



A-580-867
CCR (Hyundai)
Public Document
E&C AD/CVD OVI: JCM

DATE: August 28, 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: Final Results of Changed Circumstances Review Regarding
Successor-In-Interest Analysis: Large Power Transformers from
the Republic of Korea

I. Summary

Based on our analysis of the comments included in the case and rebuttal briefs submitted by interested parties in the above-referenced changed circumstances review (CCR), we recommend that you approve the positions described in the “Discussion of Interested Party Comments” section of this memorandum, and continue to find that Hyundai Electric & Energy Systems Co., Ltd. (HEES) is the successor-in-interest to Hyundai Heavy Industries Co., Ltd. (HHI)¹ and that HHI’s current cash deposit rate is the rate for HEES. Further, we continue to find that applying the cash deposit rate applicable to HEES retroactively to the effective date of the first entry by HEES at the final results of this CCR is warranted.

II. Background

On August 31, 2012, the Department of Commerce (Commerce) published in the *Federal Register* the antidumping duty order on LPTs from Korea, which included HHI.² During the 2014-2015 administrative review, covering the period August 1, 2014, through July 31, 2015, Commerce assigned HHI an antidumping duty rate, based on adverse facts available (AFA), of

¹ On April 3, 2017, HEES which was spun off from HHI effective April 1, 2017, began operations as a separate corporation. See Hyundai’s January 3, 2018 Questionnaire Response (Hyundai January 3, 2018 QR).

² See *Large Power Transformers from Japan: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012) (*Order*).

60.81 percent.³ During the 2015-2016 administrative review, covering the period August 1, 2015, through July 31, 2016, Commerce also assigned HHI an antidumping duty rate, based on AFA, of 60.81 percent.⁴ Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), on December 4, 2017, Commerce self-initiated a CCR regarding HHI's new spin-off company, HEES, based on information obtained: (1) during the course of the 2014-2015 and 2015-2016 administrative reviews; (2) *via* public search and the phone conversation with a representative retained by ABB Inc.'s (ABB's or the petitioner's) counsel; and (3) from U.S. Customs and Border Protection (CBP) data.⁵

On December 5, 2017, we issued a questionnaire to Hyundai and on January 3, 2018, Hyundai⁶ responded.⁷ Between January 29, and February 7, 2018, ABB and Hyundai submitted comments.⁸

On May 31, 2018, Commerce published the *Preliminary Results* of this CCR.⁹ We invited parties to comment on the *Preliminary Results*. On July 6, 2018, we received a timely-filed case brief from HEES and HHI (collectively, Hyundai).¹⁰ On July 13, 2018, we received a timely-filed rebuttal brief from ABB.¹¹ Hyundai submitted a request for a hearing regarding the *Preliminary Results*,¹² but subsequently withdrew its request on August 3, 2018.¹³ As Hyundai was the only party to request a hearing, no hearing was held.

Further, no party challenges Commerce's preliminary finding that HEES is the successor-in-interest to HHI, or that HHI's current cash deposit rate applies to HEES. For these final results, the only issue in dispute is whether to apply HHI's current cash deposit rate retroactively to HEES to the effective date of HEES's first entry of subject merchandise. As explained below, we continue to find that applying HHI's current cash deposit rate retroactively to HEES is

³ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2014-2015, 82 FR 13432 (March 13, 2017) (*2014-2015 Final Results*).

⁴ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2015-2016, 83 FR 11679 (March 16, 2018) (*2015-2016 Final Results*).

⁵ See *Large Power Transformers from the Republic of Korea: Initiation of Antidumping Duty Changed Circumstances Review*, 82 FR 57210 (December 4, 2017) (*Initiation Notice*).

⁶ HHI and HEES are collectively referred to as Hyundai.

⁷ See Letter from Commerce to Hyundai, re: Large Power Transformers from the Republic of Korea: Antidumping Duty Changed Circumstances Review Questionnaire, dated December 5, 2017; *see also* Hyundai January 3, 2018 QR.

