case Brief at 45, 47-48.

⁹⁷ See Petitioner Rebuttal Brief for Hyundai at 25.

⁹⁸ See Memorandum to the File, “Analysis of Data/Questionnaire Responses Submitted by Hyundai Heavy Industries Co., Ltd. in the Preliminary Results 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) at 5.

requests, and Hyundai's claim that it provided a complete list of its affiliated parties concerning merchandise under review, we continue to find that the available record evidence indicates that Hyundai is affiliated with the sales agent, pursuant to section 771(33) of the Act. Specifically, we find that the available record evidence, which is otherwise incomplete and unreliable for the reasons discussed above, demonstrates that Hyundai was affiliated with a certain sales agent in the United States based on the fact that this sales agent uses an email address and a title and a division that belongs to Hyundai.⁹⁹ After examining parties' comments and the record evidence, we continue to find that Hyundai failed to provide complete and accurate information regarding its precise relationship with this sales agent as to whether this agent is affiliated. Therefore, Hyundai should have: (1) reported that its New Jersey sales agent office was involved in the sale of merchandise under review; and (2) included the associated selling expenses as part of its indirect selling expenses. By not disclosing the precise relationship between Hyundai and this sale agent, Hyundai failed to cooperate to the best of its ability to provide complete and accurate information regarding its affiliated parties.

We find that Hyundai's arguments do not undermine our finding that Hyundai failed to disclose the precise relationship with this sales agent. Without the conclusive evidence to undermine/challenge Commerce's preliminary finding, despite our multiple request for complete and accurate information regarding its affiliation, we determine that Hyundai failed to provide complete and accurate information regarding its precise relationship with this sales agent as to whether this agent is affiliated or not; thereby preventing us from examining whether the indirect selling expenses were reported accurately. Although this issue alone may not warrant the application of total AFA, considering the other issues identified above, collectively, the application of total AFA is appropriate.

With regard to Hyundai's argument related to Commerce's rejection of new factual information submitted by Hyundai, we disagree. As we stated in the Rejection Memo, we presented analyses and conclusions based on factual information already present on the record.¹⁰⁰ In other words, we did not place new factual information on the record. Rather, it was Commerce's preliminary interpretation and conclusion based on the record evidence. Thus, as Hyundai submitted untimely and unsolicited information, we rejected the submission pursuant to 19 CFR 351.302(d) and 19 CFR 351.104(a)(2).¹⁰¹ For this reason, Hyundai's argument regarding Commerce's improper rejection of new factual information has no merit.

D) Moot Issues

- The petitioner raised various issues including: (1) whether Hyundai withheld the costs of spare parts; (2) whether Hyundai withheld reporting of certain separately negotiated revenues for services and the associated expenses; (3) whether Hyundai withheld and

⁹⁹ See Memorandum to the File, "Analysis of Data/Questionnaire Responses Submitted by Hyundai Heavy Industries Co., Ltd. in the Preliminary Results 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) at 5.

¹⁰⁰ See Memorandum to the File, "Request to Reject and Remove File," dated October 4, 2017 (Rejection Memo).

¹⁰¹ *Id.*

failed to translate documents; (4) whether the expenses associated with Hyundai's reported home market revenues cannot be linked with individual expense fields, and are therefore inaccurate; (5) whether Commerce should reject Hyundai's U.S. Sales file as unreliable; and (6) whether Commerce should reject Hyundai's submitted cost of production.¹⁰²

Commerce's Position

Because we continue to apply AFA to Hyundai based on the aforementioned issues in sections A) to C) above, the issues presented by the petitioner are moot.

Comment 2: Selection of AFA Rate

Petitioner's Case Brief:

- As Hyundai failed to cooperate in this proceeding, and the previous 2014-2015 review, Commerce should assign Hyundai a total AFA rate higher than the 60.81 percent rate assigned in the *Preliminary Results*.¹⁰³

Hyundai's Rebuttal Brief:

- Hyundai does not believe the application of total AFA is warranted,¹⁰⁴ however, if Commerce decides to apply total AFA in the final results, the current rate (*i.e.*, 60.81

¹⁰² See Letter from Petitioner, "Large Power Transformers from the Republic of Korea: Petitioner's Case Brief for Hyundai," dated October 12, 2017 at 5-8 (Petitioner Case Brief for Hyundai) at 5-24.

¹⁰³ See Petitioner Case Brief for Hyundai at 3, 24-28; see also section 776(a)(2) and (b) of the Act; see also *F.lli de Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. Supp 3d. 1027, 1032 (Fed Cir. 2000) (*F.lli de Cecco Di Filippo Fara S. Martino*); see also 19 CFR 351.308(c); see also SAA, accompanying the Uruguay Round Agreements Act, H.R. Rep. No. 103-316, vol. 1 at 829-832; see also *PAM, SPA and JCM, Ltd. v. United States*, 31 CIT 1008 (CIT 2007), citing *F.lli de Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. Supp 3d. 1027, 1032 (Fed Cir. 2000); see also *Nan Ya Plastics Corp. v. United States*, 810 F. Supp 3d. 1333 (Fed. Cir. 2016) (*Nan Ya Plastics*); see also *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review 2009/2010*, 76 FR 76941 (December 9, 2011), and accompanying Issue and Decision Memorandum at Comment 1; see also *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Preliminary Results of Antidumping Duty Administrative Review*, 76 FR 47540, 47544 (August 5, 2011); see also *Nan Ya Plastics Corporation, Ltd. v. United States*, CIT No. 11-00535, Slip Op. 14-94 at 3-4 (CIT 2014); see also PDM at 12-18; see also 2014-2015 *Final Results*; see also *e.g.*, *Certain Steel Concrete Reinforcing Bars from Turkey: Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 71 FR 65082, 65084 (November 7, 2006), citing *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, 55796 (August 30, 2002); see also *e.g.*, *Notice of Final determination of Sales at Less Than Fair Value: Static Random Access Memory Semiconductors from Taiwan*, 63 FR 8909, 8932 (February 23, 1998); see also *e.g.*, *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F. Supp 3d. 1330, 1338-1340 (Fed. Cir. 2002); see also *e.g.*, *Branco Peres Citrus S.A. v. United States*, 173 F. Supp 2d. 1363, 1376 (CIT 2001); see also *e.g.*, *iScholar, Inc. v. United States*, 2011 CIT, 3, 9 (January 13, 2011); see also *e.g.*, *Certain Frozen Warmwater Shrimp from Ecuador: Preliminary Results and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 10698, 10701 (March 9, 2007).

