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April 12, 2019

MEMORANDUM TO: Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on Large
Power Transformers from the Republic of Korea; 2016-2017

I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we continue to find that the application of total adverse facts available (AFA) is appropriate for Hyundai Heavy Industries Co., Ltd. and Hyundai Electric & Energy Systems Co. (collectively, Hyundai), as discussed below. For Hyosung Corporation (Hyosung), we have made changes from the *Preliminary Results*,¹ as discussed below. We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. The complete list of the issues in this administrative review for which we received comments from parties is provided below.

¹ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016–2017*, 83 FR 45415 (September 7, 2018) (*Preliminary Results*) and accompanying decision memorandum (PDM).



II. LIST OF ISSUES

A. Hyundai-Specific Issues

- Comment 1: Reliability of Hyundai's Cost Data
- Comment 2: Hyundai's Cost Reconciliation
- Comment 3: An Adverse Inference is Not Warranted
- Comment 4: Moot Issues

B. Hyosung-Specific Issues

- Comment 5: Ministerial Errors
- Comment 6: Service Related Revenue Capping and Order Acknowledgement Form
- Comment 7: U.S. Indirect Selling and General and Administrative Expenses
- Comment 8: Whether Commerce's Preliminary Results G&A Expense Adjustment was Appropriate
- Comment 9: Variable Overhead Expenses
- Comment 10: Costs of Spare Parts
- Comment 11: Packing Costs
- Comment 12: Scrapped Materials
- Comment 13: Product Codes and Home Market Sales
- Comment 14: Product Codes and U.S. Sales
- Comment 15: Product Codes and "VOH3B" Cost Variances
- Comment 16: Warranty Expenses
- Comment 17: Depreciation Costs
- Comment 18: Document Acceptance Charge
- Comment 19: Interest Expense Ratio
- Comment 20: Brokerage Expenses
- Comment 21: Effective Date of the Deposit Rate
- Comment 22: Successor in Interest
- Comment 23: Cost Variances
- Comment 24: Constructed Export Price Offset
- Comment 25: Constructed Value for Normal Value

C. General Issues

- Comment 26: Rate for Non-selected Respondents

III. BACKGROUND

On September 7, 2018, the Department of Commerce (Commerce) published the *Preliminary Results* of the administrative review of the antidumping (AD) duty order on large power transformers (LPTs) from the Republic of Korea (Korea) for the period August 1, 2016, through July 31, 2017. The review covers five producers/exporters of the subject merchandise: Hyosung, Hyundai, Iljin, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co., Ltd. (LSIS). The

two manufacturers/exporters that were selected as mandatory respondents were Hyosung and Hyundai. Iljin, Iljin Electric, and LSIS were not selected for individual examination.

We conducted sales and cost verifications of Hyosung, and subsequently issued verification reports.² On February 15, 2019, Iljin submitted a case brief, and on February 19, 2019, Hyosung, Hyundai, and ABB Inc. (the petitioner), timely submitted case briefs³ commenting on the *Preliminary Results* as well as the Hyosung verification reports. The petitioner, Hyosung, Hyundai, and Iljin timely filed rebuttal briefs on March 4, 2019.⁴

IV. SCOPE OF THE ORDER

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

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

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

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

² See “Verification of the Sales Responses of Hyosung Corporation, in the 2016/2017 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated December 20, 2018 (Hyosung Korea Sales Verification Report); “Verification of the U.S. Sales Responses of Hyosung Corporation and its U.S. affiliate HICO America in the 2016/2017 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated December 20, 2018 (Hyosung CEP Verification Report); and “Verification of the Cost Response of Hyosung Corporation, in the Antidumping Duty Review of Large Power Transformers from Korea,” dated December 20, 2018 (Hyosung Korea Cost Verification Report).

³ See “Large Power Transformers from Korea for the 2016-17 Review Period – Case Brief of Iljin Electric Co.,” dated February 15, 2019 (Iljin Case Brief); “Large Power Transformers from Korea: Affirmative Case Brief,” dated February 19, 2019 (Hyosung Case Brief); “Large Power Transformers from Korea: Hyundai’s Case Brief,” dated February 19, 2019 (Hyundai Case Brief); “Petitioner’s Case Brief Regarding Hyundai,” dated February 19, 2019 (Petitioner’s Hyundai Case Brief); and “Petitioner’s Case Brief Regarding Hyosung,” dated February 19, 2019 (Petitioner’s Hyosung Case Brief).

⁴ See “Petitioner’s Rebuttal Brief Regarding Hyundai,” dated March 4, 2019 (Petitioner’s Hyundai Rebuttal Brief); “Petitioner’s Rebuttal Brief Regarding Hyosung,” dated March 4, 2019 (Petitioner’s Hyosung Rebuttal Brief); “Large Power Transformers from Korea: Rebuttal Brief,” dated March 4, 2019 (Hyosung Rebuttal Brief); “Large Power Transformers from Korea: Hyundai’s Rebuttal Brief,” dated March 4, 2019 (Hyundai Rebuttal Brief); and “Large Power Transformers from Korea for the 2016-17 Review Period – Rebuttal Brief of Iljin Electric Co.,” dated March 4, 2019 (Iljin Rebuttal Brief).

V. APPLICATION OF ADVERSE FACTS AVAILABLE

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

As discussed in Comment 1 below, we continue to find that Hyundai withheld requested information and otherwise impeded this review by failing to comply with a request for information to reconcile reported costs at the individual LPT project-level to its normal records. Hyundai failed to provide all requested explanations and reconciliations associated with the cost differences arising from its admitted manipulation of LPT project costs to achieve project profitability in its normal books and records. Therefore, Hyundai has failed to demonstrate how the manipulation of its normal records was reversed such that the reported costs at the individual LPT project-level are actual, verifiable, and reliable.

Furthermore, as discussed in Comments 7 and 18 below, we find that Hyosung withheld requested information and otherwise impeded this review. Specifically, during verification, we found that several reported individual general and administrative (G&A) expenses and indirect selling expenses (ISE) were actually affiliated transactions. Because we do not have any information on the record to test the arm’s-length nature of the transactions due to Hyosung’s failure to disclose affiliates, as partial AFA, we have added the expenses for transactions with affiliated parties into the reported G&A and ISE and recalculated the ratios for G&A and ISE in both the home and U.S. markets. Additionally, at verification, Commerce discovered that HICO America incurs a document acceptance charge for sales to the United States. As partial AFA, we are deducting the amount of the document charge incurred from each U.S. sale.

For these reasons, and as discussed below in Comments 1, 2, 3, 7, and 18, Commerce concludes that the application of total facts available with an adverse inference is warranted with respect to Hyundai and that the application of partial facts available, with an adverse inference, is warranted with respect to Hyosung, pursuant to sections 776(a)(2)(A) and (C), and 776(b) of the Act.

VI. DISCUSSION OF THE ISSUES

A. Hyundai-Specific Issues

Comment 1: Reliability of Hyundai's Cost Data

In the *Preliminary Results*, Commerce applied total AFA to Hyundai. Commerce preliminarily found that Hyundai failed “to comply with a request for information to reconcile reported costs at the individual LPT project-level to its normal records.”⁵ Commerce explained that “Hyundai failed to provide all requested explanations and reconciliations associated with the cost differences arising from its admitted manipulation of LPT project costs to achieve project profitability in its normal books and records.”⁶ Commerce concluded that “Hyundai has failed to demonstrate how the manipulation of its normal records was reversed such that the reported costs at the individual LPT project-level are actual, verifiable, and reliable.”⁷

Hyundai's Comments:

- Hyundai asserts that at the core of Commerce's decision was a finding that “because Hyundai failed to provide support for the cost differences {between its SAP and EEMTOS cost systems} or an accurate cost reconciliation ..., Commerce was left with unreliable cost data.”⁸
- Hyundai argues that the supporting documentation it presented show the cost differences between its cost systems (SAP and EEMTOS) and the reported costs reconcile to its financial statements.⁹ “Hyundai believes that the documentation provides part-specific cost tracing to the maximum extent possible using the available accounting and production records.”¹⁰
- Hyundai argues that in previous phases of this proceeding Commerce relied upon documents that were identical in approach to establish the accuracy of Hyundai's reported costs.¹¹ Therefore, Hyundai's cost information can be verified, is reliable, and can be used without undue difficulties.¹²
- Hyundai asserts that it cooperated to the best of its ability; therefore, an adverse inference is not warranted. Hyundai argues that it traced part-specific costs and provided a cost reconciliation that was consistent with the cost systems used in the ordinary course of business.¹³
- Hyundai argues that whether the documents submitted by Hyundai are characterized as having been provided in the “form and manner” anticipated by Commerce or as reasonable alternatives, the documents establish the accuracy and reliability of Hyundai's cost data.¹⁴

⁵ See PDM, at 14.

⁶ *Id.*, at 15-16.

⁷ *Id.*, at 17.

⁸ See Hyundai Case Brief, at 1 (citing to PDM, at 20).

⁹ *Id.*, at 1-2.

¹⁰ *Id.*, at 2.

¹¹ *Id.*, at 2.

¹² *Id.*, at 2.

¹³ *Id.*, at 3 and 5-8.

¹⁴ *Id.*, at 3.

- Hyundai points to an attachment showing the transformer-specific, material-specific quantifications of the differences between the material costs recorded in SAP and the actual material consumption by transformer. Hyundai argues that the worksheet quantified the project-specific differences attributable to silicon steel and the differences attributable to parts within the adjustment from SAP to actual costs.¹⁵
- Hyundai demonstrated, for each transformer, the project from which the costs for specific parts were shifted and the project to which the costs of the part were shifted, along with the corresponding material codes, material descriptions, and amounts in Korean won (KRW).¹⁶
- Hyundai quantified the silicon steel costs incurred versus those originally budgeted for each project.¹⁷
 - It demonstrated the differences between the costs recorded in SAP, which were budgeted at the time work began, and the actual transformer-specific consumption, on a project-by-project basis.¹⁸
 - Hyundai argues that unlike other material costs which are recorded to both the EEMTOS and the SAP bills of materials (BOMs), it is not possible to trace the shifting of silicon steel costs from one project BOM to another, because, among other reasons, silicon steel consumption is not recorded in the EEMTOS BOM. Thus, Hyundai argues that the silicon steel adjustments made to the SAP BOMs were to replace the budgeted amounts for actual silicon steel amounts.¹⁹
 - Hyundai accuses Commerce of conflating purchases of silicon steel with consumption of silicon steel when Commerce notes that Hyundai must plan silicon steel purchases to match production and that “materials were removed from inventory to be used for each LPT project.”²⁰ Hyundai reiterates that “only in the silicon steel processing report,” not the EEMTOS BOM or the SAP BOM, can you determine the actual silicon steel consumed for each LPT.²¹
 - Hyundai argues that silicon steel is a fungible input which cannot be traced as a “part” from project-to-project. They note there is no one-to-one ratio between purchases and consumption, and the balance of unused silicon steel at the end of production for one project becomes available for use in another project. This they assert is shown in the core steel processing reports, which indicate the amount of silicon steel remaining for use in another project.²²
 - Hyundai asserts that it quantified these differences on a transformer-specific basis, as requested by Commerce. In providing the transformer-specific differences between silicon steel purchases, as recorded in the SAP BOM, and the actual steel consumption, as recorded in the silicon steel processing report, Hyundai followed the same methodology used by Commerce in the previous review.
- Even if its responses were not exactly what Commerce had in mind when it requested cost tracing, Hyundai contends that its approach was a reasonable alternative, and one which

¹⁵ *Id.*, at 4.

¹⁶ *Id.*, at 6.

¹⁷ *Id.*, at 8.

¹⁸ *Id.*, at 8.

¹⁹ *Id.*, at 9.

²⁰ *Id.*, at 10 (citing PDM, at 19).

²¹ *Id.*, at 10.

²² *Id.*, at 11-12.

Commerce had itself used in a past verification. Indeed, the method used by Hyundai was the best method available based on the records maintained by Hyundai. There was no document that permits the tracing of silicon steel from project-to-project.²³

Petitioner's Rebuttal Comments:

- Hyundai impeded Commerce's investigation by failing to demonstrate the accuracy and reasonableness of its admittedly manipulated cost data.
- Hyundai repeatedly failed to fully provide the itemized cost differences requested by Commerce in multiple questionnaires and instead, with the exception of other material costs, provided only aggregate cost differences.
- Hyundai's brief relies on the limited itemized data that it did submit, *i.e.*, for other material costs; however, that data is critically flawed and in conflict with other record evidence.²⁴
- Hyundai withheld the requested explanations regarding the calculations and shifting of cost differences by providing a limited two-sentence explanation for only one of the six categories of cost adjustments.
- Hyundai's claim that it does not track silicon steel, one of the two largest inputs into LPT production, to projects, while all other raw materials are tracked to projects, is implausible and contradicted by record evidence, including sales documentation such as mill test certificates.²⁵
- Hyundai made no attempt to satisfy Commerce's request to itemize all silicon steel costs that were shifted between projects nor did Hyundai provide an alternative method that demonstrated it had reasonably reported this cost data.

Commerce's Position

We continue to find that Hyundai failed to provide the information as requested, or to sufficiently address its manipulation of transformer costs, within its own normal books and records.²⁶ As stated in the preliminary results, "Hyundai failed to provide all requested explanations and reconciliations associated with the cost differences arising from its admitted manipulation of LPT project costs."²⁷ Commerce continues to conclude that Hyundai "failed to demonstrate how the manipulation of its normal records was reversed, such that the reported costs at the individual LPT project-level are actual, verifiable, and reliable."²⁸ While Hyundai provided limited information after our second request, mostly concerning the reassignment of direct materials to the correct LPTs (for response purposes), it did not provide the requested complete details and explanations surrounding all of its cost shifting and deviations from what is recorded in its normal books and records or to show how the reported costs fully reversed the full extent of the manipulations.²⁹

²³ *Id.*, at 12.

²⁴ See Petitioner's Hyundai Rebuttal Brief, at 13-14.

²⁵ *Id.*, at 17.

²⁶ See *e.g.*, Hyundai January 31, 2018 DQR, at 20 and 27.

²⁷ See PDM, at 15-16.

²⁸ *Id.*, at 17.

²⁹ *Id.*, at 14 to 16.

Section 773(f)(1)(A) of the Act directs Commerce to normally rely on a company's generally accepted accounting principles (GAAP)-based books and records, if such records reasonably reflect the costs associated with producing the merchandise under consideration. In so doing, Commerce considers a company's normal books and records to be the source of the "public-presentation" of its audited financial statements. Thus, consistent with the statute, Commerce typically relies on the expenses from a respondent's audited financial statements as a company's starting point for establishing total costs, and relies on the company's underlying accounting books and records (*e.g.*, such as inventory ledgers) as the most reasonable and identifiable means of establishing individual product costs. The burden to justify a departure from normal books and records falls to the party arguing for departure, in this case, to Hyundai.³⁰ Moreover, because the record shows that Hyundai knowingly taints its own normal records, to show consistent product profitability, Hyundai has the added burden of establishing which records kept in the normal course of business are not tainted, thus reliable for purposes of forming a foundation for the actual costs, and whether such records are sufficient to provide support for actual product costs.³¹ In this proceeding, Hyundai has provided only limited and piecemeal responses to our efforts to fully address the issue, thus impeding our ability to clarify which costs are distorted, what records are reliable, and whether the efforts by Hyundai fully correct the distortions. Due to the proprietary nature of Hyundai's admissions, the following is a limited discussion of the issue. For the BPI version *see* the memorandum titled "Business Proprietary Information on Cost of Production and Constructed Value for the Final Results."³²

Based on Hyundai's own admissions to Commerce, it is undisputed that the project costs calculated in Hyundai's SAP accounting system (*i.e.*, Hyundai's normal books and records) do not reasonably reflect the costs associated with producing the merchandise under consideration. Thus, as an initial matter, we agree with Hyundai that the project costs calculated in its normal

³⁰ We note that the Courts have indicated that companies are expected to keep proper accounting records. *See Nippon Steel Corp. v. United States*, 337 F.3d 1373 (U.S. App. 2003) where the appellate court found, "Compliance with the 'best of its ability' standard is determined by assessing whether respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation. While the standard does not require perfection and recognizes that mistakes sometimes occur, it does not condone inattentiveness, carelessness, or inadequate record keeping. It assumes that importers are familiar with the rules and regulations that apply to the import activities undertaken and requires that importers, to avoid a risk of an adverse inference determination in responding to Commerce's inquiries: (a) take reasonable steps to keep and maintain full and complete records documenting the information that a reasonable importer should anticipate being called upon to produce; (b) have familiarity with all of the records it maintains in its possession, custody, or control; and (c) conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so."

³¹ *See Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the People's Republic of China: Affirmative Final Determination of Sales at Less Than Fair Value and Final Critical Circumstances, in Part*, 83 FR 16322, dated April 16, 2018, and accompanying decision memorandum at Comment 1 (where Commerce stated that, "Specifically, the magnitude of Hongyi's inventory adjustment, the inappropriate expensing of materials that were never consumed in production, and the number of years during which Hongyi inappropriately recorded production costs and inventory, raise serious concerns about the integrity of the company's accounting records and render Hongyi's reported factors of production unreliable. Because Commerce is unable to rely on Hongyi's underlying books and records or financial reporting, which serves as the basis of Hongyi's reported factors of production, verification is not possible.").

³² *See* "Business Proprietary Information on Cost of Production and Constructed Value for the Final Results – Hyundai Electric & Energy Systems and Hyundai Heavy Industries, (collectively Hyundai)," dated concurrently with this memorandum (Hyundai Proprietary Cost Memorandum)

books and records (*i.e.*, the SAP© BOMs) were not sufficient for reporting purposes. The focus shifts then to Hyundai's devised methodology for calculating the actual costs of the merchandise under consideration. However, in doing so, Hyundai is compelled to provide source information on expenses from its SAP© accounting system, (*i.e.*, the same system that is tainted). As stated above, the presumption of the statute is to rely on a respondent's normal books and records. Typically, such reliance relates to disputes concerning the treatment of costs from otherwise reliable records. As such, Commerce's cost adjustments are usually limited to reallocations of costs not normally assigned to products or to whether it is appropriate to exclude particular costs, and do not address a purposeful systemic shifting of costs in an entire accounting system. This raises significant concerns for Commerce. Most importantly, where a company's normal books and records are unreliable, how can Commerce confirm the total pool of costs that should be assigned or allocated to products and then how to obtain assurance that the "revised" cost allocation methodology reasonably and accurately assigns or allocates those total costs to the products produced.

