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DATE: August 31, 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: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Large Power Transformers from the
Republic of Korea; 2016-2017

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). The review covers six producers/exporters of the subject merchandise: Hyosung Corporation (Hyosung); Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Electric & Energy Systems Co., Ltd. (HEES) (collectively, Hyundai)¹; ILJIN, Iljin Electric Co., Ltd., and LSIS Co., Ltd (LSIS). We selected two respondents, Hyosung and HHI, for individual examination. The period of review is August 1, 2016, through July 31, 2017. We preliminarily determine that Hyosung did not make sales of subject merchandise at less than normal value, and that Hyundai made sales of subject merchandise at less than normal value, during the period of review.

¹ In accordance with Commerce's decision in the LPTs from Korea changed circumstances review, Commerce has determined that HEES is the successor-in-interest to HHI. 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) (LPTs from Korea CCR) (unchanged in *Large Power Transformers from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, signed August 28, 2018; pending publication).



II. BACKGROUND

On August 31, 2017, Hyosung, Hyundai, and Iljin requested an administrative review of their imports of LPTs.² ABB (the petitioner) also requested administrative reviews of Hyosung, Hyundai, ILJIN, and LSIS on August 31, 2017. On October 16, 2017, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order on LPTs from Korea.³

In the *Initiation Notice*, we stated our intention, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.⁴ We released the CBP data to interested parties under an administrative protective order on November 1, 2017, and invited interested parties to submit comments on the data as well as potential respondent selection. On November 8, 2017, we received comments from Hyosung, Hyundai, and Iljin. We then received comments from the petitioner on November 17, 2017. Based on a consideration of the comments, the number of potential producers/exporters involved in this review, and the resources available to Commerce, we determined that we could reasonably individually examine two producers/exporters in the current review (*i.e.*, Hyosung and HHI) as the producers/exporters accounting for the largest volume of the subject merchandise from Korea that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).⁵

On January 23, 2018, we exercised our discretion to toll deadlines affected by the closure of the Federal Government from January 20 through 22, 2018. The deadline was extended three days, and since the deadline fell on a non-business day, the deadline for the preliminary results of this review became May 7, 2018.⁶ On May 7, 2018, we further extended the time limit for completion of the preliminary results of the review to August 31, 2018.

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

³ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 82 FR 48051 (October 16, 2017) (*Initiation Notice*).

⁴ See *Initiation Notice* at 48051-52.

⁵ See Memorandum, "Antidumping Duty (AD) Administrative Review of Large Power Transformers (LPTs) from the Republic of Korea (Korea): Respondent Selection Memorandum," dated December 13, 2017.

⁶ See Memorandum for The Record from Christian Marsh, Deputy Assistant Secretary for Enforcement and Compliance, "Deadlines Affected by the Shutdown of the Federal Government," dated January 23, 2018. All deadlines in this segment of the proceeding have been extended by 3 days. The revised deadline became Sunday, May 6, 2018. The next business day was Monday, May 7, 2018. See *Notice of Clarification: Application of "Next Business Day" Rule for Administrative Determination Deadlines Pursuant to the Tariff Act of 1930, As Amended*, 70 FR 24533 (May 10, 2005).

III. DEADLINE FOR SUBMISSION OF UPDATED SALES AND COST INFORMATION

Given that most LPTs sold in the United States were made pursuant to long-term contracts and the production of LPTs in general involves long lead times, certain expenses reported by respondents in their sales and cost databases were based upon estimates. Consistent with prior segments of this proceeding, we instructed respondents to provide actual cost and expense data for amounts for which actual data existed as of a certain date, which in this review was December 31, 2017. Therefore, when available, Commerce relied upon reported actual costs and expenses (related to sales) through and including December 31, 2017, in determining the preliminary weighted-average dumping margins for mandatory respondent(s).

IV. SCOPE OF THE ORDER

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

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

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

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

V. DISCUSSION OF THE METHODOLOGY

For these preliminary results, we have applied total adverse facts available to Hyundai, as discussed below in Section VI. The following methodology discussion applies to Hyosung.