¹⁰⁴ See Letter from Hyundai, "Large Power Transformers from the Republic of Korea: Hyundai's Rebuttal Brief," dated October 19, 2017 (Hyundai Rebuttal Brief) at 14.

percent) fulfills its statutory purpose, and the petitioner's argument for a higher rate is unlawful.¹⁰⁵

Commerce's Position

Section 776(b)(2) of the Act states that Commerce, when applying an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record.¹⁰⁶ In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.¹⁰⁷

At the *Preliminary Results*, we assigned Hyundai, based on total AFA, a rate of 60.81 percent. The petitioner has argued that Commerce should assign Hyundai a total AFA rate higher than the 60.81 percent rate assigned in the *Preliminary Results*. The petitioner cites to *Nan Ya Plastics* to support its claim that the higher AFA rate is necessary to encourage future cooperation by Hyundai.¹⁰⁸ In *Nan Ya Plastics*, with regard to the total AFA assigned to a respondent, Nan Ya Plastics Corporation, Ltd. (Nan Ya), concerning *PET Film from Taiwan*, the Court of Appeals for the Federal Circuit (CAFC) concluded that Commerce's selection of 74.34 percent, (*i.e.*, the highest transaction-specific margin calculated for the other respondent, Shinkong Synthetic Fibers Corporation and Shinkong Materials Technology Co., Ltd. (collectively, Shinkong), in the instant 2009-2010 administrative review) as total AFA, rather than a much lower 18.3 percent in a previous segment of the proceeding, was reasonable.¹⁰⁹ The 60.81 percent is a rate is sufficient to induce future cooperation in this proceeding.

In *F.lli de Cecco Di Filippo Fara S. Martino*, the CAFC indicated that the adverse inference should provide respondents with an incentive to cooperate, but it should not result in imposition of punitive, aberrational, or uncorroborated margins.¹¹⁰ Commerce corroborated the current AFA rate of 60.81 percent in the previous 2014-2015 review.¹¹¹ As a result, according to 776(c)(2) of the Act, this rate does not require corroboration for this review. Further, we find that while not being punitive and aberrational, this rate achieves the purpose of applying an

¹⁰⁵ *Id.* at 15-18; *see also* section 776(b)(2) and (c)(2) of the Act; *see also* SAA, H.R. Doc. No. 103-316, Vol. 1 (1994) at 870; *see also* *Parkdale Int'l v. United States*, 475 F. Supp 3d., 1375, 1380 (Fed. Cir. 2007); *see also* *Timken Co. v. United States*, 354 F. Supp 3d. 1334, 1345 (Fed. Cir. 2004); *see also* *F.LLI De Cecco Di Filippo Fara S. Martino S.p.A. v. United States*, 216 F. Supp 3d. 1027, 1032 (Fed. Cir. 2000); *see also* PDM at 6; *see also* Petitioner Case Brief for Hyundai at 12-15, 27-28; *see also* *Nan Ya Plastics Corp. v. United States*, 810 F. Supp 3d. 1333, 1347 (Fed. Cir. 2016).

¹⁰⁶ *See* 19 CFR 351.308(c).

¹⁰⁷ *See* SAA at 870; *see also* Trade Preferences Extension Act of 2015 (TPEA), Pub. L. No. 114-27, 129 Stat. 362 (2015).

¹⁰⁸ *See* Petitioner Case Brief for Hyundai at 25-26. *See also* *Nan Ya Plastics Corp*, 810 F. Supp 3d. 1333 (Fed. Cir. 2016).

¹⁰⁹ *Id.* *See also* *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 76941 (December 9, 2011) and accompanying Issues and Decision Memorandum (*PET Film from Taiwan*).

¹¹⁰ *See* *F.lli de Cecco Di Filippo Fara S. Martino*, 216 F. Supp 3d. 1027, 1032 (Fed Cir. 2000).

¹¹¹ *See* 2014-2015 *Final Results* and accompanying 2014-2015 IDM.

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, as consistent with the previous review.¹¹²

We continue to find that the current AFA rate of 60.81 percent achieves the purpose of applying an adverse inference sufficient to ensure that Hyundai does not obtain a more favorable result by failing to cooperate than if it had fully cooperated. We also continue to find that the current AFA rate provides Hyundai with an incentive to cooperate while not resulting in the imposition of punitive, aberrational, or uncorroborated margins. Thus, for these final results, we find that the imposition of an AFA rate higher than the current AFA rate is not warranted.

Comment 3: Application of Hyundai's Margin to New Entity

Petitioner's Case Brief:

- As HHI decided to spin off its LPT facilities, production, and sales and incorporate them into HEES, Commerce should assign the same liquidation and cash deposit rates to HEES.¹¹³

Hyundai's Rebuttal Brief:

- It is not appropriate for Commerce to address Hyundai's corporate restructuring, as this occurred after the review period, is unrelated to the case, and is contrary to Commerce's normal practice.¹¹⁴ Further, Commerce did not notify Hyundai of any deficiencies related to its responses concerning its corporate structure.¹¹⁵

Commerce's Position

On December 4, 2017, we initiated a changed circumstances review (CCR) to address a corporate structure issue with regard to Hyundai.¹¹⁶ Because there exists a separate segment that

¹¹² See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010). See also *2014-2015 LPT Korea Final*.

¹¹³ See Petitioner Case Brief for Hyundai at 1-4, 24-28 (Hyundai Electric and Energy Co., Ltd. (HEES)); see also PDM at 5, 12-18; see also *Cut-to-Length Quality Steel Plate from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review and Intent to Rescind Administrative Review in Part*, 74 FR 48716, 48718; see also *Final Determination of Sales at Less Than Fair Value: Prestressed Concrete Steel Rail Tie Wire from the People's Republic of China*, 79 FR 25572 (May 5, 2014), and accompanying Issues and Decision Memorandum at 4; see also *Certain Lined Paper Products from India: Notice of Final Results of Antidumping Duty Administrative Review*, 75 FR 7563 (February 22, 2010).

¹¹⁴ See Hyundai Rebuttal Brief at 18-20; see also Petitioner's Case Brief for Hyundai at 28-30; see also *e.g.*, *Certain Circular Welded Carbon Steel Pipes and Tubes from Taiwan: Initiation of Antidumping Duty Changed Circumstances Review*, 70 FR 17063, 17064 (April 5, 2005).

¹¹⁵ *Id.* at 20-21; see also section 782(d) of the Act; see also *Mukand Ltd. v. United States*, 767 F. Supp. 3d 1300, 1304 (Fed. Cir. 2014); see also *e.g.*, *Notice of Final Results of Antidumping Duty Changed Circumstances Review: Circular Welded Non-Alloy Steel Pipe from the Republic of Korea*, 81 FR 42653, 42652 (June 30, 2016).

¹¹⁶ See *Large Power Transformers from the Republic of Korea: Initiation of Antidumping Duty Changed Circumstances Review*, 82 FR 57210 (December 4, 2017) (CCR Initiation).

will address the changed circumstances regarding Hyundai's corporate structure, we find that the ongoing CCR is the appropriate mechanism to address this issue, not this administrative review.