To address these questions and adequately assess the reliability of the reported costs, Commerce first endeavored to obtain from Hyundai a clear and full disclosure of the extent of the manipulation. For example, Commerce requested a detailed accounting and demonstration of each manipulation for all home market and U.S. sales, and its effect on other costs (*e.g.*, conversion cost allocations based on incorrect direct material costs, work in process where a project straddled non-POR and POR periods, *etc.*). Commerce also requested that Hyundai identify reliable documents and fully document in a detailed fashion all corrections to the inaccurate and distorted SAP© records.³³ Additionally, Commerce requested a reconciling of all the differences between the SAP© costs and the costs in the cost file. The intent was to establish a complete picture of the issue and determine the total pool of costs that should have been allocated to each of the reportable products. It was essential that early in the proceeding Hyundai fully document the corrections for all LPTs, so that all parties were afforded the opportunity to assess whether the manipulations were fully accounted for, and the reported costs were now based on reliable records. The burden of full transparency falls on Hyundai as they are the only party with full knowledge as to the extent of the alterations, what records are available, and which records are tainted. Additionally, the complexity of the product in question and the extent of the manipulation are of fundamental concern to such an inquiry, as they go to the ability of the agency, and other interested parties, to analyze within a limited period of time both the financial and technical engineering evidence put forward by the respondent to justify continuing with the proceeding. The next step, after obtaining complete details and explanations surrounding all of its cost shifting and deviations from what is recorded in its normal books and records, would have been to determine what reliable records, if any, were available to test the corrected costs against. However, the incomplete responses to Commerce's supplemental questions prevented us from reaching this point, as the complete picture associated with the shifting and deviations remained undetermined. With these considerations in mind, we continue to find that Hyundai withheld important requested information and failed to sufficiently demonstrate that the reported costs are reliable. Below, we outline Hyundai's deficiencies in establishing the reliability of the reported product-specific costs and discuss the adequacy of Hyundai's responses with regard to the requested cost reconciliations.

³³ See Commerce's First Supplemental D Questionnaire (May 24, 2018) (1SDQ) at 4-5.

First, the initial section D questionnaire directed Hyundai to “{list and describe all differences between costs computed under your company’s normal cost and financial accounting systems and the costs submitted in {this} response.”³⁴ Further, the questionnaire instructed Hyundai to “identify and quantify” all “differences between the reporting methodology and the normal books and records.”³⁵ However, in its initial response, Hyundai only identified the cost difference in aggregate for each project and failed to fully distinguish each quantity and value difference between its SAP© costs and the costs reported to Commerce by cost type (*i.e.*, raw materials, direct labor, *etc.*).³⁶ Due in part to these deficiencies, Commerce issued a supplemental questionnaire on May 24, 2018, where Commerce provided more explicit instructions to Hyundai including the following:

For each reported home and U.S. market sale, provide the total costs recorded in SAP, the total costs reported to the Department, and an itemization of the materials and related costs making up the difference. Explain in detail how you were able to identify and quantify the costs that were mis-recorded in your SAP© system. Please show how the adjustments in each project offset each other and reconcile in total.

After multiple extensions of time to answer these questions, Hyundai again identified only the total POR cost differences and merely explained that “Hyundai downloaded BOMs from both systems and by computer program was able to trace all materials in the EEMTOS BOMs to the SAP© BOMs.”³⁷ Thus, instead of providing for each reported home and U.S. market sale, a complete itemization of all transactions detailing the manipulation (including the subsequent impact of labor, variable overhead and fixed overhead) and support as requested, Hyundai only provided a schedule of direct materials, which showed three years of total monthly direct material costs, in aggregate for all transformers. For one sample month, which was outside the POR, Hyundai provided a table showing the difference between each project’s SAP© BOM and the EEMTOS BOM, and not between SAP© and the reported costs. Thus, not only did Hyundai’s response fail to fully identify the project-specific direct material cost manipulations between SAP© and the reported costs for the POR, it failed to address any of the other myriad of cost differences for labor and overheads.

On July 12, 2018, Commerce extended to Hyundai a third opportunity to provide the details surrounding its deviation from its normal books and records, which were necessary to establish the reliability of the reported costs. In doing so, Commerce clearly listed the deficiencies in Hyundai’s previous submissions and detailed the information that was necessary to rectify these deficiencies.³⁸ On July 23, 2018, Hyundai partially complied by providing a cost differences

³⁴ See *e.g.*, Hyundai January 31, 2018 DQR at 31.

³⁵ *Id.*, *e.g.*, at 34.

³⁶ *Id.*, *e.g.*, at 34 and Attachment D-20.

³⁷ See *e.g.*, Hyundai June 11, 2018 SDQR, at 8-9 and Attachment SD-16.

³⁸ See Commerce’s Second Supplemental D Questionnaire (July 12, 2018) (2SDQ) where Commerce stated that, “You did not provide a response to question 9 in your First Supplemental Section D Questionnaire Response (“SSDQR”). For each reported home market and U.S. sale, provide the following in a revised schedule: a) Total POR costs recorded in SAP and the total POR costs reported to the Department. Ensure the total POR cost reported to the Department agrees to your COP file; b) For the difference between the SAP costs and the reported costs ... itemize each specific material and conversion cost item which make up that difference. For example, identify all

worksheet which split the total cost differences, by LPT project, into six categories.³⁹ These categories are: 1) silicon steel costs; 2) other material costs; 3) scrap; 4) fixed overhead costs; 5) material costs incurred after the year of cost of goods sold (COGS) recognition on the project; and, 6) expenses recorded after the year of COGS recognition for the project.⁴⁰ However, Hyundai provided the requested detail information for only one of the six categories of costs, *i.e.*, other materials, that it identified as being manipulated.⁴¹ These “other materials” are the part-specific cost tracing which Hyundai now submits as evidence of its responsiveness to Commerce’s inquiries. Yet, other materials are only one of the six cost categories that Hyundai identified as being manipulated and needing adjustment. Thus, contrary to Hyundai’s assertions that it is a concern of whether Hyundai presented the information in an alternative manner than requested, it rather is the fact that the requested information was not presented to Commerce in any “form or manner.”

With regard to silicon steel, which is a significant input into LPT production, the essential issue is not, as Hyundai puts forward, that there was a difference or confusion between the “purchased” quantities and values recorded in its SAP® BOMs and the “consumed” quantities and values in the cutting shop processing reports. Rather, the issue is that Hyundai failed to demonstrate and support how each project’s reported silicon steel consumption quantities and per-unit input values were calculated, that they truly represent actual consumption, and how the per-unit input valuations differed from those recorded in SAP®. Thus, Hyundai failed to adequately address Commerce’s questions with regard to silicon steel, a significant direct material input into the production of LPTs.

Silicon steel, *i.e.*, core steel, is input into Hyundai’s production of LPTs, and by the company’s own admission, Hyundai failed to demonstrate how cost manipulation among the LPT projects can be traced to, or supported by, the normal books and records.⁴² Hyundai failed to reconcile or itemize these cost differences as requested in our questionnaire and, therefore, did not demonstrate how the normal books and records project-specific input quantities and per-unit values are determined and recorded to SAP and why such amounts are reasonable or unreasonable.⁴³

Furthermore, in order to clarify the amounts reported to Commerce, we requested that Hyundai “support the quantity and value of actual material consumption per the actual BOM with project specific engineering/specification reports.”⁴⁴ In their response, Hyundai provided engineering

parts and raw materials that are included or excluded from other LPTs; c) For all SAP and reported cost itemized material and conversion cost differences show which LPT project the itemized items were shifted to/from in SAP; d) Explain in detail how you were able to identify and quantify the costs which were miss-recorded in SAP; *see also e.g.*, Hyundai June 11, 2018 SDQR.

³⁹ See Hyundai July 23, 2018 2SDQR at 1-3.

⁴⁰ *Id.*, at 2.

⁴¹ Hyundai admits that Exhibit 2 of 2SDQR contained errors. See Hyundai Case Brief, at 6.

⁴² See Hyundai July 23, 2018 2SDQR, at 2, where Hyundai states “Unlike all other materials, silicon steel is fungible, and it is not possible to trace the projects to and from which silicon steel costs might have been shifted.”

⁴³ See Attachment SD-19 and page 9 of the 1SDQR; *see also* Hyundai June 11, 2018 SDQR, at Attachment SD-19.

⁴⁴ See Hyundai June 11, 2018 SDQR at 9.

calculations of the theoretical silicon steel necessary to achieve the desired electrical properties.⁴⁵ However, not only did these engineering calculations not support the per-unit values, but there were also differences in quantities compared to the silicon steel processing report (*i.e.*, source for reporting silicon steel quantity and value) and to the SAP© BOM.⁴⁶ Hyundai simply attributed the difference in quantities between the silicon steel processing report and the engineering calculations to yield losses, and did not support the quantities and values as requested in the question.⁴⁷ Yield losses are typically based on the difference between the consumption for the job and the actual amount in the final product, not between consumption at a preliminary processing stage and theoretical quantities. Further, Hyundai did not explain how the silicon steel processing reports then reconcile to its SAP© system (*i.e.*, normal books and records) and did not explain the quantity differences between the SAP© BOMs and the theoretical calculations.

Hyundai also failed to demonstrate how the cost manipulation among the LPT projects was corrected for the fixed overhead (FOH) and scrap categories, how they can be traced through the SAP system, or provide any support for these two categories. For the last two categories, Hyundai failed to discuss how the cost manipulation among the LPT projects for “add back of expense” and “add back of materials” incurred after the year of COGS recognition is a part of the reported cost difference. Hyundai failed to itemize each specific material and conversion cost making up the “add back of expense” and “add back of materials” incurred after the year of COGS recognition cost differences and which LPT projects these itemized cost differences are shifted to and from. Further, Hyundai provided no explanations regarding the impact of its manipulation on variable overhead (VOH) costs.

Hyundai argues that Commerce has previously relied on the very same information which Commerce now considers unreliable. While it is true Hyundai disclosed in prior segments that it shifts costs between projects, Hyundai is incorrect that these admissions were not of concern to Commerce. In the prior segments, Commerce made initial attempts to understand the issue and Hyundai claimed that it was stopping the practice, however the shifting reoccurred in this segment and the issue was raised by the petitioner. Moreover, Hyundai’s responses in the previous two administrative reviews were rejected because they were deemed unreliable due to not providing requested information. Regardless, each segment stands on its own. In fact, the courts have recognized that “each administrative review is a separate segment of proceedings with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews.”⁴⁸ Moreover, Commerce’s acceptance of Hyundai’s methodologies in prior segments is irrelevant and does not necessarily mean it is appropriate. Commerce is not obligated to “accept an incorrect methodology and perpetuate a mistake because it was accepted” in previous proceedings.⁴⁹ In fact, the courts have affirmed

⁴⁵ *Id.*, at 9-10 and attachment SD-18

⁴⁶ *Id.*, at attachment SD-18.

⁴⁷ *Id.*, at 10.

⁴⁸ See *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005).

⁴⁹ See *Certain Hot-Rolled Flat-Rolled Carbon-Quality Steel Products from Brazil*, 64 FR 38756, 38789 (July 19, 1999).

Commerce's discretion to change its position as long as the agency provides an explanation for doing so.⁵⁰

In the instant case, it is reasonable for Commerce to take a closer look at this continuing practice and Hyundai's attempt to correct the manipulation. This is reasonable, in part, specifically in light of Hyundai's narrative suggesting that the costs from the SAP© BOMs themselves are also initially "set" to show profit and, thus, the non-SAP© records previously considered suitable support documents for the revised cost allocation methodology may be manipulated as well. In prior segments, Hyundai indicated the manipulation was limited to select parts of the SAP© system only. Further, the contradicting statements between the exhibits and the narratives, both in the initial and subsequent supplementals indicated that greater scrutiny was necessary. We note also that the inherent complexity of this case, both in the nature of LPTs themselves and in the arrangements with customers, added to our concerns about the need for transparency in the untangling of the manipulation.

While Hyundai provided some limited data, it falls short of providing transparency of the extent and impact of the manipulation on Hyundai's normal books and records and the reported costs. The courts have articulated that companies are expected to maintain proper accounting records and to provide full and complete answers to all inquiries in an investigation.⁵¹ The burden is on the respondent to provide substantial evidence to establish reliability of the information submitted and, in the instant review, we find that Hyundai failed to provide full and complete answers to Commerce's inquiries. Finally, regarding Hyundai's contention that the cancelled verifications cannot be used as a rationale for AFA, we agree. As outlined in detail in the foregoing paragraphs, Hyundai's failure to provide crucial and fundamental data requested by Commerce was the basis for our decisions not to verify and, in the preliminary results, to apply AFA, not the cancellations of the sales and cost verifications. Because, Hyundai did not provide a complete explanation of how all of its actual costs could be derived from its distorted books and records, Commerce could not verify the information. Verification is not an appropriate forum in which to collect significant amounts of new explanation and information. The purpose of verification is to verify the explanations and information already submitted. Hyundai failed to provide significant portions of the explanation needed to understand Hyundai's books and records allocations to arrive at the actual costs, the submission of which is a prerequisite to the conduct of a verification.

Comment 2: Hyundai's Cost Reconciliation

Hyundai's Comments:

- Hyundai fully and accurately reconciled the reported costs to its audited financial statements. The manner of presentation in the cost reconciliation originally submitted

⁵⁰ See *Timken Co. v. United States*, 23 C.I.T. 509, 515 (1999); *Asociacion Colombiana de Exportadores v. United States*, 6 F. Supp. 2d 865, 879-80 (Ct. Int'l Trade 1998); *Anshan Iron & Steel Co. v. United States*, 28 C.I.T. 1728, 1735 (2004).

⁵¹ See *Nippon Steel Corp. V. United States*, 337 F. 3d 1373 (U.S. App. 2003).

was driven by the unique aspects of the sales and costs reported in this review and in the other segments of this proceeding.

- It was unnecessary to distinguish the total costs excluded as non-subject merchandise from those costs excluded as outside of the POR, since, in total, the effect is the same. Whether costs not relevant to sales during the POR are presented in the reconciliation, the costs are excluded from the POR costs.⁵²
- Complying with the unique reporting required by Commerce in this case, *i.e.*, the reporting of costs for transformers shipped prior to the POR and the reporting of post-POR costs for transformers through December 2017, rendered it impossible to simply exclude the non-POR months as directed in Commerce’s revised reconciliation format.
- Hyundai carefully followed Commerce’s instructions in reporting its cost data to include costs for all CONNUMs in the home-market and U.S. sales databases, including costs from before and after the POR.⁵³ Because the transformers reported in the U.S. sales database are based on entry date, and not shipment or production date, it was necessary for Hyundai to report costs for transformers produced prior to, but entered into the United States during, the POR.⁵⁴
- In the first adjustment line in the DOC-format cost reconciliation (*i.e.*, Non-MUC from Transformer), Hyundai removed the cost of manufacturing (COM) for merchandise not subject to this review (*i.e.*, COM for third-country sales and COM for shipments not covered by this review, including COM for U.S. shipments that did not enter the United States during the POR and home market shipments made outside of the POR and window period).⁵⁵ By this adjustment, Hyundai reconciled the COM in the cost database to the 2016 and 2017 audited financial statements.⁵⁶
- Prior to the *Preliminary Results*, Commerce did not identify any deficiencies in the revised cost reconciliation worksheets or seek clarification of the adjustments made therein.

Petitioner’s Rebuttal Comments:

- Hyundai failed to submit a cost reconciliation consistent with Commerce’s instructions and requirements. Contrary to Hyundai’s claims, this deficiency is not merely a matter of presentation, but rather Hyundai failed to report the requested cut-off adjustments which were necessary to reconcile the fiscal year financial statements COGS to the POR COM.

Commerce’s Position

Hyundai attempts to blame Commerce for the fact that the production and sale of LPTs is complex and results in complications when reporting the costs associated with POR sales to Commerce. However, complexity does not change the need for a proper reconciliation of costs. Moreover, Hyundai’s comments with regard to the overall cost reconciliation are disingenuous. Commerce’s overarching concern is not in the specific format or “form” used in reporting the

⁵² See Hyundai Case Brief, at 13.

⁵³ *Id.*, at 16.

⁵⁴ *Id.*, at 18.

⁵⁵ *Id.*, at 20.

⁵⁶ *Id.*, at 20.

overall cost reconciliation, but rather in the clarity and substance of the information provided. We agree with Hyundai that, unlike most cases, the complex nature and extended time necessary to complete production of LPT projects and the reporting of contemporaneous home market sales required the reporting of costs outside of the normal 12-month POR. As a result, Hyundai likewise adapted the overall cost reconciliation to incorporate these pre- and post-POR costs. We take no issue with Hyundai's adaptations in this regard.

Hyundai provided a cost reconciliation in its initial Section D questionnaire response that a) did not comply with the format requested and b) did not provide requested details, which resulted in it not satisfying Commerce's needs.⁵⁷ Specifically, in the initial Section D questionnaire Commerce asked Hyundai to "List each category of Non-MUC {merchandise not under consideration} separately."⁵⁸ In a supplemental questionnaire, Commerce asked Hyundai to revise its cost reconciliation to follow the format requested and to provide the information requested in the initial Section D questionnaire. Specifically, the supplemental questionnaire again asked Hyundai to "List each category of Non-MUC separately." In its first Section D supplemental questionnaire response, Hyundai provided a revised cost reconciliation and an additional cost reconciliation in the format requested by Commerce. In both reconciliations, however, Hyundai still did not provide details on each category of non-MUC. Instead, Hyundai included a single line titled "Non-MUC from Transformer" as a reconciling item with no explanation or support to substantiate the cost deducted.

Hyundai's pattern of not providing the specific information requested by Commerce resulted in a very complex and difficult proceeding being even more difficult. We asked for all reconciling items to be broken out by each category for a reason. Being able to see each type of excluded cost category and the related amount is an important step in our investigative process. It enables Commerce to better understand and analyze the response and to plan its approach to testing the integrity of the reported information. In addition, it provides all interested parties the means to meaningfully analyze the submitted information and comment as part of the investigative process. Failure to separately distinguish specific types of costs that were excluded, when specifically requested two different times by Commerce, is not acceptable. As Hyundai readily admits in its case brief, the costs which have been removed from the reconciliation were lumped into one figure on one line that was simply described as merchandise not subject to this review.⁵⁹ According to Hyundai, based on explanations provided in its case brief and not in response to the specific requests in either the original section D questionnaire or the first supplemental D, this single reconciling item includes the COM for: 1) non-subject merchandise; 2) third-country sales; 3) U.S. shipments that did not enter the United States during the POR; and, 4) home market shipments made outside the POR and window periods.⁶⁰ Despite explicit directions to separately identify each major reconciling item, Hyundai failed to comply, and, in fact, did not identify the numerous excluded categories lumped together under the single line item until after

⁵⁷ See Hyundai's submission of January 31, 2018, at Attachment D-20.