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Hyosung’s sales of the subject merchandise from Korea to the United States were made at less than normal value, we compared the constructed export price (CEP) to the normal value as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (EPs) (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.⁷

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁸ Commerce finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is considered using the product control number and any characteristics of the sales, other than

⁷ See *Ball Bearings and Parts Thereof from France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

⁸ See, e.g., *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

purchaser, region and time period, that Commerce uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-

average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Hyosung, based on the results of the differential pricing analysis, we find that the value of total sales that passed the Cohen's *d* test was less than 33 percent, and, as such, these results do not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and these results do not support consideration of an alternative to the average-to-average method.⁹ Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method for either respondent. Accordingly, we preliminarily determine to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyosung.¹⁰

Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products produced by Hyosung and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) number of phases; (2) maximum MVA rating; (3) transformer technology; (4) high line voltage; (5) high voltage winding basic insulation level; (6) number of windings in transformer; (7) type of tap changer and percentage regulation; (8) low line voltage; (9) impedance at maximum MVA rating; (10) type of core steel; (11) type of transformer; (12) low voltage winding basic insulation level; (13) load loss at maximum MVA rating; (14) no-load loss; (15) cooling class designation; (16) overload requirement; (17) decibel rating; and (18) frequency.

Date of Sale

Section 19 CFR 351.401(i) states that, “[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.” The

⁹ See Memorandum from John K. Drury to the File, regarding “Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2016-2017 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea” (Hyosung Preliminary Analysis Memorandum), dated concurrently with this memorandum.

¹⁰ In these preliminary results, Commerce applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹¹ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹²

In prior segments of this proceeding, we concluded that the date of the initial purchase order was the date upon which material terms of sale had been established between the respondents and their customers.¹³ However, in the 2014-2015 administrative review, Commerce found that the date of shipment was the date on which the material terms of sale had been established for Hyosung.¹⁴ Hyosung indicated that a significant number of sales in both markets had changes to the material terms of sale after the initial purchase order.¹⁵ Consequently, Hyosung reported the shipment date as the date of sale for both home market and U.S. sales in this review.¹⁶

Hyosung stated that it normally issues a tax invoice to home-market customers at the time that it is preparing to ship a completed LPT unit to the customer.¹⁷ However, for certain home-market sales, Hyosung indicated that it had not yet issued invoices for sales of LPT units that had been shipped to the customer.¹⁸ For sales in the United States, Hyosung stated that its U.S. affiliate, HICO America Sales and Technology, Inc. (HICO America), issues an invoice to its U.S. customer once the LPT unit has been shipped to the United States and certain tests have been performed.¹⁹ Thus, we preliminarily conclude that, for Hyosung, the date of sale is the shipment date, in accordance with Commerce's regulation and practice.

¹¹ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

¹² See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹³ For a full discussion of this determination, see *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) and accompanying Issue and Decision Memorandum at Comment 1.

¹⁴ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying Issues and Decision Memorandum at Comment 17.

¹⁵ See Letter from Hyosung to Commerce, "Large Power Transformers from Korea: Hyosung's Supplemental Section A Response (Response to Questions 2 - 83)," dated May 3, 2018 (Supplemental Section A Response), at 31-32 and Exhibit S-23.

¹⁶ See Letter from Hyosung to Commerce, "Large Power Transformers from Korea: Section A Questionnaire Response," dated January 9, 2018, (Section A Response) at A-31.

¹⁷ See Hyosung's Section A Response at A-24.

¹⁸ See Letter from Hyosung to Commerce, "Large Power Transformers from Korea: Sections B-C Questionnaire Responses," dated February 2, 2018, (Section B-C Responses) at B-22; see also Letter from Hyosung to Commerce, "Large Power Transformers from Korea: Hyosung's Supplemental Sales Questionnaire Response (Response to Questions 2 - 104)," dated July 6, 2018, (Supplemental Section B-C Response), at 13 and Exhibit SBC-7(2).

¹⁹ See Hyosung's Section A Response at A-29.