B. Hyosung-Specific Issues

Comment 4: Application of Total Adverse Facts Available

Hyosung's Comments:

- Hyosung cooperated to the best of its ability in this review: however, prior to the preliminary results, Hyosung was not notified of any deficiencies or given the opportunity to clarify its responses.¹¹⁷
- The record does not support the conclusion that Hyosung failed to provide information requested by Commerce, as Hyosung did the "maximum it is able to do."¹¹⁸ In addition, Commerce cannot use broad requests for information to apply AFA based on narrow grounds.¹¹⁹
- Commerce alleges that there are major gaps in the record, but only points to minor issues that Hyosung never had an opportunity to remedy.¹²⁰
- Hyosung requested that Commerce issue a supplemental questionnaire or conduct verification to address the aforementioned issues and toll the briefing schedule pending resolution of these issues. Commerce did not address Hyosung's request and, therefore, should seek this information prior to issuing the final decision.¹²¹

¹¹⁷ See Letter from Hyosung to Commerce, "Large Power Transformers from Korea: Case Brief of Hyosung Corporation and Request for Closed Hearing," dated October 13, 2017 at 3-4, 6-12 (Hyosung Case Brief); see also PDM at 4, 5-6; see also section 776(a) and (b) of the Act; see also Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA); see also *Albemarle Corp. v. United States*, 821 F. Supp. 3d 1345, 1358 (Fed. Cir. 2016) (quoting *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1295, 1378 (Fed. Cir. 2013)).

¹¹⁸ *Id.* at 5-6; see also *Nippon Steel v. United States*, 337 F. Supp. 3d 1373, 1382 (Fed. Cir. 2003); see also *Mannesmannrohren-Werke AG v. United States*, 23 CIT 826, 839 (1999); see also *Shantou Red Garden Foodstuff Co., Ltd. v. United States*, 815 F. Supp. 2d 1311, 1319 (CIT 2012).

¹¹⁹ *Id.* at 6 11-12; see also *Agro Dutch Indus. Ltd. v. United States*, 32 CIT 215, 225 (2007); see also *Ta Chen Stainless Steel Pipe Ltd. v. United States*, 23 CIT 804 (1999) (quoting *Bowe-Passat v. United States*, 17 CIT 335, 343 (1993); see also SAA H.R. Doc. No. 103-316 at 656, 869; see also *Gerber Food (Yunnan) Co., Ltd. v. United States*, 29 CIT 753, 754-759 (2005)).

¹²⁰ *Id.* at 6-8; see also *Albemarle Corp. v. United States*, 821 F. Supp. 3d 1345, 1358 (Fed. Cir. 2016) (quoting *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1295, 1378 (Fed. Cir. 2013)).

¹²¹ *Id.* at 12-13; see also *Albemarle Corp. v. United States*, 821 F.3d 1358 (Fed. Cir. May 2, 2016); see also *Bowe-Passat v. United States*, 17 CIT 343 (1993); see also 19 CFR 351.301(a); see also *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2014-2015*, 82 FR 26910 (June 12, 2017) and accompanying Issues and Decision Memorandum at Comment 2.

Petitioner's Rebuttal Comments:

- Hyosung did not cooperate with this proceeding to the best of its ability, and had multiple opportunities to remedy any deficient response.¹²²
- In fact, Hyosung requested additional time to respond to questionnaires on numerous occasions, which led Commerce to warn that granting extension requests would impact the time needed to respond to questionnaires/request additional information.¹²³
- Hyosung also requested additional time to translate documents on many occasions; however, numerous documents still remain untranslated.¹²⁴ As documents submitted by Hyosung remain piecemeal, unexplained, illegible, or untranslated, Hyosung failed to cooperate fully.¹²⁵
- Given the nature of these issues, and the fact that Commerce has already presented Hyosung with multiple opportunities to remedy any deficiencies, the application of total AFA is justified.¹²⁶

Commerce's Position

We agree with the petitioner and continue to apply facts available with an adverse inference to Hyosung for this administrative review period.

As noted above in Comment 1, during administrative reviews, Commerce typically requires that respondents report all of their U.S. and home market sales during the POR.¹²⁷ We then make a comparison between the U.S. and home market (*i.e.*, normal value) sales prices.¹²⁸ When calculating the U.S. price, Commerce distinguishes between export price and constructed export price.¹²⁹ In calculating export price, the statute directs Commerce to make certain adjustments.¹³⁰ These adjustments include increases or decreases to the price, which are incident to the sale of the merchandise.¹³¹

For the three issues discussed below, Commerce determined that the application of adverse facts available is appropriate due to Hyosung's failure to report information essential to the calculation of the average U.S. price, as required by section 772(a) of the Act. Hyosung's failure to provide necessary information occurred, despite numerous questionnaires and requests for information from Commerce. Each of the issues raised by interested parties is discussed below.

¹²² See Letter from the Petitioner to Commerce, "Large Power Transformers from South Korea: Petitioner's Rebuttal Case Brief for Hyosung," dated October 19, 2017 at 3-8 (Petitioner's Rebuttal Brief for Hyosung); *see also* Hyosung Case Brief at 2-8.

¹²³ *Id.* at 5-6.

¹²⁴ *Id.* at 6.

¹²⁵ *Id.* at 7-8, 14-16; *see also* Hyosung Case Brief at 5, 19-21; *see also* Letter from the Petitioner, "Large Power Transformers from South Korea: Petitioner's Case Brief for Hyosung," dated October 12, 2017 at 2-7; *see also* *Nippon Steel Corp. v. United States*, 337 F. Supp. 3d 1373, 1381-1382 (Fed Cir. 2003); *see also* *Hyosung Corp. v. United States*, Slip Op. 2011-34 at 8 and n.2 (CIT 2011).

¹²⁶ *See* Hyosung Case Brief at 7-8.

¹²⁷ *See generally* section 751 of the Act and 19 CFR 351.414.

¹²⁸ *See* section 751(a)(2)(A)(i) of the Act.

¹²⁹ *See generally* sections 772(a) and 772(b) of the Act.

¹³⁰ *See* section 772(c).