⁵⁸ *Id.*, at 35.

⁵⁹ See Hyundai Case Brief, at 20.

⁶⁰ *Id.*

the *Preliminary Results*.⁶¹ Hyundai's argument that details on these items is not relevant because Commerce would ultimately exclude them, is nonsensical. Commerce and other interested parties routinely analyze costs excluded from reporting and request supporting documents and detailed explanations of why the cost is appropriate to exclude. Further, in a case where the respondent admits to manipulating its normal books and records, and the excluded costs include LPTs sold to third countries and merchandise made at the same facilities, it was even more crucial for Commerce to identify the detailed reconciling categories and related costs. Lacking this basic information, Commerce was precluded from exploring further the reasonableness of the costs assigned to each category of excluded costs and was impeded from gathering additional data that confirms no costs were improperly excluded under the guise of "merchandise not subject to this review." Hence, we continue to find that Hyundai failed to provide a complete reconciliation of the total costs from its financial accounting system to the total of the per-unit cost reported to Commerce.

Comment 3: An Adverse Inference is Not Warranted

Hyundai's Comments:

- An Adverse Inference Is Not Warranted
 - The facts show that Hyundai acted to the best of its ability to provide Commerce with the requested information -
 - With respect to (1):
 - According to Hyundai, Commerce contends that, in response to its request for "job-specific cost differences" including "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{,}" Hyundai failed to provide "part-specific itemized cost differences" and demonstrate "where the cost differences were being shifted to/from for all projects{.}"
 - Hyundai argues that the "Details of Adjustment" listed each transformer, providing an itemization of the differences in silicon steel costs and other material costs for each project. This, in turn, accounted for each transformer reported in the sales and cost databases, quantifying project-specific differences attributable to silicon steel and parts, respectively. The "Details of Shift of Material" traced part-specific costs as they were shifted from one project to another, along with the corresponding material codes, material descriptions, and amounts in KRW.
 - For silicon steel, Hyundai did the maximum possible given the constraints of its accounting system, which was to compare the budgeted amount for each project as shown in SAP to the actual consumption used in preparing the reported costs.
 - With respect to (2):
 - Hyundai submitted the requested reconciliation which demonstrates the cut-off and reconciles from the fiscal year COGS to the POR COGS.

⁶¹ See Hyundai January 31, 2018 DQR at 34, where respondent is instructed to identify and quantify each of the following reconciling items: cost of merchandise not under consideration, cost of merchandise under consideration not sold in either the United States or comparison market, and all other reconciling items; Hyundai June 11, 2018 SDQR at 15, where Hyundai continues to describe the line item as "non-MUC"; and, Hyundai Case Brief at 20, where Hyundai lists the four categories of products that are included in the excluded amount.

- Hyundai’s Cost Information Can Be Verified, Is Reliable, and Is Usable “Without Undue Difficulty”
 - The record does not meet the statutory criteria required to allow Commerce to decline to consider information provided by a respondent.
 - Hyundai submitted all requested information by the established deadlines.
 - Hyundai acted to the best of its ability in providing information.
 - The cost information can serve as a reliable basis for reaching a determination in this review and can be used without undue difficulties.⁶²
 - Commerce has relied on the information from Hyundai’s books and records in past reviews and therefore should have done so in this review.⁶³
 - Commerce has previously reviewed Hyundai’s cost accounting system – which did not change between the investigation and this review – and ensured that the total material costs as recorded by Hyundai’s accounting system were consistent and accurate with its cost reporting.
- Canceling Verification Was Not an Appropriate Way to Draw an Adverse Inference
 - Hyundai argues that by canceling the U.S. sales, home-market sales, and cost verifications immediately after issuing the *Preliminary Results*, and declining Hyundai’s requests to reschedule them, Commerce denied Hyundai an opportunity to establish the accuracy of its data and definitively resolve the issues raised by Commerce in the *Preliminary Results*. Hyundai argues that the statute neither authorizes Commerce to use the cancelation of verification as a form of adverse inference, nor permits Commerce to presume that a verification would be a failure as an adverse inference.⁶⁴
 - Hyundai twice requested that Commerce accept additional factual information and/or conduct a cost verification.
 - Hyundai argues that by not accepting new information and then conducting a verification Commerce denied Hyundai an opportunity to establish the accuracy of its data and definitively resolve the issues raised by Commerce.⁶⁵
 - Hyundai asserts that by declining to conduct verification Commerce ensured that Hyundai’s cost data would not be verified, and, in doing so, prejudged the outcome of the verification.⁶⁶
 - Hyundai states that the statute does not authorize Commerce to presume that a verification would be a failure and then to base an adverse inference on that presumption.⁶⁷

Petitioner’s Rebuttal Comments:

- Hyundai’s claims with regard to what information was accepted in prior segments carry no weight in the instant review as the record in each review stands on its own.⁶⁸

⁶² See Hyundai Case Brief, at 22.

⁶³ *Id.*, at 23.

⁶⁴ *Id.*, at 3.

⁶⁵ *Id.*, at 28.

⁶⁶ *Id.*, at 28.

⁶⁷ *Id.*, at 28-29.

⁶⁸ See Petitioner’s Hyundai Rebuttal Brief at 24 (citing *e.g.*, *Shandong Haurong Mach. Co., v. United States*, 29 CIT 484 491 (2005)).

- Hyundai's assumptions with regard to the cancelled verifications and Commerce's application of AFA are backwards. It was not the cancellation of the verifications that resulted in AFA, but rather it was the irreparable problems with Hyundai's submitted cost data that rendered the data unverifiable.
- Hyundai was obligated to create an accurate and complete record by submitting the information requested by Commerce, yet it failed to do so.⁶⁹
- By refusing to submit the necessary cost data at the level of detail requested, Hyundai impeded Commerce's evaluation of the accuracy and reasonableness of the data, and thereby, failed to cooperate to the best of its ability.
- Commerce satisfied the requirements of the statute by providing Hyundai numerous opportunities to remedy its deficient responses, but Hyundai chose not to cooperate and instead withheld critical data requested by Commerce.
- Under the *Nippon Steel* standard, Hyundai has failed to put forth its maximum effort, thus, Commerce should affirm its assignment of total AFA to Hyundai in the final results.⁷⁰

Commerce's Position

We disagree with Hyundai that the record shows that Hyundai acted to the best of its ability to provide Commerce with the requested information.⁷¹ Hyundai repeatedly failed to provide requested information pertaining to its reported cost of producing LPTs.⁷² Hyundai's assertions that its submitted cost information can be verified, is reliable, and is usable "without undue difficulty," is undermined by the fact that incomplete information was provided and missing information cannot be verified. Hyundai's premise is that it has provided a complete response to all of Commerce's requests for information. However, that is not the case in this proceeding. As explained in Comment 1 above, the missing explanations, information, and full disclosure in its reconciliation were necessary to provide transparency and enable Commerce to meaningfully analyze Hyundai's submitted information for calculating an accurate AD margin. The missing explanations, information, and lack of disclosure on its reconciliation were necessary to fully understand the completeness of Hyundai's "creation" of its LPT costs from select records, which supposedly fully and accurately reversed the manipulation recorded in its normal SAP© accounting system. The missing explanations, information, and full disclosure in its reconciliation would have formed, in part, the objective of the verification itself and, thus missing from the record, rendered verification meaningless. A respondent's invitation to conduct a time limited review of its reworked books and records is meaningless and exceeds the scope of this AD proceeding. A prerequisite for verification is untainted information on the record with complete responses to all of Commerce's requests for information. Only when the necessary information is on the record can it be verified against the books and records of the respondent.

As to Hyundai's accusation that canceling verification was not an appropriate way to draw an adverse inference, we agree with the petitioner that Hyundai's assumptions are backwards with regard to the cancelled verifications and Commerce's application of AFA. It was Hyundai's failure to provide complete responses to Commerce's requests for information that rendered the

⁶⁹ *Id.*, at 24 (citing *Hyundai Heavy Indus.*, 332 F. Supp. 3d at 1341-42).

⁷⁰ *Id.*, at 28 (citing *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*)).

⁷¹ See Comments 1 and 2, above.

⁷² See Hyundai January 31, 2018 DQR at 27-29.

response unverifiable. The application of AFA is a result of Hyundai's deficient efforts in this administrative review.

We disagree that by not accepting new information after the *Preliminary Results*, and then conducting a verification, Commerce denied Hyundai an opportunity to establish the accuracy of its data and definitively resolve the issues raised by their shifting of costs within their financial and cost accounting systems. Far from denying an opportunity to resolve the issues, Commerce afforded Hyundai three opportunities by issuing two supplementals in addition to the original questionnaire. The AD questionnaire, sent to Hyundai on December 13, 2017, requests that respondent identify and quantify any differences between the reporting methodology and the normal books and records.⁷³ The initial questionnaire also directs respondents to provide a reconciliation of the submitted COM provided in the cost of production (COP) and constructed value (CV) database (COPCV database) to the COGS in their normal books on their income statement for the period that most closely matches the POR.⁷⁴ In its response to the initial AD questionnaire, Hyundai identified the total cost difference between the costs in their normal books and records and the costs reported to Commerce, but provided only limited details and supporting documents to demonstrate the composition or reasonableness of these differences.⁷⁵

Commerce issued a Section D supplemental questionnaire on May 24, 2018, requesting for each project an itemization of the materials and related costs making up the difference between the normal books and records and the reported costs.⁷⁶ After an extension, Hyundai filed its response on June 11, 2018, which provided the total cost differences for each project in aggregate but failed to itemize and sufficiently support or explain the cost differences as requested.⁷⁷ On July 12, 2018, in a 2nd Section D supplemental questionnaire, Commerce again requested that Hyundai provide an itemization of the cost differences including all parts, materials, and conversion costs which make up this difference for each project.⁷⁸ After an extension, in their response dated July 23, 2018, Hyundai itemized the project-specific cost differences by general categories, but only provided the part-specific itemized cost differences for a portion of one self-sampled project.⁷⁹ Hyundai failed to provide part-specific itemized cost differences for the entire difference for all projects.⁸⁰ Furthermore, included in the itemized cost differences were scrap and FOH, for which Hyundai merely stated the cost differences were due to the change in materials and provided no further explanation, support, or calculation of the revised figures.⁸¹

Therefore, Hyundai was afforded extensive time and multiple opportunities to fully explain, itemize, and reconcile the effects of their shifting of costs within their financial and cost accounting systems. Finally, we note that if Hyundai had been forthcoming with the

⁷³ See Commerce Letter, "Antidumping Duty Questionnaire," dated December 13, 2017 (Initial AD Questionnaire), Section D, at D-12.

⁷⁴ *Id.*, at D-12 through D-14.

⁷⁵ See Hyundai's January 31, 2018 DQR, at Exhibit D-20.

⁷⁶ See Commerce Letter re: First Section D Supplemental Questionnaire, dated May 24, 2018, at 4 and 5.

⁷⁷ See Hyundai's June 11, 2018 SDQR, at Exhibit SD-16.

⁷⁸ See Commerce Letter re: Second Section D Supplemental Questionnaire, dated July 12, 2018, at 3.

⁷⁹ See Hyundai's July 23, 2018 2SDQR, at Exhibit 2SD-1.

⁸⁰ *Id.*

⁸¹ *Id.*

information, the next step would have been to determine what reliable records, if any, were available to test the reported claimed corrected costs. However, the incomplete responses to Commerce's supplemental questions prevented us from reaching this point, as the complete picture associated with the shifting and deviations remained undetermined.

Commerce requires accurate and complete information pertaining to a respondent's COP the merchandise under consideration 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 (NV) (*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 NV itself.⁸² Commerce has previously explained that in cases involving a sales-below-cost investigation, such as the current investigation, the failure to provide accurate cost information renders a company's response so incomplete as to be unusable.⁸³ Additionally, the U.S. Court of International Trade (CIT) has recognized that "cost information is a vital part of {Commerce's} dumping analysis."⁸⁴ 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 merchandise under consideration is accurate and complete, but also that the costs are reasonably and accurately allocated to individual control numbers (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."⁸⁵ 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.⁸⁶

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 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.⁸⁷ 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 the merchandise under consideration, it is critical that Commerce examine and fully understand the allocation methodologies used by the respondent to allocate costs to individual products in its normal course of business. As a part of this analysis, Commerce

⁸² 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*).

⁸³ *Id.*, at Comment 1.

⁸⁴ See *Mukand, Ltd. v. United States*, Court No. 11-00401, Slip Op. 13-41 (CIT March 25, 2013) (*Mukand*), at 15.

⁸⁵ See *Sidenor Indus. SL v. United States*, 664 F. Supp. 2d 1349 (CIT 2009) (*Sidenor*), (quoting *Myland Indus., Ltd. v. United States*, 31 Ct. Int'l Trade 1696, 1703 (CIT 2007)).

⁸⁶ *Id.*, at 1357.

⁸⁷ See section 773(f)(1)(A) of the Act (*emphasis added*).

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.⁸⁸ 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.⁸⁹

In the instant case, as fully explained in Comments 1 and 2 above, Hyundai failed to provide important requested information that would enable Commerce to fully understand, test, and confirm that Hyundai's manipulation of its normal records was reversed such that the reported costs at the individual LPT project-level are actual, verifiable, and reliable.⁹⁰

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 the 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 we use in the AD 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 make transparent the separation of costs between merchandise under consideration and merchandise not under consideration and identify whether costs have been properly removed from or included in the CONNUM-specific reported costs. As such, and as stated above, understanding and supporting differences from the normal books and records is an important tool for 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 and to represent a product's CV. Without the ability to fully support cost differences in the cost reconciliation, we cannot rely on the reported per-unit COP. 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. 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.

⁸⁸ 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”).

⁸⁹ 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’”).

⁹⁰ See PDM at 12-20 and the Hyundai Proprietary Cost Memorandum.

Section 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 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.

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 the opportunity to remedy or explain the deficiency. If the party fails to remedy 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.

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.⁹¹ In so doing, and under the *Trade Preferences Extension Act* of 2015 (TPEA), Commerce is not required to determine, or make 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. In addition, the Statement of Administrative Action (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.”⁹² Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁹³ It is

⁹¹ 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).

⁹² 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).

⁹³ 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.

Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁹⁴

Therefore, because the record shows that Hyundai did not act to the best of its ability to provide Commerce with the requested information, Commerce is left with unreliable cost data. As a result, in accordance with section 776(a) of the Act, we determine that the application of facts available is warranted. Additionally, because Hyundai failed to provide the basic information necessary to perform the dumping calculations as described in the preceding comments and to substantiate what the actual costs were for its transformers, all information which any company should be expected to be able to provide, we find that the application of an adverse inference is also warranted in accordance with section 776(b) of the Act.

In addition, as discussed above, in Comments 1 and 2, and in the PDM at pages 12-20, Commerce fulfilled its requirements under section 782(d) of the Act by allowing Hyundai numerous attempts to provide requested explanations and details associated with the deviations from its normal SAP® cost accounting system, which were a result of Hyundai's practice of shifting costs between projects to achieve desired project-specific profitability in their normal books and records. What was submitted by Hyundai was clearly not comparable information in a different form but only limited and partial responses to requests for information. Thus, they failed to provide any alternative suggestions or information as allowed under section 782(c)(1) of the Act. Finally, Hyundai has not satisfied section 782(e) of the Act which, for information to be considered by Commerce, a respondent must demonstrate that it has acted to the best of its ability and has provided information that has been requested by the established deadline, can be verified, is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination, and can be used without undue difficulties. As outlined above, Hyundai has failed in this regard. Therefore, consistent with our *Preliminary Results*, we have continued to apply total AFA to Hyundai for purposes of these *Final Results*.

Comment 4: Moot Issues

Petitioner's Comments:

- The petitioner raised various issues including: (1) separately negotiated revenues and expenses; (2) reporting of "accessories"; (3) classification of certain parts; (4) reporting of product characteristics; (5) warranty expenses; and (6) calculations of ISE and G&A expenses.⁹⁵

⁹⁴ 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).

⁹⁵ See Petitioner's Hyundai Case Brief at 5-37.

Commerce's Position

Because we continue to apply AFA to Hyundai based on the aforementioned issues described in Comments 1, 2, and 3, above, these issues presented by the petitioner are moot.

B. Hyosung-Specific Issues

Comment 5: Ministerial Errors

Petitioner's Comments:

- Commerce erred in various aspects of the programming for Hyosung in the *Preliminary Results*.⁹⁶
- Specifically, Commerce should begin by using the computer field “NET_GRSUPRU” for the margin calculation program, as this variable contains Hyosung’s gross unit prices minus service revenues.⁹⁷
- Commerce made certain other inadvertent errors, including the omission of the variable “REBATE1U” from the calculation, the inclusion of the variable “WARR3YRU” in the discounts and rebates variable, and the inclusion of the fields “OTHDIS1U” and “EARLPYU” in the discounts and rebates variable.⁹⁸
- Commerce should include the “U.S.BROKU” and “U.S.INSURU” variables in the overall calculation of U.S. international movement expenses.⁹⁹
- Commerce should correct an apparent typographical error and cap other service revenues with the appropriate expenses.¹⁰⁰

Hyosung's Comments

- Should Commerce adjust the margin calculation program for ministerial errors, Commerce should ensure that the home market calculation program is also adjusted appropriately.¹⁰¹

Petitioner's Rebuttal Comments

- Because Commerce does not apply its capping methodology in calculating NV, there is no “ministerial error” with respect to Commerce’s calculations of NV.¹⁰²

⁹⁶ See Petitioner’s Hyosung Case Brief at 5-9.

⁹⁷ *Id.*, at 5-6.

⁹⁸ *Id.*, at 7-8.

⁹⁹ *Id.*, at 9.

¹⁰⁰ *Id.*, at 9-10.

¹⁰¹ See Hyosung Case Brief at 16-17.

¹⁰² See Petitioner’s Hyosung Rebuttal Brief at 22-23.