Constructed Export Price

For the price to the United States, we used CEP, in accordance with section 772(b) of the Act. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise.²⁰ We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

With respect to Hyosung, in accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses, including foreign inland freight, foreign inland insurance, foreign brokerage and handling, U.S. inland freight, international freight, marine insurance, and U.S. brokerage and handling expenses and U.S. duty expenses. Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for commissions, direct selling expenses (*e.g.*, oil, installation, duty drawback, inventory carrying costs incurred in Korea and certain other costs) credit expenses, warranties and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

Normal Value

C. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of LPTs in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), Commerce compared the volume of Hyosung's home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.²¹ Based on this comparison, we determined that Hyosung had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP.²² Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit. For CEP sales, the U.S. level of trade is based on

²⁰ See section 772(b) of the Act.

²¹ See Hyosung's Section A Response at Exhibit A-1.

²² See also section 773(a)(7) of the Act.

the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer.²³

To determine if normal value sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁴ If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level of trade is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision).²⁵

For Hyosung, the company reported a single channel of distribution to one category of customers.²⁶ We reviewed the intensity of all selling functions Hyosung claimed to perform for this single channel of distribution and, based on our analysis of all Hyosung's comparison-market selling functions, we preliminarily find all home-market sales were made at the same level of trade, or the normal-value level of trade.²⁷ With regard to U.S. sales, Hyosung also reported one channel of distribution for all sales (*i.e.*, sales through HICO America).²⁸ Finally, we reviewed the selling-functions chart provided by Hyosung. Our review indicated that many of the selling activities were performed by the affiliate HICO America in the United States.²⁹ Based on this information, we preliminarily find that all CEP sales constitute one level of trade, or the CEP level of trade. We then compared the normal-value level of trade, based on the selling functions associated with the transactions between Hyosung and its customers in the home market, to the CEP level of trade, based on the selling functions associated with the transactions between Hyosung and HICO America. Our analysis indicated that the selling functions performed for home-market customers are not performed at a higher degree of intensity, or are greater in number, than the selling functions performed for HICO America. Thus, we preliminarily concluded that the normal-value level of trade is not at a more advanced stage than the CEP level of trade. Accordingly, we preliminarily have not applied a CEP offset to normal value. For further analysis and discussion, *see* the Preliminary Analysis Memorandum.

²³ See 19 CFR 351.412(c)(1)(ii).

²⁴ See 19 CFR 351.412(c)(2).

²⁵ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-33 (November 19, 1997) (applying the CEP offset analysis under section 773(a)(7)(B)).

²⁶ See Hyosung's Section A response at A-14 through A-18 and A-21, and Exhibit A-13. See also Supplemental Section A Response at Exhibit S-18.

²⁷ See Supplemental Section A Response at Exhibit S-18.

²⁸ See Section A Response at A-15 and A-18 through A-22, and Exhibit A-21; see also Supplemental Section A Response at Exhibit S-18.

²⁹ *Id.*

E. Cost of Production

On June 29, 2015, the President signed into law The Trade Preferences Extension Act of 2015, Public Law 114-27, which provides a number of amendments to the antidumping and countervailing duty laws. Pursuant to the amendment of section 773(b)(2) of the Act,³⁰ Commerce required that both respondents provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

1. Calculation of Cost of Production

We calculated the COP for the respondents based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, interest expenses, and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Hyosung, except as follows:³¹

- We adjusted Hyosung's reported per-unit total costs of manufacturing to account for costs excluded from the cost reconciliation.
- We included and excluded specific line items from the general and administrative and financial expense ratios. We recalculated the ratios and applied them to the revised per-unit total costs of manufacturing.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

³⁰ See 19 USC 1677b(b)(2)(A)(ii).

³¹ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hyosung Corporation," dated concurrently with this memorandum.

3. Results of the Cost of Production Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating normal value. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”³² Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.³³

For Hyosung, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.³⁴ Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the companies’ home-market sales data and used the remaining sales to determine normal value.

F. Calculation of Normal Value Based on Comparison Market Prices

We calculated normal value for Hyosung based on the reported packed, ex-factory, or delivered prices to comparison-market customers.

With respect to Hyosung, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*e.g.*, warranty, installation costs, and other charges), pursuant to section 773(a)(6)(B)(ii) of the Act. We added U.S. packing costs and deducted home-market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.³⁵

³² See section 773(b)(2)(C)(ii) of the Act.

³³ See section 773(b)(2)(D) of the Act.