¹³¹ *Id.*

A) Hyosung's Reporting of Service-Related Revenue

Hyosung's Comments:

- Commerce determined that Hyosung withheld service-related revenues, but Hyosung's U.S. revenue reporting is consistent with Commerce's normal requirements/practice.¹³² Further, Hyosung responded to all of Commerce's questions regarding this matter, and was never notified of any deficiencies.¹³³
- Should Commerce decide to continue to measure service-related revenue based on order acknowledgement form (OAF) estimates, there is sufficient information on the record.¹³⁴

Petitioner's Rebuttal Comments:

- Commerce provided Hyosung with two opportunities to build a record regarding OAF forms. However, Hyosung provided illegible forms with pages omitted. The few legible forms demonstrated that Hyosung has included revenues in excess of related expenses contrary to Commerce's capping policy.¹³⁵
- Commerce requested that Hyosung report service revenue in "sales documentation" or "in any sales document."¹³⁶ Hyosung chose to respond only with respect to itemized sales invoices, and argued that this was Commerce's practice, despite Commerce's request to report service revenue in any sales document.¹³⁷
- By providing incomplete/illegible documents, Commerce cannot be sure whether it has sufficient/necessary information to calculate an accurate margin.¹³⁸ These fundamental deficiencies cannot be explained or remedied through additional questionnaires or "a simple verification exercise."¹³⁹

Commerce's Position

After carefully reviewing information on the record of this proceeding, including the arguments made by interested parties, Commerce continues to believe that the application of adverse facts

¹³² See Hyosung Case Brief at 8-10, 13-14, 14-23; see also PDM at 6-11.

¹³³ See Hyosung Case Brief at 14-2; see also PDM at 8; see also *Large Power Transformers from the Republic of Korea: Final Results of the Antidumping Duty Administrative Review; 2012-2013*, 80 FR 17034 (March 31, 2015); see also *NTN Bearing Corp. v. United States*, 74 F. Supp. 3d 1204, 1208-1209 (Fed. Cir. 1995).

¹³⁴ See Hyosung Case Brief. at 22-23.

¹³⁵ See Petitioner's Rebuttal Brief for Hyosung at 9-10, 13-14, 20-22; see also Hyosung's Case Brief at 2, 15, 22; see also *Nippon Steel Corp. v. United States*, 337 F. Supp. 3d 1382 (Fed Cir. 2003); see also *ABB, Inc. v. United States*, Slip Op. 17-138 at 13 (CIT 2017).

¹³⁶ See Petitioner's Rebuttal Brief for Hyosung at 10-14, 21-22; see also Hyosung Case Brief at 15.

¹³⁷ See Petitioner's Rebuttal Brief for Hyosung at 11-14; see also Hyosung Case Brief at 15, 18.

¹³⁸ See Petitioner's Rebuttal Brief for Hyosung at 16-23; see also Hyosung Case Brief at 20, Exhibit 1; see also Letter from the Petitioner, "Large Power Transformers from South Korea: Petitioner's Case Brief for Hyosung," dated October 12, 2017 at 3-18; see also *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1370, 1379 (Fed. Cir. 2013); see also *Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States*, 268 F. Supp. 3d 1376, 1382 (Fed. Cir. 2001); see also *Lasko Metal Products, Inc. v. United States*, 899 F. Supp. 2d 1185, 1191 (Fed. Cir. 1990).

¹³⁹ See Petitioner's Rebuttal Brief for Hyosung; see also Hyosung Case Brief at 2, 20-21, Exhibit 1.

available is appropriate with respect to Hyosung's failure to report service-related revenues accurately and completely.

Hyosung states that Commerce unfairly applied a "one strike and you're out" process in applying total AFA, while not notifying Hyosung of any deficiencies or providing Hyosung with an opportunity to repair any reporting deficiencies on the record.¹⁴⁰ Such an approach, Hyosung avers, is contrary to 19 U.S.C. § 1677m.¹⁴¹ Hyosung claims that Commerce cannot apply AFA concerning service-related revenues, as Hyosung fully complied with Commerce's requests for information regarding this issue.¹⁴² Hyosung points to Commerce's initial antidumping duty questionnaire, stating that Hyosung fully complied with Commerce's original instructions, and states that any other reporting methodology for service-related revenues would be contrary to those instructions.¹⁴³ Furthermore, Hyosung argues for various reasons that the OAFs are not appropriate documents for measuring or calculating service-related revenues.¹⁴⁴ Finally, Hyosung states that Commerce has sufficient information on the record to calculate service-related revenues, using information from the OAFs which are on the record.¹⁴⁵ For the reasons explained below, we disagree.

As we outlined in the Preliminary Results, Commerce requested that Hyosung report service-related revenues for the purposes of capping the revenues by the associated expenses.¹⁴⁶ Hyosung failed to report service-related revenues, despite multiple requests from Commerce. Indeed, as we made multiple requests, Commerce, thus, provided numerous opportunities for Hyosung to submit complete and accurate information with respect to service-related revenues.¹⁴⁷ Hyosung's responses were nevertheless incomplete after numerous questionnaires. Hyosung now argues that Commerce should have provided yet another opportunity for Hyosung to submit complete and accurate information.¹⁴⁸ Hyosung seeks to shift the burden onto Commerce to try and issue supplemental questionnaire after supplemental questionnaire, trying to obtain all of the necessary information. However, Commerce has met its burden under section 782(d) of the Act with respect to the questionnaires issued to Hyosung.¹⁴⁹ Thus, the application of facts available is still warranted. Moreover, Hyosung's reporting behavior also warrants application of an adverse inference because it failed to put forth its maximum effort to provide the requested information. Thus, Hyosung failed to cooperation to the best of its ability.

Hyosung argues that Commerce's requests were unclear. Hyosung insists that Commerce's initial questionnaire, which directs Hyosung to report a separate field for each service, which

¹⁴⁰ See Hyosung Case Brief at 3-4.

¹⁴¹ *Id.*, at 6-8.

¹⁴² *Id.*, at 8-10.

¹⁴³ *Id.*

¹⁴⁴ *Id.*, at 19 – 22.

¹⁴⁵ *Id.*, at 22 – 23.

¹⁴⁶ See Preliminary Decision Memorandum at Comment (A)(1), pages 6 - 9.

¹⁴⁷ *Id.* A complete timeline of the requests and findings by Commerce with respect to this issue is in the Preliminary Decision Memorandum at 6 - 8.

¹⁴⁸ See Hyosung Case Brief at 8 – 10.

¹⁴⁹ See *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017) ("The respondent had already failed to provide the information requested in Commerce's original questionnaire, and the supplemental questionnaire notified the respondent of that defect. §1677m(d) does not require more.").

appears on an invoice and is directly related to a sale, is the controlling instruction for the issue of service-related revenues.¹⁵⁰ However, as we explained in the *Preliminary Results*, Commerce requested additional information regarding service-related revenues beyond what was in the original questionnaire.¹⁵¹ Hyosung posits that Commerce’s additional questions “started with the premise that reporting revenues on the basis of the invoice is the correct methodology.”¹⁵² However, if that were true, Commerce would have no need to ask the further questions that it asked of Hyosung with respect to this issue. Commerce’s questionnaire does not direct a respondent to create separate fields for additional charges *only* if they appear on the invoice. Indeed, included in the question is a statement that “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.”¹⁵³ It is clear that Commerce requests that a respondent report all price adjustments, whether or not they appear on an invoice to a customer.