⁸ See Letter from ABB, re: Large Power Transformers from the Republic of Korea – Petitioner's Comment on Hyundai's Questionnaire Response, dated January 29, 2018 (ABB's Comments); *see also* Letter from Hyundai, re: Large Power Transformers from Korea: Response to ABB's Comments on Hyundai's Questionnaire Response, dated February 7, 2018 (Hyundai's Comments).

⁹ See *Large Power Transformers from the Republic of Korea: Notice of Preliminary Results of Antidumping Duty Changed Circumstances Review*, 83 FR 24973 (May 31, 2018) (*CCR Preliminary Results*), and accompanying memorandum entitled, "Preliminary Results of Changed Circumstances Review Regarding Successor-In-Interest Analysis: Large Power Transformers from the Republic of Korea," dated May 24, 2018 (*Preliminary Results*).

¹⁰ See Letter from Hyundai, re: Large Power Transformers from Korea: Hyundai's Case Brief, dated July 6, 2018 (Hyundai's Case Brief).

¹¹ See Letter from ABB, re: Large Power Transformers from the Republic of Korea: Petitioner's Rebuttal Brief, dated July 13, 2018 (Petitioner's Rebuttal Brief).

¹² See Letter from Hyundai, re: Large Power Transformers from Korea: Hearing Request, dated July 2, 2018.

¹³ See Letter from Hyundai, re: Large Power Transformers from Korea: Withdrawal of Hearing Request, dated August 3, 2018.

warranted.

III. 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.

IV. Discussion of Interested Party Comments

Comment: Whether Retroactive Application of a Cash Deposit Rate to a Successor-in-Interest is Permitted by Law and Consistent with Commerce’s Practice

Hyundai’s Comments

- Pursuant to sections 751(a)(1)(B) and 751(a)(2)(C) of the Act, the all-others cash deposit rate is the applicable rate for a company that does not have an individually assigned rate prior to the publication of the final results of a CCR.¹⁴
- Pursuant to 19 CFR 351.221(b)(7), Commerce may only apply a revised cash deposit rate prospectively. Furthermore, in prior proceedings, Commerce has refused to make a retroactive change to a cash deposit rate in cases with similar fact patterns.¹⁵

¹⁴ *Id.* at 2 (citing *Preliminary Results* at 6; sections 751(a)(1)(B) and 751(a)(2)(C) of the Act; *e.g.* *Certain Hot-Rolled Lead and Bismuth Carbon Steel Products from the United Kingdom: Final Results of Changed-Circumstances Antidumping and Countervailing Duty Administrative Reviews*, 64 FR 66880, 66881 (November 30, 1999) (*Hot-Rolled Steel from the UK*)).

¹⁵ *Id.* at 2-3 (citing 19 CFR 351.221(b)(7); *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India*, 77 FR 64953, 64955 (October 24, 2012) (*Warmwater Shrimp from India*); *Stainless Steel Plate in Coils from Belgium: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 77 FR 21963 (April 12, 2012) (*Stainless Steel Plate in Coils from Belgium*), and accompanying Issues and Decision Memorandum at 2, 3 (*Stainless Steel Plate from Belgium IDM*); *Hot-Rolled Steel from the UK* at 66881; *Preliminary Results* at 3, 5 and at 5, footnote 27).