Commerce's Position

We have made the following changes to the programing: 1) corrected the gross unit price variable used in both the comparison and U.S. market calculation programs; 2) corrected language for the capping methodology in the U.S. margin calculation program; 3) added missing expense fields in the calculation of U.S. price in the U.S. margin calculation field; and 4) relocated the warranty variable into the proper calculation string as part of the calculation of U.S. price. For further explanation, *see* the Hyosung Final Analysis Memorandum.¹⁰³

Comment 6: Service Related Revenue Capping and Order Acknowledgement Form

Petitioner's Comments

- Commerce should continue to add service-related revenues to the gross unit price based on documentation contained in the order acknowledgement form (OAF) generated by HICO America Sales and Technology, Inc. (HICO America).¹⁰⁴
- Commerce correctly relied on data submitted by Hyosung using the service-related revenues listed on the OAF in the *Preliminary Results*.¹⁰⁵
- Acknowledging the decision by the CIT with respect to Commerce's capping practice in an earlier segment of this proceeding, the petitioner argues that record evidence in this review indicates that the OAF is not simply an internal Hyosung document.¹⁰⁶ Record evidence demonstrates that the OAF records the results of negotiations between Hyosung and its unaffiliated U.S. customers.¹⁰⁷
- The OAF, and other sales documentation, is generated in conjunction with, and subsequent to, negotiations with unaffiliated U.S. customers.¹⁰⁸
- The OAF is not simply an internal Hyosung document that reflects budgeting estimates.¹⁰⁹
- HICO America and the unaffiliated U.S. customer "agree on the assignment of revenues (*i.e.*, the price of the LPT and the price that HICO America/Hyosung will separately charge for services) and that is the amount reflected on the OAF."¹¹⁰
- The service-related revenue amounts listed in the verification exhibit were not reported in any of the databases for U.S. sales submitted by Hyosung.¹¹¹
- The record evidence thus demonstrates that the OAFs are not strictly internal communications, and their usage is therefore not prohibited by the CIT's decision in *ABB. Inc. v. United States*.¹¹²

¹⁰³ See Analysis of Data Submitted by Hyosung Corporation in the Final Results of the 2016/2017 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea (Hyosung Final Analysis Memorandum), dated concurrently with this memorandum.

¹⁰⁴ See Petitioner's Hyosung Case Brief at 10.

¹⁰⁵ *Id.*, at 11.

¹⁰⁶ *Id.*, at 11-12, citing to *ABB. Inc. v. United States*, Ct. No. 16-00054, Slip Op. 18-156 (CIT, November 13, 2018).

¹⁰⁷ *Id.*, at 12.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*, at 13.

¹¹⁰ *Id.*

¹¹¹ *Id.*, at 15-16.

¹¹² *Id.*, at 16-17.

- Hyosung withheld certain documents which are part of the sales documentation between HICO America and the U.S. customer, thus making inaccurate the databases containing reported service-related revenues other than those from the OAF.¹¹³

Hyosung's Comments

- Commerce should not cap service-related revenues by the associated expenses.¹¹⁴
- While Commerce has capped service-related revenues by the associated expenses in previous reviews of LPTs, the nature of LPTs and information on the record indicates that such revenues should not be capped.¹¹⁵
- Should Commerce continue to apply its capping methodology, Commerce should not use the OAFs.¹¹⁶
- The OAFs are documents between HICO America and Hyosung that contain preliminary, estimated, budgeted expense amounts, and are thus not an appropriate basis for Commerce to measure service-related revenues.¹¹⁷
- The CIT determined that Commerce may not rely on internal company communications as records of service-related revenues between Hyosung and an unaffiliated customer, absent evidence of communication to the unaffiliated customer.¹¹⁸
- Hyosung asserts that the CIT's treatment of the OAFs is consistent with Commerce's treatment of the OAFs in previous review periods.¹¹⁹

Petitioner's Rebuttal Comments:

- Hyosung has failed to distinguish this review in such a way that Commerce should not apply its capping methodology.¹²⁰
- Commerce has specifically declined to treat LPTs as "unique" such as would warrant non-use of the capping methodology in all of the previous segments of this proceeding.¹²¹
- Commerce's capping methodology is based upon the statute and does not distinguish between commodity products or "unique" products in any way.¹²²
- The CIT has upheld Commerce's findings with respect to the capping methodology in previous segments of this proceeding.¹²³
- With respect to the OAFs, Commerce should cap service-related revenues with corresponding expenses and use the figures contained on the OAF.¹²⁴

¹¹³ *Id.*

¹¹⁴ *See* Hyosung Case Brief at 9.

¹¹⁵ *Id.*, at 10.

¹¹⁶ *Id.*

¹¹⁷ *Id.*, at 12-13.

¹¹⁸ *Id.*, at 14.

¹¹⁹ *Id.*, at 15-16.

¹²⁰ *See* Petitioner's Hyosung Rebuttal Brief at 9.

¹²¹ *Id.*

¹²² *Id.*, at 11-12.

¹²³ *Id.*, at 13 (citing to *Hyundai Heavy Industries Co. v United States*, 332 F. Supp. 3d 1331, 1340 (CIT 2018)).

¹²⁴ *Id.*, at 14.

- The petitioner asserts that Commerce is required to remove profits allocated to the sales-related expenses for constructed export price (CEP) sales, and that the capping methodology eliminates such profits when calculating the net U.S. price.¹²⁵
- By contrast, according to the petitioner, there is no distinction made by the statute for profit between service-related expenses and cost of production for the calculation of NV.¹²⁶
- With respect to the CIT's decision in *ABB. Inc. v. United States*, Ct. No. 16-00054, Slip Op. 18-156 at 25 (CIT, November 13, 2018), the petitioner argues that the CIT's decision is not based on whether a document is shared with a customer but whether a document reflects *only* internal communications between affiliated respondent entities.¹²⁷
- Changes in the OAF based on change orders from a customer is evidences that the figures on the OAF are reflective of negotiations with, and knowledge by, the unaffiliated customer.¹²⁸
- The OAF is not simply an internal budgeting document, but the way that HICO America communicates with Hyosung in Korea regarding the substance of negotiations with unaffiliated U.S. customers.¹²⁹ According to the petitioner, the document thus discloses to Hyosung in Korea "how the revenue is to be apportioned between Hyosung and HICO America, and what the U.S. customer has agreed to pay for each service to be provided."¹³⁰

Hyosung's Rebuttal Comments:

- The fact is not whether the budgeted expenses amounts on the OAFs are the same as those that appear on preliminary documents for the customer, but on whether or not a document reflects that services are separately negotiated between Hyosung and the unaffiliated customer.¹³¹
- Internal documents and communications, such as the OAF, do not provide substantial evidence that services were separately negotiated between Hyosung and an unaffiliated customer.¹³²
- The CIT's decision in *ABB. Inc. v. United States*, Ct. No. 16-00054, Slip Op. 18-156 at 25 (CIT, November 13, 2018) makes clear that Commerce "is without legal authority to require a respondent to report revenue based on internal documentation not exchanged with the customer."¹³³
- As Hyosung does not share the OAF with a customer, Hyosung concludes that Commerce may not use the OAF as the basis for calculating service-related revenues.¹³⁴

¹²⁵ *Id.*, at 18.

¹²⁶ *Id.*, at 18-19.

¹²⁷ *Id.*, at 20.

¹²⁸ *Id.*

¹²⁹ *Id.*

¹³⁰ *Id.*, at 20-21.

¹³¹ See Hyosung Rebuttal Brief at 3.

¹³² *Id.*, at 3-4.

¹³³ *Id.*, at 5.

¹³⁴ *Id.*

- While some OAFs may reflect amounts recorded on documents which are shared with the customer, not every OAF for every sale records every expense that may appear on such documents.¹³⁵
- Changes to the OAF are not reflective of contemporaneous negotiations with a customer about specific expenses, but instead reflections of changes in Hyosung's internal estimates of expenses as a result of overall negotiations with the customer.¹³⁶
- With respect to the petitioner's assertions that Hyosung withheld certain sales documentation, Hyosung states that the document in question is part of a proposal for a sale to a customer.¹³⁷

Commerce's Position

We agree with the petitioner that it is appropriate to continue capping service-related revenues with the associated expenses for sales to the United States. However, we agree with Hyosung that the use of the OAFs is not appropriate. Additionally, we disagree with the petitioner that Commerce should not apply the standard capping methodology to the home market.

To prevent U.S. price from being overstated, the statute and the regulations require revenues for services provided with the sale in excess of the related expense to be removed from a respondent's reported U.S. price. Section 772(c)(1) of the Act provides that Commerce shall increase the price used to establish export price (EP) and CEP (*i.e.*, U.S. price) in only the following three instances: (1) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in a condition packed ready for shipment to the United States; (2) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (3) the amount of any countervailing duty imposed on the subject merchandise under Subtitle A to offset an export subsidy. Revenues received by a respondent on sales-related services are not included as an upward adjustment to U.S. price.

Further, section 773(a)(6) of the Act provides that Commerce shall increase the price used to establish NV by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States. Again, revenues received by a respondent on sales-related services are not included as an upward adjustment to NV.

In addition, 19 CFR 351.401(c) directs Commerce to use a price that is net of any price adjustment, as defined in 19 CFR 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The term "price adjustment" is defined under 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The definition specifies that the adjustment applies to changes in the price charged for the subject merchandise or the foreign like product.

¹³⁵ *Id.*, at 5-6.

¹³⁶ *Id.*

¹³⁷ *Id.*, at 6-7.

Pursuant to the relevant statute and regulations which prevent U.S. price from being overstated by any upward adjustments other than the three instances above, Commerce's practice is to cap service-related revenue by the corresponding expense when making adjustments to U.S. price.¹³⁸

The issue of whether to cap service-related revenues with the associated service-related expense has arisen in prior administrative reviews of the *Order*.¹³⁹ Each segment of a proceeding stands on its own, and determinations by Commerce in previous segments of a proceeding are not binding on subsequent segments of the proceeding.¹⁴⁰ Nevertheless, Commerce will deviate from previous determinations only when record evidence warrants such a change. In this instance, we find that record evidence continues to support Commerce's application of the capping methodology in this segment of the proceeding.

In *LPT 2014-2015 Final Results*, Commerce found that it should cap service-related revenues, and specifically rejected Hyosung's arguments regarding the "unique nature" of LPTs, stating that Hyosung's arguments are:

"in opposition to the Department's policies, as well as the statute, with respect to the practice of capping service-related revenues. The Department has consistently stated that the statute and its regulations¹⁴¹ do not permit the Department to raise U.S. prices for

¹³⁸ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying decision memorandum at 7 (where we stated that "{b}ased on the plain language of the law and the Department's regulations, it has been the Department's stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). We further stated that "... although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services"); see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012)(*Certain Orange Juice from Brazil*) and accompanying decision memorandum at 34 (where we stated that "we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services...such profits should be attributable to the sale of the service, not to the subject merchandise." We further stated that "the Department has consistently applied the same capping methodology to both U.S. and home market revenues, regardless of whether it limits the increase to U.S. price or NV {normal value}."); see also e.g., *Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010) (where we stated that "{i}n accordance with our practice, we capped the amount of freight revenue permitted to offset gross unit price at no greater than the amount of corresponding inland freight expenses incurred by..."), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 75 FR 77829 (December 14, 2010).

¹³⁹ See, e.g., *Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*LPT 2014-2015 Final Results*), and accompanying Issues and Decision Memorandum at Comment 4.

¹⁴⁰ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Thailand: Final Results of Antidumping Duty Changed Circumstances Review and Reinstatement in the Antidumping Duty Order*, 74 FR 22885 (May 15, 2009) and accompanying decision memorandum at Comment 2, pages 18-19.

¹⁴¹ See 19 U.S.C. § 1677a(c)(1) and 19 CFR 351.102(b)(38).

service-related revenues in excess of the related expense.¹⁴² In addition, there is no part of the statute, the regulations, or the Department's practice that makes a distinction between large capital goods and other goods subject to antidumping duty orders with respect to the capping of service-related revenue."¹⁴³

Hyosung proffers that the cases cited by Commerce, such as *Purified Carboxymethylcellulose from the Netherlands* and certain cases which are cited therein such as *Certain Orange Juice from Brazil* and *Polyethylene Retail Carrier Bags from China*, involve commodity products where there are concerns regarding inflation of an EP with service-related revenues.¹⁴⁴ In contrast, according to Hyosung, capping for LPTs is not necessary "because the freight, delivery, and installation terms are central to the transaction and the functionality of the LPT" and that "any amounts for these expenses should be attributed to the unit itself and not be subject to a separate cap" as those amounts "are specifically negotiated as part of the overall sales transaction."¹⁴⁵ Hyosung also argues that, due to the complexity of shipping and installing an LPT, and the fact that prices are negotiated well in advance, any service-related revenues incurred are not linked to the actual service-related expenses.¹⁴⁶ Finally, Hyosung states that customers who purchase LPTs are "purchasing a service as much as they are purchasing a good, and the price of the physical LPT is inextricably intertwined with the service-related components of the transaction."¹⁴⁷

Be that as it may, the statute does not make a distinction between commodity and non-commodity products with respect to upwards adjustments in U.S. price. Furthermore, the statute does not make a distinction with respect to the services, or package of services, provided by the seller. Simply put, Hyosung has offered no argument or evidence that Commerce should modify its capping methodology under 772(c)(1) of the Act. Furthermore, the CIT has affirmed Commerce's capping methodology with respect to the sale of LPTs. In *ABB, Inc.*, the CIT stated that in a previous decision, "the court acknowledged that it has examined Commerce's revenue-capping practice and found it to be reasonable."¹⁴⁸ We also note that while services may be discussed in advance, the material terms of sale may change up to, and beyond, the date of

¹⁴² See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand* and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Orange Juice from Brazil* and accompanying Issues and Decision Memorandum at Comment 6; see also *Polyethylene Retail Carrier Bags from the People's Republic of China: Final Results of Antidumping Duty Administrative Review*, 74 FR 6857 (February 11, 2009) (*Retail Carrier Bags from China*) and accompanying decision memorandum at Comment 6; see also *Certain Steel Concrete Reinforcing Bars from Turkey*; see also *Purified Carboxymethylcellulose from the Netherlands*.

¹⁴³ See *LPT 2014-2015 Final Results* at Comment 4, page 32.

¹⁴⁴ See Hyosung Case Brief at 10-11.

¹⁴⁵ *Id.*, at 11.

¹⁴⁶ *Id.*

¹⁴⁷ *Id.*, at 12.

¹⁴⁸ See *ABB, Inc. v. United States*, Ct. No. 16-00054, Slip Op. 18-156 (CIT, November 13, 2018) (*ABB Inc.*) at 22, citing to *ABB, Inc. v. United States*, Ct. No. 16-00054, Slip Op. 17-138 (CIT, October 10, 2017). There, the CIT cited to *Dongguan Sunrise Furniture Co., Ltd. v. United States*, 36 CIT ___, ___, 865 F. Supp. 2d 1216, 1248 (2012), stating that "Commerce's approach is reasonable under the statute" when it "deducts respondent's freight expenses from {the price used to establish CEP} . . . {and} then offsets respondent's freight expenses with related freight revenues, resulting in a net freight expense."

shipment.¹⁴⁹ Thus, we determine, consistent with our standard practice, to cap Hyosung's service-related revenues with the corresponding expenses.

In addition, as noted above, section 773(a)(6) of the Act provides that Commerce shall increase the price used to establish NV by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States. Therefore, revenues received by a respondent on sales-related services are not included as an upward adjustment to NV.

With respect to the appropriate cap, Hyosung reported three separate databases for U.S. with each database containing service-related revenues based on different source documentation.¹⁵⁰ Version one of the database reported service-related revenues based upon those that appear on any invoice to the customer.¹⁵¹ Version two reported any service-related revenues that were identified on any commercial documents exchanged between Hyosung and the U.S. customer.¹⁵² Version three reported service-related revenues based upon amounts found on the OAF for each sale, which were exchanged between HICO America and Hyosung.¹⁵³ In the *Preliminary Results*, Commerce used version three of the database (using the OAF) to cap Hyosung's U.S. service-related revenues and invited parties to comment.¹⁵⁴

Hyosung states that the OAFs "do not reflect revenues, but instead reflect preliminary, estimated, budgeted expense amounts."¹⁵⁵ However, record evidence demonstrates clearly that the OAFs reflect not only service-related expenses, but also the service-related revenues allocated to cover those expenses.¹⁵⁶ Additionally, the OAFs reflect the range of services and revenues that Hyosung provides to its customers. As Hyosung stated, and as we noted above, the "freight, delivery, and installation terms are central to the transaction and the functionality of the LPT."¹⁵⁷ Hyosung's customers are aware that they are purchasing services and that the price paid includes revenues to cover those services. Finally, it is clear that Hyosung adjusts its calculations of both service-related expenses and service-related revenues if the terms of sale change. As the petitioner points out, record evidence indicates that HICO America issues the OAF as a direct result of the negotiations with the U.S. customer.¹⁵⁸ The petitioner additionally notes that the OAF reflects not just estimated expenses, but demonstrates how these estimated expenses are used to assign revenues between the unit price of the LPT and the services being separately

¹⁴⁹ See Memorandum to the File; "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 August 31, 2018, at 2-4.

¹⁵⁰ See Letter from Hyosung to Commerce, "Administrative Review of Large Power Transformers from the Republic of Korea; Response of Hyosung Corporation to the Department's December 13, 2017 Sections B-C Questionnaire," dated February 2, 2018 (Hyosung BCQR) at C-3 through C-6.

¹⁵¹ *Id.*, at C-4.

¹⁵² *Id.*

¹⁵³ *Id.*, at C-4 through C-5.

¹⁵⁴ See Hyosung Preliminary Analysis Memorandum at 2.

¹⁵⁵ See Hyosung Case Brief at 13.

¹⁵⁶ See Hyosung Final Analysis Memorandum at 3.

¹⁵⁷ See Hyosung Case Brief at 11.

¹⁵⁸ See Petitioner's Hyosung Case Brief at 12.

provided.¹⁵⁹ The petitioner also observes that HICO America will issue a revised OAF to Hyosung when there are agreed changes between HICO America and the U.S. customer on the material terms of sale.¹⁶⁰ Thus, given the evidence of how HICO America and Hyosung use this form, and the fact that the U.S. customer is keenly aware of the fact that the U.S. customer is purchasing services in addition to the LPT, we find that the OAF acts as a tracker of revenues and expenses for each U.S. sale rather than simply providing an estimate of budgeted service-related expenses.