While Commerce’s questionnaire indicates that Hyosung should report all price adjustments, Hyosung did not report service-related revenues for sales for which said revenues did not appear on the invoice. As we noted in the *Preliminary Results*, this was not the only instance in which Hyosung failed to report a price adjustment in its initial questionnaire response.¹⁵⁴ However, while Hyosung reported warehousing expenses in a supplemental questionnaire response, it did not provide legible or complete information which would allow Commerce to calculate service-related revenues.¹⁵⁵

Hyosung claims that the OAFs are not the proper documents to calculate service-related revenues as they are not “sales documents” exchanged between Hyosung and its customers, but instead contain values which reflect “pre-production estimates of various expenses for a particular order” which are “broken out per-unit, and often do not match the invoice to the customer” and that “the actual amounts charged to the customer, which form the basis of the revenues to be received, may (and frequently do) change after the OAF is generated for internal use.”¹⁵⁶ While the OAF may not be a sales document exchanged between Hyosung and its customer(s), it is a part of the sales process and is clearly based on sales documentation between Hyosung and its customer. The OAF is an internal document between Hyosung and its U.S. affiliate, HICO America, and is generated by HICO America.¹⁵⁷ In its description of the the U.S. sales process, Hyosung states that HICO America “evaluates the total costs associated with the LPT project, taking into account manufacturing costs and work scope items, including but not

¹⁵⁰ See Hyosung Case Brief at 8 – 10.

¹⁵¹ See Preliminary Decision Memorandum at Comment (A)(1).

¹⁵² See Hyosung Case Brief at 16.

¹⁵³ See Letter from the Department to Hyosung, regarding Antidumping Duty Questionnaire, dated January 5, 2017 (Hyosung Initial Questionnaire) at C-18.

¹⁵⁴ See Preliminary Decision Memorandum at Comment (A)(3). We stated in part that “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.”

¹⁵⁵ *Id.*, at (A)(1).

¹⁵⁶ See Hyosung Case Brief at 20.

¹⁵⁷ See Letter from Hyosung to Commerce, “Large Power Transformers from Korea: Response to Petitioner’s Comments,” dated August 11, 2017, at 2.

limited to the inclusion of insulating oil, inland transportation, offloading the unit, and the installation of the unit. Based on these factors, HICO America will determine an appropriate sales price for the unit that covers costs and ensures a reasonable profit on the sale.”¹⁵⁸ Once this price is determined, HICO America negotiates with the U.S. customer, establishes a price and specifications, and signs a contract.¹⁵⁹ Once this stage is completed, HICO America then “enters the order into its internal order processing system, which transfers the order to Hyosung Corporation’s headquarters in Seoul, Korea. The Seoul office then inputs the order into its ERP system and a serial number (*i.e.*, product number) is automatically generated in the system.”¹⁶⁰ The OAF is the result of HICO America entering the order into the order processing system, and is based upon the sales documents (*i.e.*, the sales contract or purchasing order) between HICO America and the U.S. customer. We agree with Hyosung that it is an internal budgeting document, but record evidence is clear that the OAF also contains sales information which allows Hyosung to calculate service-related revenues. As Hyosung stated, HICO America “evaluates the total costs associated with the LPT project, taking into account manufacturing costs and work scope items, including but not limited to the inclusion of insulating oil, inland transportation, offloading the unit, and the installation of the unit. Based on these factors, HICO America will determine an appropriate sales price for the unit that covers costs and ensures a reasonable profit on the sale.”¹⁶¹ The OAF reflects all of these cost calculations as well as the revenues necessary to cover them.

As we noted in the *Preliminary Results*, Commerce examined the OAFs that were legible.¹⁶² Commerce detailed its analysis of the OAF for one U.S. sale in the preliminary analysis memorandum.¹⁶³ Our analysis indicated that the price charged to Hyosung’s U.S. customer did not change from the time of the issuance of the OAF to the time of the invoice, as the reported gross unit price in the SAS dataset was the same as what appeared on the OAF.¹⁶⁴ The OAF contained a number of expenses for services, and the estimated costs for those services. Those estimated costs, however, were also the portion of the price charged to the customer that was set aside to cover those expenses. Indeed, the OAF also contained a price for the customer less the amounts budgeted for the services, indicating what portion of the revenues collected from the customer (the price charged to the customer) were dedicated to the provision of services.¹⁶⁵ In the SAS dataset, the actual reported expenses were less than the amount of revenue set aside to cover those expenses, showing that the price charged to the customer (which is the same as the revenue collected from the customer)¹⁶⁶ contains a subset of revenues set aside to cover expenses

¹⁵⁸ See Letter from Hyosung to Commerce, “Large Power Transformers from Korea: Section A Questionnaire Response,” dated February 2, 2017, at A-25 – A-26.

¹⁵⁹ *Id.*, at A-26.

¹⁶⁰ *Id.*, at A-26 – A-27.

¹⁶¹ *Id.*, at A-25 – A-26.

¹⁶² See Preliminary Decision Memorandum at Comment (A)(1).

¹⁶³ See “Analysis of Data/Questionnaire Responses Submitted by Hyosung Corporation in the Preliminary Results of the 2015-2016 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea” (Preliminary Analysis Memorandum) dated August 31, 2017, at 5.

¹⁶⁴ *Id.*

¹⁶⁵ *Id.*

¹⁶⁶ Hyosung claims that the OAFs do not indicate separate revenues to be received from the customer. See Hyosung Case Brief at 21. We disagree, as our analysis indicates that the figures are both estimates of the expenses AND the amount of revenue (from the sales price) collected from the customer which is allocated to cover those expenses.

and that those revenues exceeded the actual expenses.¹⁶⁷ Absent record evidence that Hyosung refunded its U.S. customer the difference between the amounts collected to cover the expenses and the actual expenses or other documentation that Hyosung allocated these revenues differently, it is reasonable to conclude based on this record evidence that Hyosung collected service-related revenues in excess of the expenses and that such revenue should be reported and capped.

Hyosung states that the prices charged to the U.S. customer can, and often do, change from the time of the OAF to the invoice and, thus, reliance on the OAF for reporting such revenues is not appropriate.¹⁶⁸ However, the existence of the OAFs indicates that Hyosung has some methodology for allocating expenses for each sale. Indeed, Commerce anticipated such a situation in its supplemental questionnaires, asking Hyosung to “explain your calculation methodology and provide an example of the calculation” if the revenues did not appear on the invoice.¹⁶⁹ It is not unreasonable that if the price charged to the customer changes, then Hyosung’s methodology for calculating expenses would be able to make adjustments and that these adjustments can be reported as requested. Because, however, Hyosung did not report its methodology for calculating both service-related expenses and the corresponding revenues from the customers, which are necessary to cover the expenses, it is impossible for us to know what the actual service-related revenues are for sales where the prices or other terms of sale changed after the initial OAF was issued. For this reason, because we are unsure as to whether the submitted OAFs are complete,¹⁷⁰ and because the forms submitted are partially illegible, Commerce does not believe that information on the record is sufficient to calculate estimated revenues and expenses related to services.