- Commerce has applied successor-in-interest determinations retroactively, in one instance. Specifically, as indicated in the *Preliminary Results*, determinations have been applied retroactively where a predecessor company had been excluded from the antidumping order. As HHI has not been excluded from the order at any point, Commerce cannot rely on this practice.¹⁶
- Record evidence contradicts Commerce's claim that HHI spun off HEES to avoid payment of the appropriate cash deposits. Therefore, the claim that the spin-off occurred to avoid paying cash deposits at the AFA rate is unsupported by substantial evidence.¹⁷
- As Commerce has explained, cash deposits are only estimates of the amount of antidumping duties to be assessed. For Commerce to have CBP collect cash deposits retroactively, when the final assessment rate is calculated, is wasteful and unnecessary.¹⁸

The Petitioner's Rebuttal Comments

- Hyundai's interpretation of the statute and regulations does not take into consideration the facts of this case. Further, to the extent that the statutory provisions cited by Hyundai are relevant to the retroactive application of the estimated duty deposit neither addresses, much less requires, that the estimated duty deposit rate only be applied prospectively.¹⁹
- This CCR was initiated under section 751(b)(1) of the Act, which is the provision applying to reviews based on changed circumstances. Therefore, Hyundai's interpretation of the statutory framework as it applies to CCRs is overly broad and restrictive.²⁰
- As noted by Commerce in the *Preliminary Results*, Commerce has the ability under the CCR statutory provision to address situations as they arise. In addition, the statute does not contain any language prohibiting Commerce from retroactively assigning a cash deposit rate to a successor-in-interest.²¹
- In contrast to administrative reviews, in CCRs, Commerce is not determining a revised dumping margin or cash deposit rate, but whether a predecessor's existing cash deposit rate should be applied to a successor. Additionally, the regulations/rules governing CCRs and administrative reviews are distinguishable, and the statutory framework for CCRs is premised on parties paying the correct amount of cash deposits in administrative reviews.²²

¹⁶ *Id.* at 4-5 (citing *Preliminary Results* at 5; *Stainless Steel Plate from Belgium* IDM at 3; *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the People's Republic of China: Notice of Final Results of Changed Circumstances Review*, 80 FR 19070, 19071 (April 9, 2015) (*Tapered Roller Bearings from China*); *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Changed Circumstances Antidumping Duty Review*, 74 FR 8904 (February 27, 2009) (*Butt-Weld Pipe Fittings from Thailand*), and accompanying Issues and Decision Memorandum at 2).

¹⁷ *Id.* at 5-7 (citing *Preliminary Results* at 5, 6-7).

¹⁸ *Id.* at 7 (citing *Preliminary Results* at 5).

¹⁹ See Petitioner's Rebuttal Brief at 4-5 (citing Hyundai's Case Brief at 2-3; sections 751(a), 751(a)(1), 751(a)(1)(B) and 751(a)(2)(C) of the Act).

²⁰ *Id.* at 5 (citing section 751(b)(1) of the Act; *Preliminary Results* at 2).

²¹ *Id.* at 5 (citing section 751(b) of the Act; *Preliminary Results* at 7).

²² *Id.* at 5-7 (citing *Preliminary Results* at 6-7; 19 CFR 351.221(b)(7); 19 CFR 351.221(c)(3)).

- Prior administrative decisions do not support Hyundai's claim that Commerce is prohibited from applying HHI's cash deposit rate retroactively, if warranted by the facts of the case.²³
- Although Hyundai claims that cash deposits are only estimates of the amount if antidumping duties to be assessed, Commerce has correctly stated that entering merchandise at the correct cash deposit is critical to the effectiveness of the order.²⁴

Commerce's Position: We find that applying the applicable cash deposit rate to HEES' entries retroactively to the effective date of the first entry by HEES is warranted in this case.²⁵

Hyundai argues that Commerce's retroactive application of HHI's cash deposit rate to HEES is contrary to law and regulation. Hyundai notes that, in the *Preliminary Results*, Commerce stated that “[S]ections 751(a)(1)(B) and 751(a)(2)(C) of the Act stipulate that the cash deposit rate following an administrative review for a company will be based on the rates determined by Commerce in that administrative review.”²⁶ Therefore, according to Hyundai, “the all others cash deposit rate is the applicable rate for a company that does not have an individually assigned rate prior to publication of the final results” of a CCR.²⁷ In addition, Hyundai claims that the regulations mandate that Commerce may only apply a revised cash deposit rate prospectively.²⁸ We disagree with Hyundai for the reasons detailed below.