³⁴ See Memorandum from John K. Drury to the File, regarding “Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2016-2017 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea” (Hyosung Preliminary Analysis Memorandum) dated concurrently with this memorandum.

³⁵ See 19 CFR 351.411(b).

G. Price-to-Constructed Value Comparison

Where we were unable to find a home-market match of identical or similar merchandise, we based normal value on constructed value in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of the respondents' material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of constructed value as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Commerce's normal practice is to rely on the financial information most contemporaneous with the period of review.³⁶ Because the majority of this period fell within fiscal year 2017 rather than fiscal year 2016, we relied on Hyosung's G&A and financial expense rates for fiscal year 2017.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

VI. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

A. Application of Facts Available

Sections 776(a)(1) and 776(a)(2)(A)-(D) of the Act provide that, if necessary information is not available on the record, or if an interested party: (1) withholds information requested by Commerce; (2) fails to provide such information by the deadlines for submission of the information, or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information but the information cannot be verified as provided in section 782(i) of the Act, Commerce shall use, subject to section 782(d) of the Act, facts otherwise available in reaching the applicable determination. Section 782(c)(1) of the Act states that Commerce shall consider the ability of an interested party to provide information upon a prompt notification by that party that it is unable to submit the information in the form and manner required, and that party also provides a full explanation for the difficulty and suggests an alternative form in which the party is able to provide the information. Section 782(e) of the Act states further that Commerce shall not decline to consider submitted information if all of the following requirements are met: (1) the

³⁶ See, e.g., *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompany Issues and Decision Memorandum at Comment 3.

information is submitted by the established deadline; (2) the information can be verified; (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; (4) the interested party has demonstrated that it acted to the best of its ability; and (5) the information can be used without undue difficulties.

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

As discussed in detail in the “Hyundai” sections below, we preliminarily find that Hyundai has failed to provide necessary information in the form and manner requested and has significantly impeded this review. We preliminarily determine, therefore, that the application of the facts otherwise available is warranted.

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

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.³⁷ In so doing, and under the Trade Preferences Extension Act of 2015 (TPEA),³⁸ Commerce is not required to determine, or make any adjustments to, a weighted-average dumping margin based on any assumptions about information an interested party would have provided if the interested party had complied with the request for information.³⁹ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference “to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully.”⁴⁰ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before

³⁷ See 19 CFR 351.308(a); see also *Notice of Final Results of Antidumping Duty Administrative Review: Stainless Steel Bar from India*, 70 FR 54023, 54025-26 (September 13, 2005); and *Notice of Final Determination of Sales at Less Than Fair Value and Final Negative Critical Circumstances: Carbon and Certain Alloy Steel Wire Rod from Brazil*, 67 FR 55792, 55794-96 (August 30, 2002).

³⁸ As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the antidumping duty and countervailing duty law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

³⁹ See section 776(b)(1)(B) of the Act.

⁴⁰ See, SAA, H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

Commerce may make an adverse inference.⁴¹ It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁴²

As discussed in detail in the "Hyundai" section below, we preliminarily find that Hyundai has failed to cooperate by not acting to the best of its ability to comply with a request for information to reconcile reported costs at the individual LPT project-level to its normal records. The missing information is necessary for Commerce to analyze Hyundai's section D responses and to calculate a margin. Accordingly, we preliminarily conclude that Hyundai failed to cooperate to the best of its ability to comply with a request for information by Commerce. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.⁴³

C. Selection and Corroboration of the Adverse Facts Available Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.⁴⁴ In selecting a rate based on adverse facts available (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.⁴⁵

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁴⁶ The SAA clarifies that "corroborate" means that Commerce will satisfy itself

⁴¹ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

⁴² See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁴³ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People's Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁴⁴ See 19 CFR 351.308(c).

⁴⁵ See SAA at 870.

⁴⁶ *Id.*

that the secondary information to be used has probative value.⁴⁷ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.⁴⁸

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁴⁹ The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁵⁰

As AFA, we are preliminarily assigning Hyundai a dumping margin of 60.81 percent, an AFA rate used in the previous review.⁵¹ According to 776(c)(2) of the Act, where Commerce has applied a dumping margin in a separate segment of the same proceeding (*i.e.*, a previously calculated dumping margin or where it previously corroborated a rate for facts available), it need not corroborate (again) the rate to be used in the current segment for purposes of facts available.