Regarding, Hyosung’s argument that Commerce did not meet its obligation to notify Hyosung of the nature of its deficiency and provide an opportunity to remedy or explain the deficiency, we disagree. As articulated above, because Commerce issued multiple supplemental questionnaires to Hyosung, Commerce provided Hyosung an opportunity to cure the deficiencies. Section 782(d) of the Act does not require more, and, thus, Commerce met its statutory obligation.¹⁷¹

Therefore, we find that the record is incomplete regarding service-related revenues and expenses, and the application of facts available is warranted. Further, we find that due to Hyosung’s continued failure to report reliable information despite multiple requests to do so, Hyosung failed to cooperate to the best of its ability thereby warranting the application of facts available with an adverse inference.

¹⁶⁷ See Preliminary Analysis Memorandum at 5.

¹⁶⁸ See Hyosung Case Brief at 10.

¹⁶⁹ 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, 2017 (Third Supplemental Questionnaire) at question 66, page 13.

¹⁷⁰ See Preliminary Decision Memorandum at Comment (A)(1), page 3.

¹⁷¹ *Hyundai Steel*, 279 F. Supp. 3d (citing *Maverick Tube Corp. v. United States*, 857 F.3d 1353, 1361 (Fed. Cir. 2017)) (“The respondent had already failed to provide the information requested in Commerce’s original questionnaire, and the supplemental questionnaire notified the respondent of that defect. §1677m(d) does not require more.”).

B) Invoice for Certain SEQUs Covering Multiple Sales over Multiple Review Periods

Hyosung's Comments:

- Commerce faulted Hyosung for not explaining why the same invoice was submitted in the 2014-2015 and 2015-2016 reviews; however, Commerce never requested an explanation/clarification.¹⁷²
- In addition, nothing on the record regarding this matter supports Commerce's conclusion of unreliable reporting, or the need to apply AFA.¹⁷³

Petitioner's Rebuttal Comments:

- Hyosung submitted the same invoice in this review as in the 2014-2015 review, despite the fact that the reliability of this invoice has been questioned.¹⁷⁴ Further, Hyosung's attempt to clarify information listed on the invoice is inconsistent with these documents.¹⁷⁵
- Because these invoices are for internal use and the amounts listed on them can change, Commerce should continue to apply AFA.¹⁷⁶ The unreliability of this invoice is also underscored by the fact that Hyosung continues to rely on the same invoice so support multiple LPT sales over two review periods.¹⁷⁷

Commerce's Position

Hyosung states that the invoice in question covered multiple sales that entered into the United States over two periods of review, and that there is no reason to use this as the basis for AFA.¹⁷⁸ The petitioner states that this claim does not explain why Hyosung is relying on one invoice as support for multiple sales of LPTs.¹⁷⁹ The petitioner also states that the invoice in question contains fewer lines on the invoice than for the number of LPTs the invoice purportedly covers.¹⁸⁰ Our examination of the invoice and record evidence leaves us unclear as to the number of sales covered, as well as why this invoice would be used to cover multiple sales. In its section A response to Commerce's antidumping duty questionnaire, Hyosung states that "HICO America issues the invoice to the unaffiliated customer when the merchandise is delivered and/or site test is completed."¹⁸¹ Given Hyosung's description of its sales process, it is unclear how multiple sales could be contained on one invoice. As Hyosung has not explained

¹⁷² See Hyosung Case Brief at 10, 13-14, 23-24; see also PDM at 6-11.

¹⁷³ *Id.* at 22-23.

¹⁷⁴ See Petitioner's Rebuttal Brief for Hyosung at 23-24; see also Hyosung Case Brief at 23-24.

¹⁷⁵ *Id.* at 24-25.

¹⁷⁶ *Id.*

¹⁷⁷ *Id.* at 25.

¹⁷⁸ See Hyosung Case Brief at 123 – 24.

¹⁷⁹ See Petitioner's Rebuttal Brief for Hyosung at 23-24

¹⁸⁰ *Id.*, at 25.

¹⁸¹ 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-38.

this discrepancy, despite multiple opportunities to clarify the record, Commerce finds that an adverse inference is appropriate.¹⁸²

We find that the record is incomplete and the lack of explanation regarding this invoice renders Hyosung's reporting unreliable. For these reasons, we find that the application of facts available is warranted. Further, we find that application of an adverse inference is warranted because Hyosung was provided multiple opportunities to remedy this deficiency, yet failed to do so. Therefore, Hyosung failed to put forth its maximum efforts to comply with requests for information thereby failing to cooperate to the best of its ability.

C) Hyosung Failed to Report All Relevant Discounts and Price Adjustments

Hyosung's Comments:

- Hyosung reported all relevant discounts/price adjustments, and Commerce did not request clarification regarding Hyosung's reporting of discounts or price adjustments.¹⁸³
- Commerce can still request clarification if there are still questions pertaining to this matter.¹⁸⁴

Petitioner's Rebuttal Comments:

- The internal invoices also demonstrate that Hyosung failed to report U.S. price adjustments pursuant to Commerce's instructions.¹⁸⁵
- By doing so, Hyosung has selectively decided which information to report, and therefore again deprived Commerce of the ability to determine what is necessary and sufficient to calculate a margin.¹⁸⁶

Commerce's Position

Hyosung states that the discounts, which are shown on the invoices to the customer, and which Hyosung did not report, "are not discounts of the type the Department typically accounts for in its margin calculations."¹⁸⁷ Hyosung goes on to state that the prices reported to Commerce are net of these discounts.¹⁸⁸

Commerce does not request that respondents report net prices as the initial basis for our dumping calculations. Indeed, as discussed in Comment 4A above, Commerce requires a respondent to

¹⁸² We note that the sales in question on this invoice are the same sales for which Hyosung did not report OAFs. See Preliminary Analysis Memorandum at 3, 6, and Footnote 41.

¹⁸³ See Hyosung Case Brief at 10-11, 13-14, 24-27; see also PDM at 6-11.

¹⁸⁴ *Id.* at 26.

¹⁸⁵ See Petitioner's Rebuttal Brief for Hyosung at 25-26; see also Hyosung Case Brief at 24-25.

¹⁸⁶ *Id.* at 26-28; see also Hyosung Case Brief at 26-27.

¹⁸⁷ See Hyosung Case Brief at 25.