In addressing Hyundai's argument regarding sections 751(a)(1)(B) and 751(a)(2)(C) of the Act, we do not disagree with the initial premise, *i.e.*, the cash deposit rate set by an administrative review is the applicable rate to a company subject to that review. We also do not disagree, generally, that a company that does not have an individually assigned rate will receive the all-others rate as its cash deposit rate. Although this is the typical statutory scheme for cash deposits, the statutory provisions cited by Hyundai do not account for circumstances that have changed—such as, one company becoming the successor to its predecessor company. Congress, when adding the specific provisions concerning changed circumstances, did not limit the Commerce's authority in assigning the applicable cash deposit, whether prospectively or retroactively. In other words, the statutory provisions cited by Hyundai under section 751(a) of the Act account for the typical scenario where a company subject to an administrative review receives its assessment rate as a result of that review, and which becomes its cash deposit rate for future entries of subject merchandise that are subject to the next review, and so on. However, a CCR may serve to correct the applicable cash deposit rate concurrently with an ongoing administrative review. For example, in a case where “Company A” has entered subject

²³ *Id.* at 7-14 (citing Hyundai's Case Brief at 2-5; *Preliminary Results* at 5, 7; *Hot-Rolled Steel from the UK* at 66880, 66881; *Warmwater Shrimp from India* at 64953, 64955, and *Final Results* 77 FR 73619; *Stainless Steel Plate in Coils from Belgium* at 21963, and accompanying Issues and Decision Memorandum at Comment 2; *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand* at 8904, and accompanying Issues and Decision Memorandum; *Nan Ya Plastics Corporation, Ltd., v. United States*, 810 F.3d 1333, 1347 (Fed. Cir. 2016); *2014-2015 Final Results*).

²⁴ *Id.* at 21-22 (citing Hyundai's Case Brief at 7; *Preliminary Results* at 7).

²⁵ We note that no party contests our finding that HEES is the successor-in-interest to HHI.

²⁶ See *Preliminary Results* at 6.

²⁷ See Hyundai's Case Brief at 2.

²⁸ *Id.* at 2 (citing 19 CFR 351.221(b)(7) (“If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.”)).

merchandise under one cash deposit rate, *e.g.*, the all-others rate, in the current ongoing administrative review, yet an intervening, concurrent CCR establishes that Company A's cash deposit rate should be a different rate because Company A is the successor-in-interest to Company B, *i.e.*, Company B's company-specific rate. This finding, pursuant to the CCR, may serve to correct the cash deposit rate that Company A should be and, perhaps under certain circumstances, should have been, paying upon entering its subject merchandise. In essence, the appropriate cash deposit rate established by the CCR is the rate that Company A should have been paying all along, *i.e.*, retroactively. Congress did not seek to limit Commerce's authority to apply the cash deposit rate when enacting sections 751(a) and 751(b) of the Act. As we explained in the *Preliminary Results*, cash deposit avoidance was a concern for Congress when enacting these provisions. Thus, when presented with evidence where, as here, such avoidance may be occurring, Commerce holds the discretion to apply the rate retroactively to correct what may be obstructing the full relief to which the domestic industry is statutorily entitled. We find that to interpret the statute otherwise, or as restrictively as Hyundai, would run counter to the purpose of CCRs as explained in the *Preliminary Results*. Had Congress intended to restrict Commerce in the way Hyundai seeks, it presumably would have done so expressly.