Nevertheless, as Hyosung notes, the CIT has ruled that Commerce may not rely on internal company communications, rather than documentation or communications shared with the unaffiliated customer, to determine that there is a separate service-related revenue to cap.¹⁶¹ Citing to *Hyundai Heavy Indus., Co. Ltd. v. United States*, Slip Op. 18-101, (CIT August 14, 2018), the CIT states that “{w}hen Commerce finds that a service is separately negotiable, its practice has been to cap the service-related revenue by the associated expenses.”¹⁶² The CIT further states that “{w}hen substantial evidence does not support a finding that the cost of the services was separately negotiable from the price of the subject merchandise, the agency is without legal authority to reduce EP or CEP except by the amount of the expense in question.”¹⁶³

The petitioner attempts to link the negotiations between Hyosung and its customers, and the subsequent possible changes to the OAF, to argue that these interactions are evidence of negotiations for services separate from the price for the subject merchandise.¹⁶⁴ It is axiomatic, given Hyosung’s sales process, that an OAF would be generated as the result of negotiations between Hyosung and an unaffiliated customer and an agreement to purchase both an LPT and the related services necessary to transport and install the LPT. However, there is no evidence that the amounts listed solely on the OAF for both service-related expenses and revenues are the result of negotiations between Hyosung and the unaffiliated customer with respect to individual expense and revenue items. That is, absent a list of service-related expenses and revenues on some other sales document that is shared with the customer, there is no evidence that the customer is aware of (or separately negotiated) each individual service-related expense and the corresponding revenue assigned by Hyosung to cover it. As Hyosung states, “simply because the OAF may, at times, reflect amounts reflected on customer-facing documents, it does not mean in all instances that the OAFs record amounts that are separately negotiable between Hyosung and the unaffiliated customer.”¹⁶⁵

The petitioner states that a document for a sale examined by Commerce at the sales verification in Pittsburgh, which the petitioner claims was not previously submitted to Commerce, shows that the revenues and expenses associated with services match those of an OAF.¹⁶⁶ Hyosung states that the document in question, a “Pricing Detail,” is a page from the proposal originally sent to

¹⁵⁹ *Id.*, at 13.

¹⁶⁰ *Id.*, at 12 (citing to Hyosung Korea Sales Verification Report).

¹⁶¹ See *ABB, Inc.*, at 22-23.

¹⁶² *Id.*, at 23.

¹⁶³ *Id.*, at 23-24.

¹⁶⁴ See Petitioner’s Hyosung Case Brief at 12-16.

¹⁶⁵ See Hyosung Rebuttal Brief at 4.

¹⁶⁶ See Petitioner’s Hyosung Case Brief at 14-17.

the customer for potential future orders which outlines options for the customer depending upon the type of unit purchased and services requested.¹⁶⁷ We examined the documentation associated with this sale and agree with Hyosung that the “Pricing Detail” is a pre-sale document which was provided to the customer prior to the purchase order.¹⁶⁸ Additionally, we examined all of the databases submitted by Hyosung for the U.S. sales.¹⁶⁹ In version one of the U.S. sales database, revenue amounts for most services were not included.¹⁷⁰ We also examined the invoice to the customer, and found that most service-related revenue amounts were not listed on the invoice.¹⁷¹ Thus, version one of the database for U.S. sales comports to Hyosung’s description of what is included in this version of the database.¹⁷² In examining versions two and three of the U.S. sales database, we found that all service-related revenue items were reported and that the figures for the service-related revenues in both versions were identical.¹⁷³ Therefore, version two of the database also comports with Hyosung’s description of what is included in this version of the database.¹⁷⁴

Based on record evidence and the findings of the CIT, Commerce determines that version two of the U.S. database accurately reflects reported service-related revenues that were separately negotiated based upon any sales documentation exchanged between Hyosung and the unaffiliated customer which contains discussions of individual revenues and expenses. We have modified our SAS program to use HYOU.S.02_v2 as our U.S. sales database for the purposes of calculating U.S. price.¹⁷⁵

Comment 7: U.S. Indirect Selling and General and Administrative Expenses

Hyosung’s Comments

- Commerce, in adjusting G&A expenses, failed to adjust the ISE ratio as well.¹⁷⁶ Hyosung maintains that, should Commerce continue to make adjustments to the G&A ratio, it must also make corresponding adjustments to the ISE ratio.¹⁷⁷

¹⁶⁷ See Hyosung Rebuttal Brief at 6-7.

¹⁶⁸ See Hyosung CEP Verification Report at Exhibit 9, page 40.

¹⁶⁹ See “Large Power Transformers from Korea: Hyosung’s Supplemental Sales Questionnaire Response (Response to Questions 2 - 104),” dated July 6, 2018 (Hyosung SBCQR), at Exhibit SBC-1.

¹⁷⁰ *Id.*

¹⁷¹ See Hyosung CEP Verification Report at Exhibit 9, pages 100-106.

¹⁷² See Hyosung BCQR at C-3 through C-6.

¹⁷³ See Hyosung SBCQR at Exhibit SBC-1.

¹⁷⁴ See Hyosung BCQR at C-3 through C-6.

¹⁷⁵ See Hyosung Final Analysis Memorandum at 2.

¹⁷⁶ See Hyosung Case Brief at 22-23.

¹⁷⁷ *Id.*, at 23.

Petitioner's Comments

- Commerce discovered previously unreported affiliated party transactions, and that Commerce should determine that Hyosung had purposefully withheld information requested by Commerce during this administrative review.¹⁷⁸
- Hyosung believes the expenses associated with these unreported affiliated party transactions should be accounted for in Hyosung's G&A expenses.¹⁷⁹ However, record evidence from Hyosung's questionnaire responses contradicts Hyosung's explanations at verification with respect to the proper classification and completeness of these expenses.¹⁸⁰
- Thus, Commerce is unable to determine if Hyosung's reported G&A and ISE are accurate.¹⁸¹
- Commerce should find that Hyosung failed to cooperate to the best of its ability, and to resort to partial facts available by incorporating the discovered U.S. expenses into the calculation of ISE.¹⁸²
- Commerce should add the previously unreported affiliated party transaction expenses into G&A, thus increasing the G&A ratio.¹⁸³
- Additionally, Commerce should add ISE associated with affiliated party transactions into the indirect selling expense ratio, increasing said ratio.¹⁸⁴

Hyosung's Rebuttal Comments:

- Hyosung disclosed the identities of certain affiliates, with which Hyosung had certain transactions, in its section A response and that these affiliates were not discovered at the verification in either Pittsburgh or Korea.¹⁸⁵
- The transactions in question are not services or inputs related to the development, sale, or distribution of subject LPTs.¹⁸⁶
- All of the expenses related to these transactions examined at the sales verification in Pittsburgh are either treated as G&A expenses for HICO America or included in ISE that were reported in Hyosung's U.S. sales databases.¹⁸⁷
- The associated expenses are not substantial, and that Commerce examined these during verification and found them to be correctly reported as ISE.¹⁸⁸

¹⁷⁸ See Petitioner's Hyosung Case Brief at 19-21.

¹⁷⁹ *Id.*, at 22.

¹⁸⁰ *Id.*

¹⁸¹ *Id.*, at 23.

¹⁸² *Id.*

¹⁸³ *Id.*, at 44-45.

¹⁸⁴ *Id.*, at 45-46.

¹⁸⁵ See Hyosung Rebuttal Brief at 8-9, 11-12

¹⁸⁶ *Id.*, at 9

¹⁸⁷ *Id.*

¹⁸⁸ *Id.*, at 10.

- With respect to the sales verification in Korea, Hyosung submits that the petitioner's proposal to adjust HICO America's ISE is mistaken as the services in question relate to Hyosung's G&A in Korea.¹⁸⁹
- While acknowledging that Commerce's section D questionnaire requires a greater level of disclosure of activities between affiliates, Hyosung indicates that no further adjustment is necessary because the majority of the transactions in question were at arm's-length.¹⁹⁰
- For transactions with one affiliated party, Hyosung again acknowledges that there is insufficient record evidence to demonstrate a pattern of arm's-length transactions.¹⁹¹ Nevertheless, Hyosung proffers that the total expenses of such transactions is small and does not necessitate a large adjustment as the petitioner suggests.¹⁹²

Commerce's Position

We agree with the petitioner that Hyosung failed to disclose certain transactions between affiliates prior to verification. At the verification of HICO America, Commerce discovered these transactions on the third day of verification.¹⁹³ At the sales verification in Korea, Hyosung disclosed similar transactions at the beginning of verification.¹⁹⁴ During the discussion with Hyosung at verification in Korea regarding these previously unreported transactions, Hyosung stated that the expenses associated with these transactions should be in Hyosung's reported selling, general and administrative (SG&A) expenses.¹⁹⁵ Pages 20 and 21 of Verification Exhibit 1 from the Korean sales verification show notes to the financial statements and list the amounts of the transactions, in Korean Won, for each affiliated party transaction, including those reported at verification.¹⁹⁶

Based on our review of record evidence, we find that the affiliated party transactions between HICO America and other affiliates are reported in HICO America's SG&A expenses and Hyosung's ISE. Further, in regard to Hyosung's affiliated party transactions in Korea, the affiliated transactions are properly reported in the G&A expense ratio. However, we have no information on the arm's-length nature of these transactions because the issue only came to light at verification.

Part of the rationale for the "transactions disregarded" rule is to ensure transactions between affiliates occur at arm's-length prices.¹⁹⁷ Here, as noted above, Hyosung and its affiliates are incurring SG&A costs related to the affiliated transactions that have not been reported by Hyosung to Commerce. Hyosung's failure to provide this information precluded us from

¹⁸⁹ *Id.*, at 11.

¹⁹⁰ *Id.*, at 11, 13-14.

¹⁹¹ *Id.*, at 15.

¹⁹² *Id.*

¹⁹³ See Hyosung CEP Verification Report at 6.

¹⁹⁴ See Hyosung Korea Sales Verification Report at 3-4, Verification Exhibit 1 at 20-21.

¹⁹⁵ *Id.*

¹⁹⁶ *Id.*, at Verification Exhibit 1, pages 20-21.

¹⁹⁷ See *Notice of Final Determination of Sales at Less Than Fair Value—Stainless Steel Round Wire from Canada*, 64 FR 17324 (April 9, 1999) (in discussing the major input rule, noting that "the intent of {the major input rule} and the related regulations is to account for the possibility of shifting costs to an affiliated party. This possibility arises when an input passes to the responding company through the hands of an affiliated supplier, regardless of the value added to the product by the affiliated supplier.").

conducting the necessary analysis of all of Hyosung’s affiliated transactions and determining whether or not the transactions were made at arm’s-length prices.

Section 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: (A) withholds information that has been requested by Commerce; (B) fails to provide such information in a timely manner or in the form or manner requested subject to section 782(c)(1) and (e) of the Act; (C) significantly impedes a proceeding under the AD statute; or (D) provides such information but the information cannot be verified as provided for in section 782(i) of the Act, Commerce shall, subject to subsection 782(d) of the Act, use facts otherwise available in reaching the applicable determination.

Section 782(c)(1) of the Act provides that if an interested party “promptly after receiving a request from {Commerce} for information, notifies {Commerce} that such party is unable to submit the information requested in the requested form and manner,” Commerce shall consider the ability of the interested party and may modify the requirements to avoid imposing an unreasonable burden on that party.

Section 782(d) of the Act provides that, if Commerce determines that a response to a request for information does not comply with the request, Commerce shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person an opportunity to remedy or explain the deficiency. If that person submits further information that continues to be unsatisfactory, or this information is not submitted within the applicable time limits, Commerce may, subject to section 782(e) of the Act, disregard all or part of the original and subsequent responses, as appropriate.

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

On June 29, 2015, the President of the United States signed into law the *TPEA*,¹⁹⁸ which made numerous amendments to the AD and countervailing duty law, including amendments to section 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act.¹⁹⁹ The amendments to the Act are applicable to all determinations made on or after August 6, 2015, and, therefore, apply to this investigation.²⁰⁰

¹⁹⁸ See *Trade Preferences Extension Act of 2015*, Pub. L. No. 114-27, 129 Stat. 362 (2015) and *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015) (*Applicability Notice*).

¹⁹⁹ See *TPEA* and *Applicability Notice*.

²⁰⁰ See 80 FR at 46794-95. The 2015 amendments may be found at <https://www.congress.gov/bill/114thcongress/house-bill/1295/text/pl>.

Section 776(b) of the Act provides that Commerce may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the *TPEA*, 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. Section 776(b)(2) states that an adverse inference may include reliance on information derived from the petition, the final determination from the investigation, a previous administrative review, or other information placed on the record. In addition, the 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.”²⁰¹ Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.²⁰²

Section 776(c) of the Act provides that, when Commerce relies on secondary information rather than on information obtained in the course of an investigation, it shall, to the extent practicable, corroborate that 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 concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise. Further, and under the *TPEA*, Commerce is not required to corroborate any dumping margin applied in a separate segment of the same proceeding.

Finally, under the new section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an AD order when applying an adverse inference, including the highest of such margins. The *TPEA* 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.

While we intend to examine this issue more closely in subsequent administrative reviews, we note that the onus is on the respondent, Hyosung, to provide information demonstrating that it is an arm’s-length transaction. Hyosung’s initial questionnaire responses neither disclosed that there were affiliated transactions, nor did it explain that affiliated services were embedded in either the reported indirect selling or G&A expenses.²⁰³ Hyosung only disclosed the nature of these transactions when Commerce verified the accuracy of Hyosung’s responses. By not disclosing these affiliated transactions, Hyosung has frustrated Commerce’s ability to evaluate the legitimacy of these transactions and not cooperated to the best of its ability.

We find that Hyosung withheld information requested of it and significantly impeded the proceeding, within the meaning of sections 776(a)(2)(A) and (C) of the Act. Without the

²⁰¹ See *Statement of Administrative Action accompanying the Uruguay Round Agreements Act*, H.R. Rep. 103-316, Vol. 1, 103d Cong., at 870 (1994) (SAA).

²⁰² See, e.g., *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); *Antidumping Duties, Countervailing Duties*, 62 FR 27296, 27340 (May 19, 1997); and *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (CAFC 2003) (*Nippon Steel*).

²⁰³ Section D response of February 1, 2018, at pages 12-13 and 32-33.

requested information, we are unable to properly analyze whether Hyosung's affiliated transactions represent arm's-length prices as required by the Act. Accordingly, we also find that necessary information is missing from the record, within the meaning of section 776(a)(1) of the Act. For the final results, we have added the expenses for transactions with these affiliated parties from the 2017 financial statements into the reported G&A and ISE and recalculated the ratios for G&A and ISE in both the home and U.S. markets for the current review.

For more information regarding the G&A expenses and ISE ratio adjustments, *see* Hyosung Cost Calculation Memorandum and Hyosung Final Analysis Memorandum, respectively.

Comment 8: Whether Commerce's Preliminary Results G&A Expense Adjustment was Appropriate

Hyosung's Comments:

- Commerce, in the *Preliminary Results*, adjusted G&A by eliminating the offset for scrap sold and by reclassifying certain expenses.²⁰⁴
- Commerce should not eliminate the offset for scrap, as Commerce's actions are inconsistent with the statute and past practices.²⁰⁵
- Commerce may have denied the scrap offset in the belief that the scrap offset was not recorded as a COM, but states that the statute directs Commerce to accept reported costs of those costs are recorded in a manner consistent with the home country's generally accepted accounting practices.²⁰⁶
- Record evidence demonstrates that Hyosung's costs are recorded under Korean IFRS.²⁰⁷
- With respect to other adjustments to G&A for the *Preliminary Results*, Hyosung states that the disallowed adjustments related to Hyosung's general operations.²⁰⁸ Therefore, the disallowed expenses are appropriately classified as G&A.²⁰⁹

Petitioner's Rebuttal Comments:

- Commerce should continue to deny the scrap offset, stating generally that Hyosung's cost accounting system is unreliable.²¹⁰
- Hyosung calculated different unit costs for direct materials for LPTs with identical physical characteristics, and further alleges that these different costs are closely related to different amounts of cost variances assigned to identical LPTs.²¹¹

²⁰⁴ See Hyosung Case Brief, at 20.

²⁰⁵ *Id.*, at 21.

²⁰⁶ *Id.*

²⁰⁷ *Id.*

²⁰⁸ *Id.*, at 22.

²⁰⁹ *Id.*

²¹⁰ See Petitioner's Hyosung Rebuttal Brief, at 25-27.

²¹¹ *Id.*, at 26.

- Given the importance of the cost variances, the difference between past and current material consumption, including scrap generation and recovery, also varies across projects.²¹²
- It is reasonable for Commerce to reject Hyosung’s use of scrap revenue for the entire company’s general operations, the vast majority of which include non-subject merchandise.²¹³

Commerce’s Position:

We disagree with Hyosung that the appropriate treatment for revenue from sales of scrap is an offset to G&A expenses. As the name alludes, G&A expenses are not related to production. Scrap is created through consumption of direct materials and is commonly classified as a production cost offset. The scrap percentage rate differs from product to product based on the particular production processes each individual product goes through, the specific materials consumed (*i.e.*, steel, wood, plastic, *etc.*), the actual production experience during the POR, and the market price for each type of scrap generated. Hyosung’s production of subject merchandise is a small percentage of Hyosung’s total POR production of in scope and out of scope merchandise, making the scrap revenue of the entire company non-representative of subject merchandise production.

For these reasons, we continue to find that the appropriate treatment for reporting sales of scrap is as an offset to the COM. Accordingly, for these final results, we continue to deny an offset to Hyosung’s G&A expenses for scrap revenue. Hyosung does not record a scrap offset to its manufacturing or raw material costs in the normal course of business. Nor did Hyosung provide a reasonable COM offset calculation for scrap generated from production of subject merchandise. Since no reasonable product-specific COM offset amount was provided by Hyosung, we are also not including a scrap offset to the COM.

For the other adjustments Commerce made to G&A expenses for these final results, we note that Hyosung indicated these line items are business proprietary in their entirety. We disagree, in part, and agree, in part, with Hyosung’s classifications and have revised the adjustment for these final results. For further details, *see* the Hyosung Final Cost Calculation Memorandum.

Comment 9: Variable Overhead Expenses

Petitioner’s Comments

- Commerce found at verification a misapplication of an adjustment factor for variable overhead costs.²¹⁴

²¹² *Id.*, at 27.

²¹³ *Id.*

²¹⁴ *See* Petitioner’s Hyosung Case Brief, at 23-24.

- While the overall percentage value of this adjustment factor is small, the supposed incorrect application of the adjustment by Hyosung is significant for certain specific sales.²¹⁵
- The incorrect application of the adjustment, and its effect on certain sales, undermines the reliability of Hyosung's cost reconciliation.²¹⁶
- Commerce, at verification, was unable to verify the values in this adjustment factor, named "VOH3B," and also reported numerous "minor corrections" at the start of verification for a separate adjustment factor named "VOH3A."²¹⁷
- The incorrect application of "VOH3B" distorts the accuracy of reported LPT costs, as the overall amount of "VOH3B" includes cost variances for the production of both subject LPTs and non-subject merchandise.²¹⁸
- The application of "VOH3B" by Hyosung to individual LPT job costs appears to have been on an "as needed" basis rather than assigning actual costs to the actual job to which the costs belong.²¹⁹
- The total value of VOH3B, allocated across multiple LPTs, amounts to unreconciled costs of production that indicates systemic issues with Hyosung's costs.²²⁰
- Commerce rectify the alleged deficiencies by making an adverse inference and adding the highest positive "" value to all U.S. sales.²²¹

Hyosung's Rebuttal Comments:

- Hyosung restates its position that while its cost accounting system calculates manufacturing costs on a project-specific basis, some costs are not charged to specific units, generally because the project has been closed and the unit shipped.²²²
- While a project may be closed, there are times when a manual review of variance costs can determine to which closed project such costs should be assigned.²²³
- Such costs that could be tied to closed projects were assigned to the "VOH3A" field.²²⁴
- Any remaining costs not assigned directly to projects represent less than 0.05 percent of total COM and are reported in the "VOH3B" variable.²²⁵ The costs in this variable are applied to both subject and non-subject merchandise.²²⁶
- Hyosung realized that it had erroneously calculated "VOH3A" and allocating it to various categories, and provided a minor correction at the start of the cost verification.²²⁷

²¹⁵ *Id.*, at 24.