¹⁸⁸ *Id.*

report gross unit prices, and any sales adjustments.¹⁸⁹ In fact, the instructions in the antidumping duty questionnaire specifically state that a respondent should report discounts and rebates.¹⁹⁰ It is not for Hyosung to decide which sales adjustments it wishes to report. Reporting all such adjustments to the gross unit price allows Commerce to examine the veracity of each claimed adjustment, and the validity of the reported price, as well as examine the level of trade between the respondent and its customers. Failure to report all such adjustments impedes Commerce's analysis and calls into question the accuracy of the reported sales amounts.

In addition, Hyosung acknowledges that it received interest revenue from certain customers, but failed to report adjustments for this revenue.¹⁹¹ In Commerce's initial antidumping duty questionnaire, Commerce specifically requests that parties explain payment terms which may be tied to either early payment discounts or to interest penalties.¹⁹² Thus, it is not only a matter of an accurate price, but also the payment terms, that are of interest to Commerce concerning interest revenue. Failure to report these adjustments impedes Commerce's analysis and calls into question the accuracy, not just of the reported prices, but the sales process as well.

For these reasons, we find that the record is incomplete and the lack of explanation regarding all three issues renders Hyosung's reporting unreliable, and Hyosung has otherwise impeded this review. Thus, we find that the application of facts available is warranted. Further, we find that application of an adverse inference is warranted because Hyosung was provided multiple opportunities to remedy these deficiencies, yet failed to do so. Therefore, Hyosung failed to put forth its maximum efforts to comply with requests for information, thereby failing to cooperate to the best of its ability. The application of total AFA is, therefore, warranted.

D) Moot Issues

- The petitioner raised a number of additional issues in its case brief, including issues related to Hyosung's reported cost of production, product characteristics, U.S. sales agents, and certain sales to one customer.¹⁹³ As Commerce continues to apply adverse facts available to Hyosung with respect to the issues discussed above, the issues raised by the petitioner are moot.

Commerce's Position

Because we continue to apply AFA to Hyosung based on the aforementioned issues in sections A) to C) above, the issues presented by the petitioner are moot.

¹⁸⁹ See generally, 19 U.S.C. §§ 772 and 773; *see also* Hyosung Initial Questionnaire at C-18. As we noted previously, the antidumping duty questionnaire states in part: "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."

¹⁹⁰ *Id.*

¹⁹¹ See Hyosung Case Brief at 26.

¹⁹² See Hyosung Initial Questionnaire at C-17.

¹⁹³ See Letter from Petitioner to the Department, "Large Power Transformers from South Korea; Petitioner's Case Brief for Hyosung," dated October 12, 2017.

C. General Issues

Comment 5: Non-Selected Respondents

A) Application of Total Facts Available

Iljin's Comments:

- In its preliminary determination, Commerce assigned a dumping margin to Iljin based on the average of the AFA rates for the mandatory respondents, due to the decision reached in the *Albermarle* case;¹⁹⁴ however, these cases have significant differences.¹⁹⁵
- When the dumping margins for the examined respondents are *de minimis* or based on AFA, Commerce must assign a dumping margin to unexamined respondents that is “reasonably reflective of potential dumping margins.”¹⁹⁶
- The situation presented in *Albermarle* is different, because the dumping margins for the two mandatory respondents in that case were found to be *de minimis*.¹⁹⁷
- In this review, Commerce does not have dumping margins based on an analysis of the mandatory respondents’ pricing practices.¹⁹⁸ Instead, Commerce used a dumping margin from the original petition.¹⁹⁹
- Although Commerce determined Hyundai and Hyosung failed to cooperate in this review in a manner that warranted applying AFA, there is no evidence that Iljin was uncooperative.²⁰⁰
- In this review, Commerce was not able to examine Iljin as a mandatory respondent.²⁰¹ Therefore, Iljin did not have an opportunity to report information.²⁰² For this reason, the application of AFA is not warranted.²⁰³

¹⁹⁴ See Iljin Letter, “Administrative Review of the Antidumping Duty Order on Large Power Transformers from Korea – Case Brief of Iljin Electric Co., Ltd.,” dated October 12, 2017 (Iljin Case Brief) at 2-3 (citing *Large Power Transformers from the republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR42289, 42290 (September 7, 2017) (*Preliminary Determination*), and *Albermarle Corp. v. United States*, 821 F. 3d 1345, 1352 (Fed. Cir. May 2, 2016).

¹⁹⁵ *Id.* at 3.

¹⁹⁶ *Id.*; see also *Albermarle Corp. v. United States*, 821 F. 3d 1345, 1352 (Fed. Cir. 2016); see also Statement of Administrative Action (SAA) accompanying the Uruguay Round Agreements, H.R. Doc. No. 103-316, vol. 1 (1994), at 873.

¹⁹⁷ *Id.* at 4-5.

¹⁹⁸ *Id.* at 5.

¹⁹⁹ *Id.* (citing PDM at 3, and LPT 2014-2015IDM at 5-7).

²⁰⁰ *Id.*; see also *Albermarle Corp. v. United States*, 821 F. 3d 1345, 1357 (Fed. Cir. May 2, 2016).

²⁰¹ *Id.* at 6.

²⁰² *Id.*

²⁰³ *Id.*

Petitioner's Rebuttal Comments:

- In applying an average of the adverse facts available rates for the mandatory respondents to unexamined respondents, Commerce acted in accordance with law.²⁰⁴ This outcome is consistent with the decision in the *Albemarle* case.²⁰⁵
- By assigning Iljin the average of the AFA rates for Hyundai and Hyosung, Commerce has applied the “expected method” in the statute and SAA.²⁰⁶
- Because neither the statute, nor the SAA, distinguishes between *de minimis* margins and margins based on adverse facts available, there is nothing to distinguish *Albemarle* from this review.²⁰⁷ Additionally, Iljin has pointed to nothing in the statute to support its claim that these cases differ.²⁰⁸
- As with *de minimis* margins (*e.g.*, *Albemarle*), Commerce has no mandate under section 735(c)(5)(B) of the Act “to routinely exclude” the AFA margins, as it would under section 735(c)(5)(A) of the Act.²⁰⁹
- Commerce’s decision to apply an AFA rate to Iljin, an unexamined company, is in accordance with law.²¹⁰
- Commerce did not determine that Iljin was uncooperative, and its rate is not based on level of cooperation.²¹¹
- Commerce may select a rate from “any previous review” as an appropriate AFA rate.²¹² Further, with uncooperative respondents, Commerce may use the highest prior dumping margin as the current weighted-average dumping margin.²¹³

²⁰⁴ See Letter from Petitioner, “Large Power Transformers from the Republic of Korea: Petitioner’s Rebuttal Brief to Iljin’s Case Brief,” dated October 19, 2017 at 4 (Petitioner’s Rebuttal Brief for Iljin); see also PDM at 19; see also section 777A(c)(2) of the Act; see also SAA at 873; see also section 735(c)(5) of the Act; see also section 735(c)(5)(A) of the Act; see also section 735(c)(5)(B) of the Act.