Additionally, Hyundai argues that, notwithstanding the statute, 19 CFR 351.221(b)(7) also limits Commerce's authority to apply the cash deposit rate retroactively despite concerns of cash deposit avoidance. Section 351.221(b)(7) of Commerce's regulations states "{i}f the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries." Again, we disagree with Hyundai's interpretation of Commerce's regulations and find this provision of Commerce's regulations inapplicable. Rather, the provision refers to "revisions" of cash deposit rates. There has been no "revision" to the appropriate cash deposit rate. Hyundai conflates "revising" the cash deposit rate with "assigning" the appropriate cash deposit rate. The latter is precisely what is at issue here. CCRs do not result in a "revision" to the applicable cash deposit rate. Such a "revision" occurs within the context of an administrative review. In contrast, a successor-in-interest analysis within the context of a CCR ensures that a company that is found to be a successor-in-interest is assigned the appropriate rate. In this CCR, Commerce found HEES to be the successor-in-interest to HHI and determined that the appropriate cash deposit rate applicable to HEES is HHI's current rate, *i.e.*, 60.81 percent. Additionally, Commerce was also presented with evidence that Hyundai may be avoiding the applicable cash deposit rate by having spun off its LPTs business to a new entity, knowing that the new entity would enter subject merchandise under the lower all-others rate.²⁹ Commerce found this evidence sufficient to warrant the retroactive application of the cash deposit rate to the effective date of HEES' first entry. The above regulatory provision does not restrict Commerce from doing so, contrary to what Hyundai contends.

Regarding Hyundai's argument that, in past CCRs, Commerce declined to apply the cash deposit rate retroactively, the facts of this case warrant such a decision for the reasons detailed in the

²⁹ See *Preliminary Results* at 2, 5-6. See also Memorandum from Commerce, re: Phone Call, dated November 28, 2017; Memorandum from Commerce, re: Antidumping Duty Changed Circumstances Review of Large Power Transformers from the Republic of Korea: Release of U.S. Customs and Border Protection Import Data, dated November 28, 2017 at Attachments I and II; Hyundai January 3, 2018 QR at 1-2, 4-6, Attachment 1; and *Initiation Notice* at 57211-57212.

Preliminary Results and articulated above. In the *Preliminary Results*, we found that past CCRs are distinguishable from this proceeding, because “prior CCRs were not confronted with the issue of cash deposit avoidance, which is chief among Commerce’s concerns in enforcing and maintaining the efficacy of its antidumping and countervailing duty orders.”³⁰ Specifically, we stated that “Hyundai completed its reorganization of its LPTs business in April 2017 and began entering subject merchandise in May 2017, less than two months after Commerce assigned HHI a rate of 60.81 percent in the 2014-2015 administrative review.”³¹ We also indicated that Hyundai, through its “newly created spin-off, {(i.e., HEES)}, entered subject merchandise at the lower all-others rate of 22 percent.”³² While Hyundai argues that its business reorganization did not take place to avoid paying the appropriate, higher cash deposit rate, Hyundai alerted Commerce of its intent to request this CCR in the underlying administrative review on January 27, 2017.³³ However, following the publication of the final results on March 13, 2017, i.e., where Commerce applied the 60.81 percent rate to HHI,³⁴ Hyundai neglected to follow through with its request for a CCR after its business reorganization, nor did it inform Commerce when the restructuring became effective.³⁵ As a result, Commerce self-initiated this CCR, while Hyundai entered subject merchandise at the substantially lower all-others rate of 22 percent, rather than HHI’s cash deposit rate of 60.81 percent.³⁶ The existence of such a scenario has undermined the efficacy of the order on LPTs from Korea, and deprived the domestic industry of its entitled relief.³⁷ In other words, by not paying the appropriate cash deposit of duties, Hyundai was able to divert resources that would otherwise have been used to pay antidumping duties, toward, in part, its development, production, sale, and distribution of LPTs in the United States and abroad and, as such, has undermined the *Order* and continued to harm the domestic industry. As stated in the *Preliminary Results*, we believe that a scenario like this arising out of a “changed circumstance,” is among the reasons Congress added section 751(b) of the Act to the statute.³⁸

Hyundai cites several past CCRs to argue that the retroactive application of cash deposits is not warranted. However, none of these cases demonstrate that the statute restricts Commerce’s authority to apply a cash deposit rate retroactively to address instances of cash deposit avoidance.³⁹ As recognized in the *Preliminary Results*, in the context of a typical CCR, “because cash deposits are only estimates of the amount of antidumping duties to be assessed, changes in

³⁰ *Id.* at 5.