²¹⁶ *Id.*

²¹⁷ *Id.*, at 25.

²¹⁸ *Id.*, at 25-26.

²¹⁹ *Id.*, at 26.

²²⁰ *Id.*, at 26-27.

²²¹ *Id.*, at 46-47.

²²² *See* Hyosung Rebuttal Brief, at 15.

²²³ *Id.*

²²⁴ *Id.*, at 16.

²²⁵ *Id.*

²²⁶ *Id.*

²²⁷ *Id.*, at 17.

- Hyosung states that the total COM and the total “VOH3A” values were not impacted, and that Commerce noted this fact in its verification report.²²⁸
- As to the “VOH3B” variable, a reference error in an Excel spreadsheet accounted for certain problems in one control number that Commerce tested at verification.²²⁹
- These issues with the “VOH3” variables are small, and are not indicative of either Hyosung’s costs being unusable or that Hyosung is manipulating costs.²³⁰
- Commerce found the assignment of “VOH3B” to be in error for one of the control numbers examined, but that the examination of the ratios matched those reported in the cost of production data file.²³¹
- Commerce verified that the variances are recorded in the normal course of business and are part of Hyosung’s COM in a factory that produces both subject and non-subject merchandise.²³²
- The error found at verification is easily corrected and that the information needed to make the correction is on the record.²³³

Commerce’s Position

At verification, we tested Hyosung’s variances extensively. When a cost cannot be assigned to a specific project, Hyosung’s accounting system books the cost directly in COGS as a 48 series variance to ensure that costs are not accidentally eliminated. As part of the cost reconciliation, Hyosung tied the total cost recorded in COGS for the POR to the total reported for the VOH3A and VOH3B reporting fields used for reporting to Commerce.²³⁴ Hyosung manually reviewed the 48 series variance and traced costs to specific projects when possible, reporting the cost in VOH3A. For the remainder of favorable variances that Hyosung was unable to trace to a specific project, Hyosung instead created a monthly adjustment factor based on the month the LPT was sold, reported in field VOH3B. At verification, we found that the monthly adjustment factor did not match what was reported in VOH3B in our testing of selected CONNUMs. Because the VOH3B adjustment factor was applied inconsistently to the COP database, we are excluding this favorable VOH3B variance for these final results. For further details, *see* the Hyosung Final Cost Calculation Memorandum.

Comment 10: Costs of Spare Parts

Petitioner’s Comments:

- Hyosung presented minor corrections during verification concerning spare parts, and contends that these costs have substantial effects on the reported cost of manufacture for the projects in question.²³⁵

²²⁸ *Id.*

²²⁹ *Id.*

²³⁰ *Id.*, at 17-18.

²³¹ *Id.*

²³² *Id.*, at 19.

²³³ *Id.*

²³⁴ *See* Hyosung Korea Cost Verification Report, at 14-15 and 24.

²³⁵ *See* Petitioner’s Hyosung Case Brief, at 29-30

- Hyosung did not revise its cost reconciliation to account for these changes.²³⁶

Hyosung's Rebuttal Comments:

- The nature of LPTs means that the sales files reported to Commerce by definition encompass a time period that greatly exceeds the POR, and that the cost file will likewise exceed the POR.²³⁷
- Hyosung determined that two spare part products had been mis-classified as to the time frame in which Hyosung had incurred costs, and that while these errors affected part of the reconciliation process the end result was that there was no change to the total reported costs.²³⁸
- While the two spare parts were, in mirror fashion, listed as being manufactured during or outside of the POR, the final cost reconciliation fixed the error and there is no need for further adjustment.²³⁹

Commerce's Position

Hyosung's minor correction regarded the misclassification of two non-POR spare parts products to the correct classification of non-POR spare parts products. While the parts were correctly classified, in general, as outside the POR, they were incorrectly classified as to when it was produced. However, the cost reconciliation includes deductions for non-POR costs and both the original and corrected cost reconciliations remove the correct total amount. The total cost reported does not change as a result of this minor correction.²⁴⁰ Therefore, for these final results we are not making an adjustment to Hyosung's reported costs.

Comment 11: Packing Costs

Petitioner's Comments:

- Hyosung submitted changes to reported costs as part of the minor corrections for the sales verification in Korea.²⁴¹ However, the revised packing costs reported at the sales verification were not the same as the costs reported at the cost verification.²⁴²
- Hyosung cannot demonstrate whether the difference is due to errors in the packing material costs, or the packing labor costs.²⁴³
- The reasons proffered by Hyosung for the differences during the sales investigation, linking the costs to sequence (SEQ) numbers, does not make sense.²⁴⁴

²³⁶ *Id.*, at 30.

²³⁷ See Hyosung Rebuttal Brief, at 19-20.

²³⁸ *Id.*, at 20.

²³⁹ *Id.*

²⁴⁰ See Hyosung Korea Cost Verification Report, at Verification Exhibit 1, attachment D and E.

²⁴¹ See Petitioner's Hyosung Case Brief, at 30-31.

²⁴² *Id.*, at 31.

²⁴³ *Id.*, at 32-33.

²⁴⁴ *Id.*, at 34

- The differences further demonstrate that Hyosung’s reported cost of manufacture are unreliable.²⁴⁵
- To correct the problems with the reported packing costs, Commerce should deny the use of the values in the field “PACKH” when calculating the comparison market price.²⁴⁶

Hyosung’s Rebuttal Comments:

- The reported values for home market packing, after the minor corrections at the sales verification in Korea, are correct.²⁴⁷
- Hyosung restates its argument that project-specific packing labor and materials costs should have been summed using the project number field but were inadvertently summed using the sequence number field, and that the minor corrections at the Korean sales verification demonstrated the error.²⁴⁸
- Hyosung disagrees with the petitioner’s claim that the adjusted home market packing costs should have also affected U.S. packing costs, stating that packing for the U.S. market properly referenced the project number field.²⁴⁹
- Commerce verified the packing labor and packing material costs for multiple home market and U.S. sales as part of the Korean sales verification process and did not note any discrepancies.²⁵⁰
- With respect to the cost reconciliation and packing costs, the deduction of packing material costs, but not packing labor costs, is not evidence of an attempt to force costs to reconcile.²⁵¹
- While the petitioner argues that Hyosung indicated it subtracted packing costs, and not just packing material costs, from the cost of production, the record evidence makes clear that only packing material costs were subtracted.²⁵²
- Commerce verified the packing material and labor costs for both home market and U.S. sales, and that if Commerce disagrees with the deduction only of packing material costs from the cost of manufacture it can also deduct packing labor costs as well.²⁵³

Commerce’s Position

After a review of record evidence, we are not making any adjustments to packing costs. During the sales verification in Korea, Commerce verified the packing correction reported by Hyosung which affected home market sales.²⁵⁴ We also verified the reported packing costs for both home

²⁴⁵ *Id.*, at 31-32.

²⁴⁶ *Id.*, at 47.

²⁴⁷ *See* Hyosung Rebuttal Brief at 22.

²⁴⁸ *Id.*

²⁴⁹ *Id.*, at 23-24.

²⁵⁰ *Id.*, at 24.

²⁵¹ *Id.*

²⁵² *Id.*, at 24-25.

²⁵³ *Id.*, at 25-26.

²⁵⁴ *See* Hyosung Korea Sales Verification Report at 2.

market and U.S. sales and found no discrepancies.²⁵⁵ Therefore, we are not making any adjustments to the reported home market or U.S. sales packing expenses.

We also examined Hyosung's reported packing costs during the cost verification as part of the cost reconciliation.²⁵⁶ As the petitioner notes, the packing costs reported at the cost verification differ from the packing costs reported in the Korean sales verification.²⁵⁷ However, the record does not contain sufficient information to adjust the packing cost of each reported LPT unit because Hyosung removed packing costs as part of the cost reconciliation. We have revised the cost reconciliation to include the revised packing cost. However, the net effect of the difference per the overall cost reconciliation, is that the reported costs exceed slightly the total per its normal books and records. Because Hyosung's error in reporting of costs as part of the cost reconciliation was not beneficial to Hyosung because the cost reconciliation indicates that the COP database overstates packing costs, and because we do not have the record evidence to make the adjustment, we are not adjusting Hyosung's reported packing costs for the final results.

Comment 12: Scrapped Materials

Petitioner's Comments:

- Certain costs for scrapped materials should be adjusted in the calculation of the cost of manufacture.²⁵⁸
- Absent such an adjustment, the reported cost of manufacture is incorrect, and thus contributes to the petitioner's assertion that Hyosung's entire reported cost of manufacture is incorrect.²⁵⁹
- Commerce, to correct this alleged deficiency, must remove certain costs associated with the scrapped materials.²⁶⁰

Hyosung's Rebuttal Comments:

- Hyosung states that it added an amount for the cost of recycled materials to one project number, for purposes of reporting cost of manufacture to Commerce.²⁶¹
- Commerce verified these reported costs, and did not have any issue with Hyosung's treatment or reporting of these costs.²⁶²
- The petitioner did not make any suggestions on how Hyosung should have accounted for these costs, and raises the issue as part of an overall statement that Hyosung's reported costs are incorrect.²⁶³

²⁵⁵ *Id.*, at 34-35 for a description of the packing costs and calculations for a home market sale. We noted no discrepancies for U.S. sales, as described, at 27-28.

²⁵⁶ See Hyosung Korea Cost Verification Report, at Verification Exhibits 7 and 8.

²⁵⁷ See Hyosung Korea Cost Verification Report, at 15 and 25.

²⁵⁸ See Petitioner's Hyosung Case Brief, at 35-37.

²⁵⁹ *Id.*, at 37.

²⁶⁰ *Id.*, at 48-49.

²⁶¹ See Hyosung Rebuttal Brief, at 26-27.

²⁶² *Id.*, at 27.

²⁶³ *Id.*

Commerce's Position

As noted in the verification report, Hyosung completed and shipped a LPT that was previously damaged in transit prior to the POR. Because LPT components are shipped in multiple containers, only the coil of the LPT was damaged. During the POR, Hyosung produced a new coil and completed construction of the LPT using the undamaged parts produced prior to the POR. As a specific reconciling item, Hyosung included the cost of LPTs delivered during the POR that were produced outside the POR, which includes this replacement LPT.²⁶⁴ Hyosung has included this pre-POR cost in its cost reconciliation and thus in its reported costs. Petitioner's assertion that an adjustment is required for parts produced prior to the POR is unwarranted given that the full cost of producing the LPT is reported when the LPTs are completed and sold. We note that LPTs routinely take significant time to construct and straddle PORs. Thus, we are not making an adjustment for the final results.

Comment 13: Product Codes and Home Market Sales

Petitioner's Comments:

- Hyosung revised product keys and descriptions of those product keys at the sales verification in Korea, and that such revisions amount to new and unsolicited factual information.²⁶⁵
- The codes obtained by Commerce at the sales verification, contained in verification exhibit 10A, do not comport with the codes submitted in Exhibit A-18 of the section A questionnaire response.²⁶⁶
- The alleged discrepancies between product keys, and assignment of keys to products sold to a Korean customer, may reflect an approach by Hyosung designed to influence the model match program.²⁶⁷
- The sales affected by these different product keys also received larger cost variances.²⁶⁸

Hyosung's Rebuttal Comments:

- Clarifications regarding product coding were the result of requests by Commerce during the Korean sales verification.²⁶⁹
- One of the product codes in question is not new, as the petitioner alleges, and cites to its response in section A of Commerce's AD questionnaire.²⁷⁰
- The information collected at verification clarified this previously-reported code and was provided at the request of Commerce.²⁷¹

²⁶⁴ See Hyosung Korea Cost Verification Report, at 14.

²⁶⁵ See Petitioner's Hyosung Case Brief, at 37-38.

²⁶⁶ *Id.*, at 38.

²⁶⁷ *Id.*, at 39-40.

²⁶⁸ *Id.*, at 40.

²⁶⁹ See Hyosung Rebuttal Brief, at 28-29.

²⁷⁰ *Id.*, at 29-30.

²⁷¹ *Id.*, at 30-31.

- The clarification regards how the four-digit code differed with respect to other product codes which were assigned to other units.²⁷²
- With respect to voltage (and one specific voltage in particular), the petitioner mis-read the product coding system in both verification exhibit 10A and Exhibit A-18, as some of the voltage range codes are only applicable if certain other codes fall within a separate specific range.²⁷³
- With respect to product codes, the petitioner confuses the assignment of CONNUM codes with product codes and asserts that there are no issues with the reported product codes.²⁷⁴
- Concerning one sale in the home market, Hyosung claims that LPTs that begin with a certain product code are not sold solely to one customer, that Hyosung never made such a claim, and that Commerce examined this sale during verification.²⁷⁵

Commerce's Position

We have not made any changes to the product codes or CONNUMs. At the sales verification in Korea, Commerce examined the reported product codes.²⁷⁶ In examining verification exhibit 10A, and after our request for additional information regarding codes (which appears in verification exhibit 10B), we noticed that page 1 of the verification exhibit (10A) did not contain certain codes for the maximum voltage range.²⁷⁷ Hyosung provided a revised page 1 at Commerce's request which contained the codes.²⁷⁸

In its rebuttal brief, Hyosung states that the revised page 1 of verification exhibit 10A is consistent with exhibit A-18 of its section A questionnaire response.²⁷⁹ We examined Hyosung's section A response, and exhibit A-18 specifically. Certain aspects of exhibit A-18 were unclear.²⁸⁰ However, the revised page 1 of verification exhibit 10A clarifies the information presented in exhibit A-18, and does not contradict the reported product codes. Additionally, we found no evidence to indicate that the remaining product codes were improperly reported.

The petitioner states that Hyosung incorreced reported one code to a particular unit as part of the internal product codes, but a separate code to the same unit for the transformer technology code as part of the CONNUM which is constructed and reported to Commerce.²⁸¹ However, one of the assigned code numbers is for the product code, while the other assigned code number is for the CONNUM reported to Commerce.²⁸² We examined the record, and find that the bases for these two codes (product code versus CONNUM) are different, and thus it is reasonable to

²⁷² *Id.*, at 31.

²⁷³ *Id.*, at 32

²⁷⁴ *Id.*, at 33-35.

²⁷⁵ *Id.*, at 35

²⁷⁶ See Hyosung Korea Sales Verification Report, at 14-15 and at Verification Exhibit 10A.

²⁷⁷ *Id.*, at 15.

²⁷⁸ *Id.*

²⁷⁹ See Hyosung Rebuttal Brief, at 29-33.

²⁸⁰ For further explanation of proprietary information, see the Hyosung Final Analysis Memorandum.

²⁸¹ See Petitioner's Hyosung Case Brief, at 39-40.

²⁸² See Hyosung Rebuttal Brief, at 33-34, citing to Hyosung BCQR, at B-13.

expect that different numbers might represent the same characteristic for these different types of codes. Our examination of the record²⁸³ does not indicate that Hyosung has mis-reported either the product codes or the CONNUMs.

The petitioner also notes that Hyosung made a sale of an LPT to a home market customer whose product code indicates that the LPT in question is for a different customer.²⁸⁴ However, we examined this sale (both the reported CONNUM as well as the technical specifications) in detail as part of our verification process.²⁸⁵ We found no discrepancies.²⁸⁶

Comment 14: Product Codes and U.S. Sales

Petitioner's Comments:

- Hyosung assigned incorrect product codes to a number of U.S. sales.²⁸⁷
- The incorrect codes may have the potential to change product matching, and thus the final margins.²⁸⁸

Hyosung's Rebuttal Comments:

- All of the assigned product codes are correct.²⁸⁹
- For each sale, the voltage on the LPT is compatible with the transmission voltage.²⁹⁰

Commerce's Position

Record evidence does not indicate that Hyosung assigned incorrect product codes for U.S. sales. Specifically, the “voltage” field discussed in the product code is slightly different than the same named field in the CONNUM reported to Commerce. Due to the proprietary nature of this discussion, *see* Hyosung Final Analysis Memorandum for further details.

Comment 15: Product Codes and “VOH3B” Cost Variances

Petitioner's Comments:

- The misreporting of product codes for both the home market and U.S. sales compounds the alleged inaccuracies in the “VOH3B” cost variance.²⁹¹

²⁸³ We examined a separate sale of a different LPT with the same reported voltage, and found no discrepancies. *See* Hyosung Korea Sales Verification Report, at 27 and Verification Exhibit 15.

²⁸⁴ *See* Petitioner's Hyosung Case Brief, at 40.

²⁸⁵ *See* Hyosung Korea Sales Verification Report, at 32-35 and Verification Exhibit 20

²⁸⁶ *Id.*, at 35.

²⁸⁷ *See* Petitioner's Hyosung Case Brief, at 41.

²⁸⁸ *Id.*, at 41-42.

²⁸⁹ *See* Hyosung Rebuttal Brief, at 36-37.

²⁹⁰ *Id.*, at 38.

²⁹¹ *See* Petitioner's Hyosung Case Brief, at 42-43.

- Commerce should resort to partial adverse facts available to address these issues.²⁹² Specifically, Commerce use the highest unit cost that Hyosung calculated for any LPT, and assign that cost to the U.S. sales for which Hyosung purportedly assigned incorrect internal product codes.²⁹³

Hyosung's Rebuttal Comments:

- As the product codes and control numbers are not mis-reported, there is no compounding of "inaccuracies" with the "VOH3B" variance.²⁹⁴

Commerce's Position

As noted above, we do not find that Hyosung incorrectly reported the product codes. Therefore, we are not making any adjustments with respect to cost variances as a result of product coding.