²⁰⁵ *Id.* at 5; see also *Albemarle Corp. v. United States*, 821 F.3d 1345 (Fed. Cir. May 2, 2016).

²⁰⁶ *Id.* at 5 (citing SAA, H.R. Doc. No. 103-316, vol. 1 (1994), at 873).

²⁰⁷ *Id.*; see also Iljin Case Brief at 3.

²⁰⁸ *Id.*

²⁰⁹ *Id.* at 6; see also *Albemarle Corp. v. United States*, 821 F.3d 1345, 1352, 1354-1355 (Fed. Cir. May 2, 2016).

²¹⁰ *Id.* at 7; see also Iljin Case Brief at 5-6; see also *Navneet Publications (India) Ltd., v. United States*, 999 F. Supp. 2d 1354, 1359 (CIT July 22, 2014); see also *Yangzhou Bestpak Gifts & Crafts Co., Ltd., v. United States*, 716 F.3d 1370, 1378 (Federal Circuit May 20, 2013) (*Bestpak*); see also Iljin Case Brief at 5-6.

²¹¹ *Id.* at 7-8.

²¹² *Id.* at 8; see also PDM at 6 (citing 2014-2015 Final Results; see also LPT 2014-2015 IDM at 6-8).

²¹³ *Id.* at 9; see also Iljin Case Brief at 4-5; see also *Albemarle Corp. v. United States*, 821 F.3d 1345, 1357 (Fed. Cir. May 2, 2016); see also *KYD, Inc., v. United States*, 607 F.3d 760, 766 (Fed. Cir. May 28, 2010) (citing *Rhone Poulenc, Inc. and Rhone Poulenc Chimie De Base, S.A. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. March 27, 1990); see also *Ta Chen Stainless Steel Pipe, Inc., v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. August 1, 2002) (citing *Rhone Poulenc, Inc. and Rhone Poulenc Chimie De Base, S.A. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. March 27, 1990)).

Commerce's Position

We agree with the petitioner. As stated in section 735(c)(5)(A)-(B) of the Act, SAA, and upheld in *Albermarle*, Commerce may use the average of two AFA margins in assigning the rate to non-selected respondents. We believe that this is a reasonable method and the expected method of calculating such a margin, as set forth in the SAA.²¹⁴ We also find, consistent with *Bestpak*, that the statute and the SAA allow Commerce to use AFA rates in calculating a margin for a non-selected company.²¹⁵

B) Commerce Should Request Information Needed to Calculate Dumping Margins for Unexamined Companies

Iljin's Comments:

- Commerce has information on the record of this review, and past reviews, concerning dumping rates calculated in prior reviews; however, Commerce continues to use the six-year-old petition rate from the investigation as the AFA rate.²¹⁶
- As Commerce assigned Iljin the rate for cooperative respondents in the first, second, and third reviews,²¹⁷ there is no basis to conclude that Iljin became uncooperative during the fourth review.²¹⁸
- Commerce can still request information, and calculate a margin specific to Iljin.²¹⁹

Petitioner's Rebuttal Comments:

- The dumping margin assigned to Iljin is reasonably reflective of its potential dumping margins during the POR.²²⁰ In addition, there is no record evidence which undermines the margin assigned to Iljin, nor are there data specific to Iljin from any past reviews.²²¹
- Commerce is not required to request data from Iljin regarding its sales, or to select Iljin as a mandatory respondent in order to calculate an Iljin-specific margin.²²²

²¹⁴ See the SAA at 873.

²¹⁵ See *Bestpak*.

²¹⁶ See Iljin Case Brief at 7.

²¹⁷ *Id.* at 7-8; see also *Large Power Transformers from Korea: Second Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 35628 (June 22, 2015); see also *Large Power Transformers from Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 27088 (May 5, 2016); see also *2014-2015 Final Results*.

²¹⁸ *Id.* at 8.

²¹⁹ *Id.* at 9; see also *Albermarle Corp. v. United States*, 821 F. 3d 1358 (Fed. Cir. May 2, 2016).

²²⁰ See Petitioner's Rebuttal Brief for Iljin at 6, 10; see also *Albermarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. May 2, 2016) (citing SAA accompanying the Uruguay Round Agreements, H.R. Doc. No. 103-316, vol. 1 (1994), at 873); see also *Gallant Ocean (Thailand) Co. v. United States*, 602 F. 3d 1319 (Fed. Cir. 2010).

²²¹ *Id.* at 5, 11; see also Section 735(c)(5)(B) of the Act; see also *Albermarle Corp. v. United States*, 821 F. 3d 1355 (Fed. Cir. May 2, 2016); see also SAA accompanying the Uruguay Round Agreements, H.R. Doc. No. 103-316, vol. 1 (1994), at 873; see also Iljin Case Brief at 7-8; see also *2014-2015 Final Results*.

²²² *Id.* at 12; also *Albermarle Corp. v. United States*, 821 F. 3d 1355 (Fed. Cir. May 2, 2016); see also Iljin's Case Brief at 6, 9; see also *Large Power Transformers from Korea: Second Amended Final Results of Antidumping Duty*

Commerce's Position

We agree with the petitioner. As the petitioner noted, we have no evidence on the record of Iljin's actual dumping margins.²²³ Commerce believes that it is reasonable to assume that the potential dumping margin for Iljin would be 60.81 percent, as the application of the AFA rate in a previous review was lower than the highest transaction specific rate for one of the respondents.²²⁴ Thus, the rate of 60.81 percent is reflective of dumping found during a segment of this proceeding for a selected respondent. There is no evidence on the record to suggest that Iljin's margins would be lower. Thus, there is neither a need nor a requirement to request additional information regarding Iljin's sales during this administrative review.

VII. RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final determination in the investigation in the *Federal Register*.

☒

☐

Agree

Disagree

3/9/2018

X



Signed by: GARY TAVERMAN

Gary Taverman

Deputy Assistant Secretary

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

Administrative Review; 2012-2013, 80 FR 35628 (June 22, 2015); see also Large Power Transformers from Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 FR 27088 (May 5, 2016); see also Corus Staal BV v. United States, 502 F. 3d 1370, 1379 (Fed. Cir. 2007); see also Ad Hoc Shrimp trade Action Comm. v. United States, 675 F. Supp. 2d 1287, 1300 (CIT 2009).

²²³ See Petitioner's Rebuttal Brief for Iljin at 10.

²²⁴ See 2014-2015 LPT Korea Final and accompanying 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: 2014-2015 (March 6, 2017) at 6-8.