When a respondent is not cooperative, such as Hyundai in this review, Commerce has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.⁵² If this were not the case, the party would have produced current information showing its rate to be less.⁵³ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

VII. DISCUSSION OF THE ISSUES

A. Hyundai-Specific Issues

We have preliminarily based Hyundai’s dumping margin on adverse facts available. Hyundai failed to provide reliable information on the record pertaining to its cost of producing the LPTs. Rather, as explained more fully below, due to its failure to act to the best of its ability in responding to our requests for information, we did not receive from Hyundai the necessary explanations and documentation supporting the reported costs. Specifically, Hyundai failed to provide all requested explanations and reconciliations associated with the cost differences arising

⁴⁷ *Id.*; see also 19 CFR 351.308(d).

⁴⁸ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan*; *Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

⁴⁹ See section 776(d)(1)-(2) of the Act.

⁵⁰ See sections 776(d)(3)(A) and (B) of the Act.

⁵¹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*2014-2015 LPT Korea Final*).

⁵² See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*)).

⁵³ See *Rhone Poulenc*, 899 F.2d at 1190.

from its admitted manipulation of LPT project costs to achieve project profitability in its normal books and records.⁵⁴ The missing requested explanations and reconciliations are necessary for us to analyze its section D questionnaire responses and to calculate an accurate antidumping margin.

Commerce requires accurate and complete information pertaining to a respondent's cost of producing LPTs because such information: (1) provides the basis for determining whether comparison market sales were made in the ordinary course of trade and can be used to calculate normal value (*i.e.*, comparison market sales made at prices above COP) pursuant to section 773(b)(1) of the Act; (2) is used in the difference-in-merchandise analysis pursuant to section 773(a)(6)(C) of the Act; and, (3) in certain instances (*e.g.*, where there are no comparison market sales made at prices above the COP), is used as the basis for normal value itself.⁵⁵ Commerce has previously explained that in the cases involving a sales-below-cost review, such as here, the failure to provide accurate cost information renders a company's response so incomplete as to be unusable.⁵⁶ Additionally, the CIT has recognized that cost information is a vital part of {Commerce's} dumping analysis."⁵⁷ Accordingly, Commerce examines and confirms not only that a respondent has reported the total pool of costs which the respondent reports as being attributable to the LPT is accurate and complete, but also that the costs are reasonably and accurately allocated to individual CONNUMs. The CIT has recognized that Commerce "'must ensure that {a respondent's} reported costs capture all of the costs incurred by the respondent in producing the subject merchandise' before it can appropriately use that respondent's cost allocation methodology."⁵⁸ The CIT has also recognized that a respondent must provide the information and documentation necessary for Commerce to gain an understanding of a respondent's reporting methodology.⁵⁹

Section 773(f)(1)(A) of the Act provides that, for the purposes of calculating COP and CV, costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles (GAAP) of the exporting country (or the producing country, where appropriate) and *reasonably* reflect the costs associated with the production and sale of the merchandise.⁶⁰ Because of the statutory directive to ensure that a respondent's submitted costs are based on the costs recorded in the normal course of business if such records are kept in accordance with the GAAP of the producer's home country and reasonably reflect the cost of producing LPTs, it is critical that Commerce examine and fully understand the allocation methodologies used by the respondent to

⁵⁴ See Hyundai's Section D Questionnaire Response, dated January 31, 2018, at pages 27 – 29; *see also* page 18, below, for additional discussion related to Hyundai's admitted total cost difference between the costs in its normal books and records and that which it reported to Commerce).

⁵⁵ See *Notice of Final Results of Antidumping Duty Administrative Review, Stainless Steel Bar from India*, 70 FR 54023 (September 13, 2005), and accompanying Issues and Decision Memorandum at Comment 1 (*Stainless Steel Bar from India*).

⁵⁶ *Id.* at Comment 1.