Comment 16: Warranty Expenses

Petitioner's Comments:

- Commerce should rely on transaction specific warranty costs for U.S. sales, as reported in the field "WARRU," rather than the average warranty costs in the field "WARR3YRU."²⁹⁵

Hyosung's Rebuttal Comments:

- Commerce's standard practice with respect to warranties is that warranties extend over a period of time and that warranty claims often do not correspond with the POR.²⁹⁶
- The reported three-year warranty amounts in the "WARR3YRU" field are consistent with Commerce's methodology, and that Commerce verified the reported fields at verification.²⁹⁷
- The petitioner has not offered an explanation as to why Commerce should use the transaction-specific warranty amounts, and that Commerce should reject the request.²⁹⁸
- As LPTs are capital goods with long lifespans, any reliance on a transaction-specific warranty amount would not be reflective of Hyosung's historical experience and would mitigate the impact of warranty claims that may by nature occur at irregular intervals.²⁹⁹

²⁹² *Id.*, at 43.

²⁹³ *Id.*, at 49-50.

²⁹⁴ *See* Hyosung Rebuttal Brief, at 38.

²⁹⁵ *See* Petitioner's Hyosung Case Brief, at 50-51.

²⁹⁶ *See* Hyosung Rebuttal Brief, at 39.

²⁹⁷ *Id.*

²⁹⁸ *Id.*

²⁹⁹ *Id.*, at 39-40 (citing to *Certain Oil Country Tubular Goods from the Republic of Korea: Final Determination of Sales at Less than Fair Value and Negative Final Determination of Critical Circumstances*, 79 FR 41983 (July 18, 2014), and accompanying decision memorandum, at Comment 22).

Commerce's Position

With respect to warranty expenses, Commerce requires that respondents report all warranty expenses incurred during the POR and, where possible, to divide the expenses on a model-specific basis and create a warranty ratio for each model sold during the POR. If a respondent has an atypical warranty experience, we request a three-year history of warranty claims in order to avoid distortions. As Commerce stated in *Solar Cells*, our normal practice is to rely on warranty expenses incurred during the POR.³⁰⁰ Commerce further stated that “{h}owever, if those expenses are distortive and not representative of a respondent’s experience, Commerce relies on a three-year average of the respondent’s warranty expenses.”³⁰¹ Hyosung stated that Commerce’s practice “recognizes that warranties typically extend over a period of time that is longer than the POR, and that warranty claims do not coincide with Commerce’s review period.”³⁰²

In previous reviews, Commerce has relied on the three-year average.³⁰³ We determine that the warranty expenses for Hyosung are distortive, as they occur infrequently but may be significant due to the specialized nature of LPTs and their expense.³⁰⁴ Additionally, Hyosung states that its accounting system does not allow it to trace such warranty expenses directly to an individual transaction.³⁰⁵ While Commerce examined warranty claims during the POR, Hyosung manually traced the warranty expenses.³⁰⁶ Therefore, we determined that the reported three-year warranty expenses are appropriate to use for this review with respect to Hyosung.

Comment 17: Depreciation Costs

Petitioner’s Comments:

- Hyosung mis-classified depreciation costs for two buildings as VOH, instead of FOH.³⁰⁷
- Commerce discovered this error at the cost verification. The errors would result in an understatement of the COM.³⁰⁸

³⁰⁰ See *Crystalline Silicon Photovoltaic Cells, Whether or Not Assembled Into Modules, From the People's Republic of China: Final Results of Antidumping Duty Administrative Review and Final Determination of No Shipments; 2014-2015*, 82 FR 29033 (June 27, 2017) (*Solar Cells*), and accompanying decision memorandum, at Comment 19.

³⁰¹ *Id.*

³⁰² See Hyosung Rebuttal Brief at 39 (citing to *Certain Pasta from Turkey: Final Results of Antidumping Duty Administrative Review and Determination Not to Revoke the Antidumping Duty Order in Part*, 67 FR 298 (January 3, 2002), and accompanying Issues and Decision Memorandum, at Comment 2).

³⁰³ *LPT 2014-2015 Final Results* where Commerce used the three-year average warranty expenses when calculating normal value for Hyosung.

³⁰⁴ See BCQR, at B-41 through B-42, C-47 through C-48.

³⁰⁵ *Id.*

³⁰⁶ See, e.g., Hyosung CEP Verification Report, at 31-32.

³⁰⁷ See Petitioner’s Hyosung Case Brief, at 51.

³⁰⁸ *Id.*, at 51-52.

- Commerce, as partial facts available, increase the reported FOH costs by a percentage which reflects the alleged misreported FOH expenses.³⁰⁹ Commerce should not reduce Hyosung's reported VOH, as it would result in an unjustified reduction to total COM.³¹⁰

Hyosung's Rebuttal Comments:

- Hyosung's cost system segregates conversion costs, and that Commerce determined that Hyosung classified two building depreciation cost centers as variable overhead.³¹¹
- The cost verification report suggests certain adjustments, based on Commerce's testing of this item.³¹²
- The error in question does not mean that Commerce should partial AFA due to COM failures, but instead is a question of the appropriate categorization of VOH versus FOH costs.³¹³

Commerce's Position

At verification, we tested Hyosung's cost centers and allocation of costs to specific CONNUMs. In our testing we found that two building depreciation cost centers were incorrectly classified as variable overhead. Building depreciation is a fixed cost that does not vary based on production activity. The petitioner in their case brief notes that a proposed calculation based on one month of testing would result in an understatement of cost if applied for the POR. We agree that the ratio of VOH to FOH for the one month tested at verification differs from the POR ratio. For the final results we have reclassified the building depreciation cost centers from variable overhead to fixed overhead to ensure that the reported fixed overhead cost is not understated. *See* Hyosung Final Cost Calculation Memorandum for further details.

Comment 18: Document Acceptance Charge

Petitioner's Comments:

- Commerce discovered at the sales verification in Pittsburgh that HICO America incurs a charge each time it issues a document acceptance.³¹⁴
- Contrary to Hyosung's claims, there is no evidence that these charges appear in ISE.³¹⁵
- Commerce should increase the gross unit price of all U.S. sales by the amount of the document acceptance charge.³¹⁶

³⁰⁹ *Id.*, at 52.

³¹⁰ *Id.*

³¹¹ *See* Hyosung Rebuttal Brief at 40.

³¹² *Id.*

³¹³ *Id.*

³¹⁴ *See* Petitioner's Hyosung Case Brief at 52.

³¹⁵ *Id.*, at 53.

³¹⁶ *Id.*

Hyosung's Rebuttal Comments:

- The document acceptance charge is not large and that Commerce examined this issue at verification. Rather, these charges are a component of ISE.³¹⁷

Commerce's Position

We agree with the petitioner. At verification, Commerce discovered that HICO America incurs a document acceptance charge for sales to the United States.³¹⁸ HICO America stated that the fees are included in ISE, and that the fee often covers multiple sales that can consist of both subject and non-subject merchandise.³¹⁹ Nevertheless, as these fees are incurred as a direct result of sales, Commerce determines that these are direct selling expenses which should be deducted from U.S. price under section 772(c)(2)(A) of the Act.

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

Commerce issued its initial AD questionnaire to Hyosung on December 13, 2017.³²⁰ Section C of that questionnaire requested that Hyosung report expenses on a transaction-specific basis for U.S. sales transactions, where possible, and to report all such expenses and adjustments separately.³²¹ The questionnaire also instructs Hyosung to ensure that all expenses and/or adjustment are reported separately.³²² Hyosung reported expenses in the United States in its section C questionnaire response.³²³ Commerce issued a supplemental questionnaire pertaining in part to issues with Hyosung's section C response, and Hyosung responded to that

³¹⁷ See Hyosung Rebuttal Brief at 42-43.

³¹⁸ See Hyosung CEP Sales Verification Report at 8.

³¹⁹ *Id.*

³²⁰ See Letter from the Department to Hyosung, regarding Antidumping Duty Questionnaire, dated December 13, 2017 (Hyosung Initial Questionnaire).

³²¹ See Hyosung Initial Questionnaire at C-1.

³²² *Id.*

³²³ See Hyosung BCQR.

supplemental questionnaire.³²⁴ At no point during these responses did Hyosung report or discuss a document acceptance charge.

Commerce issued the *Preliminary Results* on September 7, 2018.³²⁵ Subsequently, Commerce conducted verification of Hyosung's U.S. affiliate, HICO America, from September 17, 2018 through September 19, 2018, in Pittsburgh, Pennsylvania.³²⁶ At verification, Commerce discovered that HICO America incurs a charge each time it issues a document acceptance.³²⁷ In reviewing the accounting system for HICO America, we traced a U.S. sale through the various accounting entries.³²⁸ Page 41 of Verification Exhibit 2 contains a receipt of merchandise by HICO America from Hyosung, which includes not only a portion of the U.S. sale that Commerce examined but other line items as well.³²⁹ HICO America stated that it grouped these unrelated sales onto one material receipt form due to the fact that HICO America incurs a charge each time it issues this material receipt/document acceptance for merchandise received from Hyosung.³³⁰ HICO America further stated that the items listed on this document were not shipped together, and that HICO America had not separately reported this acceptance charge.³³¹ HICO America stated that the charges were recorded in ISE.³³² The line items listed on the form on page 41 include subject LPTs and non-subject merchandise.³³³

As the record indicates, despite requests by Commerce for information regarding U.S. selling expenses and despite numerous opportunities to report all such expenses, Hyosung failed to report this document acceptance charge. It was only at the verification that Commerce discovered that the charge existed. Hyosung had the ability to provide the requested information. The failure to report the information impedes Commerce's attempts to calculate an accurate AD margin, specifically by preventing Commerce from deducting direct selling expenses from the U.S. price as specified under section 772(c)(2)(A) of the Act.

As such, we determine that Hyosung impeded the review by failing to act to the best of its ability by withholding the requested information concerning U.S. direct selling expenses. Hyosung's failure to provide this necessary information significantly impedes Commerce's ability to calculate accurate AD margins by understating the expenses to be deducted from U.S. price, thus increasing the net U.S. price and lowering the dumping margin.

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

³²⁴ See Hyosung SBCQR.

³²⁵ See *Preliminary Results*.

³²⁶ See Hyosung CEP Verification Report.

³²⁷ *Id.*, at 2, 8, and Verification Exhibit 2.

³²⁸ *Id.*, at Verification Exhibit 2.

³²⁹ *Id.*, at 7, and page 41 of Verification Exhibit 2.

³³⁰ *Id.*, at 8.

³³¹ *Id.*

³³² *Id.*

³³³ *Id.*, at page 41 of Verification Exhibit 2.

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 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 above, we that Hyosung has not acted to the best of their abilities to provide Commerce with the requested information to calculate an accurate AD margin and have, therefore, impeded this administrative review. Accordingly, pursuant to sections 776(a)(1), 776(a)(2)(A) and (C), and 782(e) of the Act, we are relying upon facts otherwise available.

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.³³⁴ In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA),³³⁵ 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.³³⁶ In addition, the 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

³³⁴ 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).

³³⁵ As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the AD and CVD law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

³³⁶ See section 776(b)(1)(B) of the Act.

fully.”³³⁷ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.³³⁸ 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.³³⁹ We find that Hyosung has not acted to the best of its ability to comply with Commerce’s request for information because it failed to report the document acceptance charge information that was reflected in its books and records. In accordance with section 776(b) of the Act and 19 CFR 351.308(a), Commerce determines to use an adverse inference when selecting from among the facts otherwise available.³⁴⁰

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.³⁴¹

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.³⁴² The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.³⁴³ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of

³³⁷ 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).

³³⁸ 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.

³³⁹ 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).

³⁴⁰ See, e.g., *Non-Oriented Electrical Steel from Germany, Japan, and Sweden: Preliminary Determinations of Sales at Less Than Fair Value, and Preliminary Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 29423 (May 22, 2014), and accompanying Preliminary Decision Memorandum at 7-11, unchanged in *Non-Oriented Electrical Steel from Germany, Japan, the People’s Republic of China, and Sweden: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determinations of Critical Circumstances, in Part*, 79 FR 61609 (October 14, 2014); see also *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where the Department applied total AFA when the respondent failed to respond to the antidumping questionnaire).

³⁴¹ See 19 CFR 351.308(c).

³⁴² *Id.*

³⁴³ *Id.*; see also 19 CFR 351.308(d).

the information to be used.³⁴⁴

As AFA, we are deducting the full document acceptance charge from the U.S. price for Hyosung, and are not making any adjustments to G&A expenses. This achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.³⁴⁵ See Hyosung Final Analysis Memorandum for further discussion.

Comment 19: Interest Expense Ratio

Petitioner's Comments:

- Hyosung failed to remove certain costs from the denominator for interest expense.³⁴⁶
- As a result, the interest expense as reported is understated for each LPT sold during the POR.³⁴⁷
- Commerce should rectify the error by doubling the reported interest expense ratio.³⁴⁸

Hyosung's Rebuttal Comments:

- While Commerce noted that certain expenses were not deducted from the denominator, Commerce did not conclude that Hyosung had improperly calculated the interest expense ratio.³⁴⁹
- Hyosung indicates that it calculated the interest expense ratio on the same basis as it calculated G&A.³⁵⁰
- Hyosung admits that it omitted adjusting the cost of goods sold denominator to account for installation expenses, but states that record evidence is sufficient for Commerce to make an adjustment.³⁵¹
- Any such adjustment will have essentially no impact on the interest expense ratio.³⁵²

Commerce's Position

At verification, we reviewed Hyosung's COGS denominator which is used for the INTEx and G&A expense ratio calculations. We note that with the exception of installation revenue, the

³⁴⁴ 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).

³⁴⁵ See *Gallant Ocean (Thailand) Co. v. United States*, 602 F.3d 1319 (Fed. Cir. 2010).

³⁴⁶ See Petitioner's Hyosung Case Brief at 54.

³⁴⁷ *Id.*, at 54-55.

³⁴⁸ *Id.*, at 55.

³⁴⁹ See Hyosung Rebuttal Brief at 43.

³⁵⁰ *Id.*, at 43-44.

³⁵¹ *Id.*, at 44

³⁵² *Id.*

expenses raised as a concern by petitioner are not recorded in the cost of sales in Hyosung's normal books and records. Rather these expenses are classified as selling and administration expenses on Hyosung's financial statements. Because they are not included in the cost of sales per the normal books and records, there is no need to deduct them from the COGS denominator used for the INTEX and G&A expense ratio calculations when they are not included in the first place. For the Final Results, we have revised the COGS denominator to reflect the deduction of installation revenue and use the revised denominator for the INTEX ratio. We note that Hyosung's COGS denominator for the G&A expense ratio already includes a deduction for installation revenue. *See Hyosung Final Cost Calculation Memorandum* for further details.

Comment 20: Brokerage Expenses

Petitioner's Comments:

- Hyosung under-reported brokerage expenses for one sale, where Hyosung divided the Korean brokerage expenses between an LPT and non-subject spare parts.³⁵³
- Even division of the brokerage expenses between these two items is unreasonable, given that the spare parts account for only a small fraction of the total value of the LPT.³⁵⁴
- Commerce should restore the entire brokerage expense to the sale of the LPT alone.³⁵⁵

Hyosung's Rebuttal Comments:

- The petitioner's arguments amount to an attempt to mis-classify certain merchandise and apply AFA based on this purported mis-classification.³⁵⁶
- The explanation for the brokerage expense division was that Hyosung shipped subject and non-subject merchandise together and declared them on the same form.³⁵⁷
- Commerce examined the issue at verification, as reflected in the Korean sales verification report.³⁵⁸

Commerce's Position

We agree with the petitioner and have allocated the majority of the brokerage expense to the LPT in question. *See Hyosung Final Analysis Memorandum* for further discussion.

³⁵³ *See* Petitioner's Hyosung Case Brief at 55.

³⁵⁴ *Id.*, at 56.

³⁵⁵ *Id.*, at 56-57.

³⁵⁶ *See* Hyosung Rebuttal Brief at 45.

³⁵⁷ *Id.*, at 46.

³⁵⁸ *Id.*

Comment 21: Effective Date of the Deposit Rate

Hyosung's Comments:

- Commerce make the effective rate of the cash deposit retroactive to the original date of the statutory deadline.³⁵⁹
- Hyosung recognizes that Commerce tolled the deadline for the final results of this review due to the government shutdown, but believes that a retroactive date for the cash deposit rate would prevent undue prejudice towards Hyosung.³⁶⁰
- Extending the final results beyond the statutory deadline is inconsistent with the statute.³⁶¹
- Hyosung cites to Commerce's determination in the changed circumstances review regarding Hyundai, where Commerce made a retroactive application of the cash deposit requirements.³⁶²

Petitioner's Rebuttal Comments:

- Commerce should reject Hyosung's request to make the effective date of the cash deposit rate retroactive to the date of the statutory deadline absent the recent government shutdown.³⁶³
- Commerce has implemented the same extension time for all active reviews as a result of the recent government shutdown, and avers that it would be inappropriate for Commerce to adopt an outcome-determinative policy that treats Hyosung differently from the other reviews or other respondents in this case.³⁶⁴
- Deposit rates are not assessment rates, and any Hyosung entries in March or April of 2019 have not received final assessments.³⁶⁵
- Hyosung's argument with respect to the changed circumstances review for Hyundai is misplaced, as is Hyosung's argument regarding clerical error, as both situations are distinguishable from the current proceeding.³⁶⁶
- In cases of ministerial errors, such adjustments reflect margin changes that Commerce did not intend, and that the changes simply follow the policy of issuing new deposit instructions on the date of the publication of Commerce's results or determinations.³⁶⁷

Commerce's Position

We disagree with Hyosung and are not adjusting the effective date of the cash deposit. Section 751(a)(1)(C) of the Act states that Commerce shall publish in the *Federal Register* the results of

³⁵⁹ See Hyosung Case Brief at 3.

³⁶⁰ *Id.*, at 4.

³⁶¹ *Id.*, citing to *Daido Corp. v. United States*, 796 F. Supp. 533, 536 (Ct. Int'l Trade 1992)

³⁶² *Id.*, at 4-5.

³⁶³ See Petitioner's Hyosung Rebuttal Brief at 5.

³⁶⁴ *Id.*, at 6.

³⁶⁵ *Id.*

³⁶⁶ *Id.*, at 7

³⁶⁷ *Id.*, at 8.

an administrative review along with notice of any estimated duty to be deposited. Section 751(a)(2)(C) of the Act states that the administrative review determination shall be the basis for the deposits of estimated duties. Thus, the statute makes clear that the completion of an administrative review and the publication of the final results in the Federal Register are the key actions necessary to establish the cash deposit rate of estimated AD duties.

Commerce tolled the deadlines for the final determination due to the partial government shutdown.³⁶⁸ All deadlines for all proceedings were tolled by 40 days.³⁶⁹ Commerce has published the final determination, and final results of review, for other cases based upon tolled deadlines established due to government shutdowns.³⁷⁰ There is no evidence on the record which would provide a statutory reason for shifting the effective date of the cash deposit to a date prior to the publication of the final results. Therefore, will establish the effective date of the cash deposit on the date of the final results, as provided by statute.