³¹ *Id.* at 7.

³² *Id.*

³³ See Hyundai January 3, 2018 QR at 3.

³⁴ See 2014-2015 Final Results.

³⁵ See Petitioner’s Case Brief at 15-17.

³⁶ *Id.*

³⁷ See *Preliminary Results* at 6 (“Sections 751(a)(1)(B) and 751(a)(2)(C) of the Act stipulate that the cash deposit rate following an administrative review for a company will be based on the rates determined by Commerce in that administrative review. Necessarily, this statutory scheme requires that parties pay the correct amount of applicable cash deposits determined at the final results of an administrative review. Congress mandated that a rate determined from an administrative review would remain in effect until a subsequent administrative review was completed. In considering this statutory scheme, however, Congress also anticipated that companies may make certain business decisions that would allow them to avoid the payment of the appropriate cash deposits. For example, a company could create a new entity in which that new entity would produce and export the prior company’s merchandise and enter that merchandise at a different or lower cash deposit rate.”), and at 6, footnote 30.

³⁸ *Id.* at 7.

³⁹ See Hyundai’s Case Brief at 3 (citing *Warmwater Shrimp from India* at 64955; *Stainless Steel Plate from Belgium* IDM at 3; *Hot-Rolled Steel from the UK* at 66881).

cash deposit rates are not made retroactively . . .”⁴⁰ Again, as the record shows, we are not faced with a typical set of facts in this CCR. For this reason, Commerce considers evidence of potential cash deposit avoidance in this case to support the retroactive application of the cash deposit rate. Furthermore, as detailed below, a closer comparison to these prior CCRs demonstrates that past cases have not been confronted with a similar fact pattern to this proceeding.⁴¹

For instance, Hyundai’s reliance on *Stainless Steel Plate in Coils from Belgium* is misplaced. In that case, Commerce found that Aperam (*i.e.*, the successor-in-interest to ArcelorMittal Stainless Belgium (AMSB)) should pay the revised cash deposit rates prospectively, because “{Commerce} only gives retroactive effect to successor-in-interest determinations in changed circumstances reviews when a successor company is a successor-in-interest to a predecessor company that had been excluded from the order.”⁴²

Again, the above statements in *Stainless Steel Plate in Coils from Belgium* were made by Commerce because that particular fact pattern did not cause us to deviate from our normal practice. The fact that distinguishes this case from *Stainless Steel Plate in Coils from Belgium*, and which warrants a different approach, is that HEES has been entering subject merchandise at the lower all-others rate of 22 percent, and in doing so, avoiding Commerce’s assignment of the AFA rate of 60.81 percent to HHI. The application of AFA to HHI adds an important distinction to the decision in the instant CCR and a similar scenario is not found in *Stainless Steel Plate in Coils from Belgium*, or other cases for that matter, as explained in our *Preliminary Results*.

Further, unlike this CCR, the cash deposit rate applicable to the predecessor company (AMSB) was lower than the all-others rate.⁴³ Also, we recognize that Aperam did hypothesize about a scenario similar to this CCR, where a successor-in-interest (*i.e.*, HEES) entered subject merchandise at a lower all-others rate. Aperam considered a scenario where “in the event a company had a margin that was higher than the all others rate, under the rule followed by {Commerce} here, if a company were to reorganize, it would get the benefit of a lower rate for the period between its reorganization and {Commerce’s} final results of a successorship review.”⁴⁴ In other words, Aperam presented the reverse set of facts that more closely align with the facts presented here, rather than its own. In response, per our normal practice, Commerce stated that the interested party “may request an administrative review during the anniversary month of the publication of the order of those entries to determine the proper assessment rate for the aforementioned company.” However, “as the issues in each segment are case-specific,” Commerce also stated that it did not need to resolve Aperam’s hypothetical scenario.⁴⁵

Although we do not disagree with Aperam’s statement that a company could reorganize and benefit from receiving a lower all-others rate, because this situation was hypothetical, Commerce

⁴⁰ See *Preliminary Results* at 5.