⁵⁷ See *Mukand, Ltd. v. United States*, Court No. 11-00401, Slip Op. 13-41, 2013 WL 1339399 *8 (CIT 2013), *affirmed in*, 767 F.3d 1300 (Fed. Cir. 2014).

⁵⁸ See *Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349, 1356 (CIT 2009) (Sidenor) (quoting *Myland Indus., Ltd. v. United States*, 31 CIT 1696, 1703 (CIT 2007)).

⁵⁹ *Id.* at 1357.

⁶⁰ See section 773(f)(1)(A) of the Act (*emphasis added*).

allocate costs to individual products in its normal course of business. As a part of this analysis, Commerce requires that, in addition to demonstrating that overall production costs at the aggregate level reconcile to a respondent's records, a respondent must demonstrate that the individual cost of manufacturing (TOTCOM) components reported in the cost database (*e.g.*, direct materials (DIRMAT), direct labor (DIRLAB), etc.) also reconcile to its normal records at both the CONNUM-specific and product-specific levels.⁶¹ The CIT has recognized that a respondent's failure to provide documentation to support the individual cost components of its TOTCOM prevented Commerce from ensuring that the reported costs capture all of the costs the respondent incurred in producing LPTs.⁶² In the instant case, as fully explained below, Hyundai has failed to demonstrate how the manipulation of its normal records was reversed such that the reported cost at the individual LPT project-level are actual, verifiable, and reliable.

The Application of Facts Available

Section 776(a)(1) of the Act states, subject to section 782(d) of the Act, that the Department shall use facts otherwise available if necessary information is not available on the record of a proceeding. In addition, section 776(a)(2) of the Act also provides that the Department shall, subject to section 782(d) of the Act, use facts otherwise available if an interested party or any other person: A) withholds information that has been requested by the Department; B) fails to provide such information by the deadlines for the submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 782; C) significantly impedes a proceeding; or, D) provides such information but the information cannot be verified, as provided in section 782(i).

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

Section 782(c)(1) of the Act provides that if an interested party, after receiving a request from the Department, promptly notifies the Department that it is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which it is able to submit the information, the Department shall consider the ability of the interested party to submit the information in the requested form and manner and may modify its requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

⁶¹ See *Stainless Steel Bar from Spain: Final Results of Antidumping Duty Administrative Review*, 72 FR 42395 (August 2, 2007) (Stainless Steel Bar from Spain), and accompanying Issues and Decision Memorandum at Comment 2 (stating that “[t]hroughout this review Sidenor has declined to provide us with requested documentation in support of its reported direct-materials cost at both the control-number and specific-product levels” and explaining that the “primary reason for the Department’s finding that Sidenor did not cooperate to the best of its ability . . . is Sidenor’s failure to provide adequate explanations and requested documentation linking its reported direct-materials cost to cost-accounting records it maintains in the normal course of business”).

⁶² See *Sidenor*, 664 F. Supp. 2d at 1356 (noting that “. . . the fact remains that Sidenor did not provide to Commerce the information necessary ‘to gain an understanding of Sidenor’s reporting methodology’”).

Section 782(e) of the Act states further that the Department shall not decline to consider submitted information if all of the following requirements are met: 1) the information is submitted by the established deadline; 2) the information can be verified; 3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination; 4) the interested party demonstrated that it acted to the best of its ability; and, 5) the information can be used without undue difficulties.

The initial Section D antidumping duty questionnaire, sent to Hyundai on December 13, 2017, requested that Hyundai provide a reconciliation of the submitted per-unit costs of manufacturing provided in the cost of production and constructed value database (COPCV database) to the cost of goods sold in its normal books as reflected on its income statement for the period that most closely matches the period of review. The initial antidumping duty questionnaire further requested that the respondent identify and quantify any differences between the reporting methodology and the normal books and records.⁶³ In its response to the initial antidumping duty questionnaire, Hyundai disclosed the manipulation of cost information described above and identified the total cost difference between the costs in its normal books and records and that reported to Commerce.⁶⁴ Hyundai explained that this difference is due to the shifting of LPT project costs to achieve certain profitability levels and requested that Commerce disregard the normal books and rely on the reported costs.⁶⁵ Hyundai explained that at the onset of each LPT project, Hyundai has budgeted costs of production and project profitability. As production of an LPT progresses, Hyundai explained that if the actual costs for the project exceed the budgeted costs, the team will reassign certain cost elements to other projects for which the total budgeted cost has not yet been reached. This enables Hyundai to maintain the appearance of profitability for each project in its normal books and records. However, as discussed below, in response to requests made by Commerce, Hyundai failed to provide support demonstrating the composition or reasonableness of its correction to these cost differences (*i.e.*, the project-specific cost differences between its normal books and records and the reported costs).