⁴¹ See *e.g.* *Warmwater Shrimp from India*; *Stainless Steel Plate in Coils from Belgium*; *Hot-Rolled Steel from the UK*; *Tapered Roller Bearings from China*; *Butt-Weld Pipe Fittings from Thailand*).

⁴² See *Stainless Steel Plate from Belgium* IDM at 3. See also *e.g.* Hyundai’s Case Brief at 4 (citing *Butt-Weld Pipe Fittings from Thailand* and accompanying Issues and Decision Memorandum at 2.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *Id.*

did not undertake an analysis of this particular situation, or any other similar circumstances that could arise, *e.g.*, cash deposit avoidance. In the instant CCR, because we are confronted with this scenario, *i.e.*, where a successor-in-interest to a predecessor company reorganized, avoided paying cash deposits at the proper rate, and subsequently entered subject merchandise at the lower all-others cash despot rate, we find that such a scenario warrants assigning the appropriate cash deposit rate retroactively in order to provide the domestic industry its entitled relief and to protect the revenue of the United States collected from entries of articles subject to antidumping and countervailing duties. It is precisely the difference that Aperam argued that presents the opportunity for cash deposit avoidance, which cannot exist in Aperam's case, *i.e.*, where the cash deposit rate applicable to the predecessor company was lower than the all-others rate. Thus, our decision in *Stainless Steel Plate in Coils from Belgium* would remain unchanged.

Hyundai attempts to rely on *Hot-Rolled Steel from the UK*,⁴⁶ *Tapered Roller Bearings from China*,⁴⁷ and *Butt-Weld Pipe Fittings from Thailand*,⁴⁸ CCRs with fact patterns similar to *Stainless Steel Plate from Belgium*, where Commerce stated that it only applies the results retroactively to a successor-in-interest, when the predecessor had been excluded from an order. However, Hyundai, in its case brief, simply points to these cases, and summarizes Commerce's past decisions regarding the application of cash deposits prospectively.⁴⁹ In other words, there is no reference or citation to the statute or regulations. Nor is there legal analysis that supports Hyundai's argument that the statute prohibits applying a cash deposit rate retroactively, in light of the above. While Hyundai may have cited these cases to distinguish the instant CCR from those CCRs, what Hyundai fails to recognize is that these cases demonstrate that Commerce has authority to apply the results retroactively to a successor-in-interest where the facts and circumstances warrant such retroactive application.

In addition, while Commerce's determinations in the aforementioned CCRs summarize some of Commerce's past practice in CCRs, we find that these CCRs do not take into account the particular scenario concerning this CCR (*i.e.*, cash deposit avoidance).⁵⁰ Therefore, based on the above analysis, we continue to find that applying the cash deposit rate to HEES retroactively to the effective date of the first entry by HEES is appropriate.

⁴⁶ See *Hot-Rolled Steel from the UK* at 66880, 66881.

⁴⁷ See *Tapered Roller Bearings from China* at 19070, 19071.

⁴⁸ See *Butt-Weld Pipe Fittings from Thailand* and accompanying Issues and Decision Memorandum at 2.

⁴⁹ See Hyundai's case Brief at 4-5.

⁵⁰ See *Preliminary Results* at 7.

V. RECOMMENDATION

For the reasons explained above, we recommend that HHI's current cash deposit rate should be applied to HEES, and that we will apply the cash deposit rate applicable to HEES retroactively to the effective date of the first entry by HEES at the final results of this CCR.

☒

☐

Agree

Disagree

8/28/2018

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