In order to fully understand and evaluate, and to allow Hyundai the opportunity to further explain, the differences between the reported costs and those from its normal books and records, we issued two supplemental questionnaires on May 24, 2018, and July 12, 2018.⁶⁶ These questionnaires requested that Hyundai, for each project, provide an itemization of the incorrect booking of cost items (*i.e.*, the job-specific cost differences) to include all parts, materials, and conversion costs which make up these differences for each project and any other difference in how the input material consumption values were determined.⁶⁷ In each of its responses dated June 11, 2018, and July 23, 2018, Hyundai failed to provide part-specific itemized cost

⁶³ See Section 773(f)(1)(A) of the Act (Cost shall normally be calculated based on the records of the exporter or producer if kept in accordance with generally accepted accounting principles and reasonably reflect the cost associated with production).

⁶⁴ See Hyundai's Section D Questionnaire Response, dated January 31, 2018, at attachment D-20.

⁶⁵ *Id.* at 27 – 29.

⁶⁶ See First Section D Supplemental Questionnaire, dated May 24, 2018, at 6-7; See Second Section D Supplemental Questionnaire, dated July 12, 2018, at 3.

⁶⁷ See First Section D Supplemental Questionnaire, dated May 24, 2018, at 6-7; See Second Section D Supplemental Questionnaire, dated July 12, 2018, at 3.

differences for the entire difference for all projects and did not address our question about differences in the valuation of material costs.⁶⁸ The itemization of incorrectly recorded costs for each project is vital for Commerce to ensure accurate reporting of project-specific costs and to determine whether the deviation from normal books is appropriate and reliable.

We therefore requested that Hyundai demonstrate where the cost differences were being shifted to/from in the normal books and records for all projects.⁶⁹ Hyundai, however, failed to demonstrate where the cost differences were shifted to/from for all projects. As shown in Attachment 2SD-1, Hyundai only provided the cost differences in aggregate, and did not otherwise trace part-specific costs as they are shifted from one project to another. Hyundai claims that the largest material input (*i.e.*, silicon steel) “is fungible and it is not possible to trace” the associated cost differences on a project specific basis.⁷⁰ However, Hyundai maintains raw material inventories and materials were removed from inventory to be used for each LPT project.⁷¹ Further, despite record evidence showing that engineering and design documents are utilized to determine quantities and values to be purchased for each project,⁷² Hyundai made no attempt to satisfy our request nor did it provide an alternative method.

Additionally, included in the initial antidumping duty questionnaire, as part of the cost reconciliation, we requested that respondents reconcile fiscal year cost of goods sold (COGS) to POR COGS for the period of review. Hyundai failed to provide its cost reconciliation in the format requested by Commerce in its January 31, 2018, initial response and did not include a reconciliation from fiscal year COGS to POR COGS to adjust cost of production for cutoff adjustments.⁷³ In our supplemental questionnaire dated May 24, 2018, we requested that Hyundai submit a cost reconciliation based on our instructions in the initial antidumping duty questionnaire.⁷⁴ Hyundai submitted a revised cost reconciliation in the requested format in response to our request on June 11, 2018, but provided no cutoff adjustment and therefore, failed to reconcile from fiscal year COGS to POR COGS for the second time.⁷⁵

As noted above, Section 773(f)(1)(A) of the Act provides that, for the purposes of calculating COP and CV, costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with GAAP of the exporting country (or the producing country, where appropriate) and *reasonably* reflect the costs associated with the production and sale of the merchandise. Therefore, it is essential for the respondent to identify and support all differences, at an appropriate level of detail, between the CONNUM specific per-unit production costs that we use in the antidumping duty margin program and the costs recorded in Hyundai’s normal books and records. The itemization of cost differences and tracing of those differences to each project, as requested, is needed to identify whether costs have

⁶⁸ See Hyundai’s First Supplemental Section D Questionnaire, dated June 11, 2018, at attachment SD-16; See Hyundai’s Second Section D Supplemental Questionnaire Response, dated July 23, 2018, at attachment 2SD-1

⁶⁹ See Second Section D Supplemental Questionnaire, dated July 12, 2018, at 3.

⁷⁰ See Hyundai’s Second Section D Supplemental Questionnaire Response, dated July 23, 2018, at 2 and 3.

⁷¹ See Hyundai’s Section D Questionnaire Response, dated January 31, 2018, at 28.

⁷² See Hyundai’s First Supplemental Section D Questionnaire, dated June 11, 2018, at 9 – 10 and, at attachment SD-18.

⁷³ See Hyundai’s Section D Questionnaire Response, dated January 31, 2018, at attachment D-20.

⁷⁴ See First Section D Supplemental Questionnaire, dated May 24, 2018, at 6.

⁷⁵ See Hyundai’s First Supplemental Section D Questionnaire, dated June 11, 2018, at attachment SD-23.

been properly removed from or included in the CONNUM-specific reported costs. As such, understanding and supporting differences from the normal books and records is a necessary step in assessing the completeness and accuracy of the reported costs that are used in the margin program to calculate difference-in-merchandise adjustments, to perform the sales-below-cost test and to represent a product's constructed value. Without the ability to fully support the cost reconciliation and the differences between actual costs and manipulated books and records, we cannot rely on the reported per-unit costs of production. Without reliable cost data we cannot perform a reliable sales-below-cost test on the home market sales to determine if sales were made in the ordinary course of trade. Without reliable cost data we cannot perform reliable price-to-price comparisons of products that are similar, as we would have no practical means to adjust for differences in price due to product differences. In addition, without reliable cost data we cannot perform reliable price-to-CV comparisons, if there are no usable home market sales deemed acceptable for price comparison.

Therefore, because Hyundai failed to provide support for the cost differences or an accurate cost reconciliation, as explained above, Commerce was left with unreliable cost data. As a result, in accordance with 776(a) of the Act, we preliminarily find that the application of facts available is warranted. Additionally, because of the many opportunities Hyundai was given to submit data needed to support the cost differences, we preliminarily find that the application of an adverse inference is also warranted in accordance with 776(b) of the Act.

In addition, as discussed above, Commerce fulfilled its requirements under Section 782(d) of the Act by allowing Hyundai numerous attempts to adequately support and explain the reported cost differences resulting from shifting costs to different projects to achieve desired project-specific profitability in its normal books and records. If Hyundai was in fact unable to submit the information supporting the cost differences in the requested form and manner, they failed to provide any alternative suggestions or information as allowed under Section 782(c)(1) of the Act. Finally, Hyundai has satisfied none of the requirements under Section 782(e) of the Act. That is, in this case, the information submitted by the established deadline cannot be verified, it is so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, there is a demonstration that the party has not acted to the best of its ability, and the information cannot be used without undue difficulties. Therefore, we have applied total adverse facts available to Hyundai for purposes of the preliminary determination.

VIII. RATE FOR NON-SELECTED COMPANIES

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, Hyosung and Hyundai are two mandatory

respondents and Hyundai has a margin determined entirely on the basis of facts available. Accordingly, we have applied a rate of 0.00 percent from Hyosung to the non-selected companies.

IX. PARTS

For this administrative review, we received comments from interested parties, and solicited information from respondents, regarding parts and components, and “accessories,” in order to determine what constitutes in-scope merchandise and to ensure that all revenues, expenses, and costs are properly accounted for and treated consistently in each market. For these preliminary results, we determine that merchandise which consists of “any other parts attached to, imported with or invoiced with the active parts,” as defined in the scope of the order, is subject merchandise, regardless of whether or not such components or parts are referred to as “accessories.” Parties are invited to comment on Commerce’s preliminary findings with respect to this issue.

X. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.

☒

☐

Agree

Disagree

8/31/2018

X 

Signed by: GARY TAVERMAN