Comment 22: Successor in Interest

Hyosung's Comments:

- Hyosung Heavy Industries Corporation (HIIC) is the successor in interest to Hyosung Corporation and, therefore, Commerce should perform an successor-in-interest analysis during this administrative review.³⁷¹
- Hyosung undertook a corporate restructuring, and while this restructuring does not affect the entries of LPTs during this administrative review period it will affect the subsequent cash deposit rates.³⁷²
- Commerce has the authority to conduct a successor-in-interest analysis during an ongoing administrative review and has all necessary information on the record to conduct such an analysis.³⁷³

Petitioner's Rebuttal Comments:

- The petitioner did not comment on this issue.

³⁶⁸ See Memorandum to the Record from 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, "Deadlines Affected by the Partial Shutdown of the Federal Government," dated January 28, 2019.

³⁶⁹ *Id.*

³⁷⁰ See, e.g., *Chlorinated Isocyanurates from the People's Republic of China: Final Results of Antidumping Duty Administrative Review: 2016-2017*, 84 FR 5053 (February 20, 2019), and *Certain Aluminum Foil from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 83 FR 9282 (March 5, 2018).

³⁷¹ See Hyosung Case Brief at 6.

³⁷² *Id.*

³⁷³ *Id.*, at 7, citing to *Tapered Roller Bearings and Parts Thereof; Finished and Unfinished, From the People's Republic of China: Final Results of the 2008-2009 Antidumping Duty Administrative Review*, 76 FR 3086, 3087 (January 19, 2011).

Commerce's Position

In determining whether a change in a company and its relationship with outside entities results in a new company that is not a successor to the pre-change company for cash deposit purposes, Commerce examines a number of factors including, but not limited to: changes in structure, management, production facilities, supplier relationships, and customer base.³⁷⁴ Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.³⁷⁵ Thus, if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.³⁷⁶

Hyosung submitted information regarding a restructuring during the administrative review process.³⁷⁷ Commerce also examined the restructuring at the sales verification in Korea.³⁷⁸ Record evidence shows the following regarding Hyosung's operations:

1. *Ownership / Management / Corporate Structure*

The record shows that Hyosung shifted to a holding company structure, spinning off four operating subsidiary companies; Hyosung TNC, Hyosung Heavy Industries, Hyosung Advanced Materials, and Hyosung Chemical.³⁷⁹ The operating subsidiary company which manufactures LPTs is Hyosung Heavy Industries Corporation, or HHIC, which is the successor to the Heavy Industries Performance Group within the former Hyosung Corporation entity.³⁸⁰

With regard to ownership, information on the record shows that HHIC's major shareholders are essentially identical to those from Hyosung Corporation before the creation of HHIC.³⁸¹ Record information indicates that the new companies would be required to relist on the securities market.³⁸² Additionally, record evidence indicates that

³⁷⁴ See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed-Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying decision memorandum at Comment 1.

³⁷⁵ See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

³⁷⁶ See, e.g., *id.* at 9980; *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992), and accompanying decision memorandum at Comment 1.

³⁷⁷ See Letter from Hyosung to Commerce, “Large Power Transformers from Korea: Rebuttal Factual Information to Petitioner's March 15 Submission,” dated March 19, 2018 (Hyosung March 19, 2018 Letter); *see also* Letter from Hyosung to Commerce, “Large Power Transformers from Korea: Notification of Change in Company Name and Request for Successor-in-Interest Analysis,” dated June 7, 2018 (Hyosung June 7, 2018 Letter), and 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 (Hyosung SAQR), at 3-4 and Exhibit S-3.

³⁷⁸ See Hyosung Korea Sales Verification Report at 4-6, and Verification Exhibit 2B.

³⁷⁹ See Hyosung March 19, 2018 Letter at Attachment 4, Hyosung SAQR at 4 and at Exhibit S-3.

³⁸⁰ See Hyosung June 7, 2018 Letter at 2.

³⁸¹ See Hyosung SAQR at Exhibit S-3, Hyosung Korea Sales Verification Report at Exhibit 2B.

³⁸² See Hyosung Korea Sales Verification Report at Exhibit 2B, page 30.

Hyosung Corporation was required to sell shares of Hyosung Capital, a financial company.³⁸³

Concerning management, the record does not indicate that there were any changes in the directors of HHIC as a result of the restructuring, but that the management structure changed as a result of the conversion of Hyosung Corporation into a holding company and HHIC from a division of Hyosung Corporation to an operating subsidiary company.³⁸⁴

Regarding corporate structure, information on the record demonstrates that after the spin-off, HHIC is the sole producer of LPTs, and that Hyosung is a holding company overseeing HHIC.³⁸⁵ Hyosung's holding company structure allows it to oversee group-wide investment plans.³⁸⁶

Based on the information above, we determine that Hyosung has undergone significant changes in its corporate structure and ownership structure as a result of the creation of HHIC.

2. *Production Facilities*

Record evidence indicates that Hyosung has transferred assets, including plant and equipment, to HHIC, and that Hyosung thus no longer directly produces LPTs.³⁸⁷

Therefore, based on record evidence, we determine that these changes in the production facilities before and after the spin-off are significant in terms of ownership, and that HHIC assumed Hyosung's production for the merchandise under review.

3. *Supplier Relationships*

Hyosung states that there are no significant changes in supplier relationships as a result of the restructuring.³⁸⁸ We found no information during verification to indicate that there were changes in the supplier relationships as a result of the restructuring.³⁸⁹ Thus, we find that HHIC's supplier relationships did not change materially or significantly from Hyosung Corporation as a result of the restructuring.

³⁸³ See Hyosung March 19, 2018 Letter at Attachment 3.

³⁸⁴ See Hyosung Korea Sales Verification Report at Exhibit 2B.

³⁸⁵ *Id.*

³⁸⁶ See Hyosung March 19, 2018 Letter at Attachment 3.

³⁸⁷ See Hyosung Korea Sales Verification Report at Exhibit 2B, pages 37-40.

³⁸⁸ See Hyosung June 7, 2018 Letter at 2.

³⁸⁹ See, generally, Hyosung Korea Sales Verification Report at 5-6 and Exhibit 2A.

4. *Customer Base*

Hyosung stated that there are no significant changes in the list of customers as a result of the restructuring.³⁹⁰ We found no information during verification to indicate that there were changes in the customer relationships as a result of the restructuring.³⁹¹ Thus, we find that HHIC's customer base did not change materially or significantly from Hyosung Corporation as a result of the restructuring.

For the reasons discussed above, we find that Hyosung has provided sufficient evidence, based on the totality of the circumstances under Commerce's successor-in-interest criteria, to demonstrate that HHIC's day-to-day operations, corporate and management structure, and ownership are materially similar to those of Hyosung Corporation before the spin-off with respect to the merchandise under review. Moreover, we find that HHIC assumed Hyosung Corporation's production facilities, supplier relationships, and customer base with regard to the merchandise under review. Thus, we find that HHIC is the successor-in-interest to Hyosung Corporation. After the publication of these final results, effective the date of publication of these final results, we will instruct CBP to (1) begin collecting deposits from HHIC at the rate assigned to Hyosung Corporation pursuant to these final results and (2) issue liquidation instructions covering Hyosung POR entries at the rate established in these final results.

Comment 23: Cost Variances

Hyosung's Comments:

- Hyosung states that Commerce adjusted the cost of manufacture in the Preliminary Results by increasing the cost of manufacture to include certain cost variances.³⁹²
- Hyosung argues that the cost variances in question, which were subtracted during the cost build-up, were subsequently added back into the cost of manufacture.³⁹³
- Hyosung also states that Commerce verified the cost variances at verification.³⁹⁴

Petitioner's Rebuttal Comments:

- Petitioner states that Commerce found at verification a misapplication of an adjustment factor for variable overhead costs, VOH3B, in the cost reconciliation. Petitioner additionally claims that several plugs were used to force the cost reconciliation.³⁹⁵
- Petitioner argues that Commerce should continue to make an adjustment to total COM, as Hyosung's cost reconciliation with cost variances indicates a difference.³⁹⁶

³⁹⁰ See Hyosung June 7, 2018 Letter at 2.

³⁹¹ See, generally, Hyosung Korea Sales Verification Report at 5-6 and Exhibit 2A.

³⁹² See Hyosung Case Brief at 17.

³⁹³ *Id.*, at 18-19.

³⁹⁴ *Id.*, at 19.

³⁹⁵ See Petitioner's Hyosung Rebuttal Brief at 24.

³⁹⁶ *Id.*, at 24-25.

Commerce's Position

For the *Preliminary Results*, we adjusted Hyosung's reported costs to include the cost variances that Hyosung removed as step 5 of the cost reconciliation. At verification, Hyosung separately reconciled the cost variances removed at step 5 to the variances added back as either Project-Specific COM Difference or Remaining Cost Difference and reported in the COP database as VOH3 computer fields.³⁹⁷ Because Hyosung demonstrated that its reported costs includes POR cost variances, for the Final Results we are reversing the adjustment for cost variances applied at the Preliminary Results. See Hyosung Final Cost Calculation Memorandum for further details.

Comment 24: Constructed Export Price Offset

Hyosung's Comments:

- Commerce should reverse its findings in the Preliminary Results and grant Hyosung a CEP offset due to differences in level of trade and selling functions between the home market and HICO America.³⁹⁸
- Commerce is required by statute to grant a CEP offset to account for differences in levels of trade between NV and CEP.³⁹⁹
- Record evidence supports its contention that the selling functions provided in the home market exceed those functions provided in support of HICO America.⁴⁰⁰
- Commerce erred in certain parts of its analysis.⁴⁰¹ Specifically, Hyosung argues that:
 - With respect to the Sales and Marketing analysis, Hyosung states that it does not directly absorb the cost of the commission and that Commerce made no such finding.⁴⁰²
 - That it is inaccurate to state that Hyosung participated in trade *shows*, but instead that it only attended a trade show one time.⁴⁰³
 - With respect to market research, Commerce “did not seem to weigh this function” in its analysis.⁴⁰⁴
 - That, with respect to technical services, Commerce did not state whether there were different levels of this selling function provided in the home market and to HICO America.⁴⁰⁵
 - Also with respect to warranty expenses, that Commerce did not state whether there were different levels of this selling function provided in the home market and to HICO America.⁴⁰⁶

³⁹⁷ See Hyosung Korea Cost Verification Report at 24.

³⁹⁸ See Hyosung Case Brief at 23.

³⁹⁹ *Id.*, at 25, citing to 19 U.S.C. § 1677b(a)(7)(A) and 19 U.S.C. § 1677b(a)(7)(B).

⁴⁰⁰ *Id.*, at 26.

⁴⁰¹ *Id.*

⁴⁰² *Id.*, at 27

⁴⁰³ *Id.*, at 28.

⁴⁰⁴ *Id.*, at 30.

⁴⁰⁵ *Id.*, at 32.

⁴⁰⁶ *Id.*, at 33.

- Commerce’s findings with respect to inventory carrying should not rely on the cost of the selling activities, as it appears Commerce did when performing its analysis of the inventory carrying selling function.⁴⁰⁷
- Commerce may find that a respondent can engage in shipment services to a greater extent for U.S. sales, and still find that the respondent should be granted a CEP offset.⁴⁰⁸

Petitioner’s Rebuttal Comments:

- Commerce should not grant Hyosung a CEP offset, as Hyosung has not supported its arguments that selling activities performed in the home market are at a greater degree of intensity than those performed for CEP sales.⁴⁰⁹
- The “prolonged inventory period in Korea for LPTs destined for the U.S. market in this review (as in AR3) indicates that Hyosung provides more intensive inventory functions for its CEP sales, as compared to those for its home market sales.”⁴¹⁰
- Commerce was correct in examining the recorded costs of inventory as part of its level of trade analysis.⁴¹¹
- A change in delivery terms would necessitate changes in other selling functions that Hyosung provides to HICO America, indicating that the selling functions provided by Hyosung to HICO America are more intensive than Hyosung claims.⁴¹²
- Commerce, in addition to the inventory carrying function, also examined warranty services, U.S. import-related expenses and ISE, among others, in Commerce’s level of trade analysis.⁴¹³
- Commerce specifically disagreed with Hyosung’s contention that there were no warranty services provided by Hyosung to HICO America, and further states that record evidence indicates that Hyosung did provide warranty services to HICO America.⁴¹⁴
- Hyosung reported guarantees in the home market as direct selling expenses, and postulates that the same guarantees cannot be considered as ISE for the purposes of the CEP offset.⁴¹⁵
- Hyosung provided other sales-related services for U.S. sales that it failed to report, such as being the importer of record and expenses captured in G&A.⁴¹⁶

⁴⁰⁷ *Id.*, at 34-35.

⁴⁰⁸ *Id.*, at 36 (citing to *Notice of Final Results and Final Rescission in Part of Antidumping Duty Administrative Review: Certain Stainless Steel Butt-Weld Pipe Fittings From Taiwan*, 73 FR 1202 (January 7, 2008), and accompanying decision memorandum at 38).

⁴⁰⁹ See Petitioner’s Hyosung Rebuttal Brief at 29.

⁴¹⁰ *Id.*

⁴¹¹ *Id.*

⁴¹² *Id.*, at 33.

⁴¹³ *Id.*

⁴¹⁴ *Id.*, at 34-35.

⁴¹⁵ *Id.*, at 35-36.

⁴¹⁶ *Id.*, at 36.

- The indirect selling expenses ratio in Korea for U.S. sales is higher than the same ratio for home market sales, indicating that Hyosung Korea provided significant selling activities in support of its U.S. sales.⁴¹⁷

Commerce's Position

We agree with the petitioner and determine that record evidence does not support Hyosung's request for a CEP offset in these final results.

In analyzing the respective levels of trade (LOTs) for home market sales and CEP sales, Commerce's practice is to "examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer."⁴¹⁸ If the home market sales are at a different LOT than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home market sales at the LOT of the export transaction, Commerce makes a LOT adjustment under section 773(a)(7)(A) of the Act.⁴¹⁹ For CEP sales, if the normal value level 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, Commerce adjusts normal value under section 773(a)(7)(B) of the Act (the CEP offset).⁴²⁰ Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing.⁴²¹ Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing.⁴²² It is within this framework that Commerce conducts its LOT analysis.

In the preliminary results of review, we analyzed the various selling functions Hyosung indicated it performed for sales in the home market versus those performed with respect to its U.S. affiliate HICO America for its CEP sales.⁴²³ We preliminarily determined that "the selling functions performed for home-market customers are not performed at either a higher degree of intensity or at a greater in number than the selling functions performed for HICO America."⁴²⁴ From this, we stated "we preliminarily conclude that the normal-value level of trade is not at a more

⁴¹⁷ *Id.*, at 37.

⁴¹⁸ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 44821, 44824 (*HRS from Romania*) (August 9, 2007) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 71357 (December 17, 2007)); *Certain Pasta from Italy: Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review*, 72 FR 44082, 44084-85 (August 7, 2007) (unchanged in final results, *Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review*, 72 FR 70298 (December 11, 2007)); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), Issues and Decision Memorandum at Comment 3.

⁴¹⁹ See *HRS from Romania* at 44824.

⁴²⁰ *Id.*

⁴²¹ See 19 CFR 351.412(c)(2).

⁴²² *Id.*

⁴²³ See Hyosung Preliminary Analysis Memorandum at 4-10.

⁴²⁴ *Id.*, at 5.

advanced stage than the CEP level of trade” and “{w}e have preliminarily not applied a CEP offset to normal value, in accordance with section 773(a)(7)(B) of the Act.”⁴²⁵

Hyosung asks that Commerce revise its analysis to consider that Hyosung’s home market is at a more advanced stage of trade, stating that Commerce “{o}verlooked key facts on the record as they pertain to Hyosung’s selling functions.”⁴²⁶ Hyosung also noted that Commerce had granted a CEP offset in previous reviews of the *Order*, and claimed that the selling activities from the investigation and those review periods were not substantially different than the selling functions in this review.⁴²⁷ The petitioner responds that Commerce undertook a thorough analysis of the selling functions provided by Hyosung in the third review and in the current proceeding, and correctly determined not to grant the CEP offset.⁴²⁸

In particular, the petitioner notes that LPTs are large and complicated industrial equipment whose varying delivery schedules often result in a long inventory carrying period.⁴²⁹ The maintenance of the finished LPTs in inventory, according to the petitioner, indicates that Hyosung provides more intensive inventory functions for CEP sales, particularly with respect to inventory maintenance.⁴³⁰ As to Hyosung’s list of selling functions previously reported, and Hyosung’s statement that Commerce should assess the selling activities themselves rather than the cost of such activities, the petitioner argues (again with reference to the cost of inventory carrying) that that recorded costs in Korea for services provided for U.S. sales “are an objective indication of the level of activity incurred.”⁴³¹ The petitioner also notes that the material terms of sale change more frequently for U.S. sales compared to home market sales, and avers that the resulting coordination between Hyosung and HICO America to manage these changes is evidence of a higher degree of provision of support by Hyosung for HICO America.⁴³²

We find that a full comparison of all selling activities is the proper basis for determining the level of trade between the comparison market and the U.S. market. The petitioner’s reliance on the relevance of “selling expenses” (in this case, the expenses related to inventory carrying costs) as an indicator of “selling functions” is inappropriate with respect to the total LOT analysis because it assumes that the expense data reported by Hyosung are an accurate depiction of the level of intensity in which the selling activities are performed.

Commerce’s focus on selling activities rather than selling expenses is supported by the statute, which specifies that a difference in LOTs “involves the performance of different selling activities.”⁴³³ The SAA also specifies that “Commerce will grant such {LOT} adjustments only where: (1) there is a difference in the level of trade (*i.e.*, there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the

⁴²⁵ *Id.*, at 10.

⁴²⁶ *See* Hyosung Case Brief at 23.

⁴²⁷ *Id.*, at 23-24.

⁴²⁸ *See* Petitioner’s Hyosung Rebuttal Brief at 30.

⁴²⁹ *Id.*, at 32.

⁴³⁰ *Id.*

⁴³¹ *Id.*

⁴³² *Id.*

⁴³³ *See* 19 U.S.C. § 1677b(a)(7)(A).

difference affects price comparability.”⁴³⁴ Finally, Commerce’s regulations similarly follow the language in the statute, specifying that we will determine that sales are made at different LOTs if they are made at different marketing stages or their equivalent.⁴³⁵ Thus, Commerce’s analysis of selling activities/functions is grounded in the statute and regulations.

Although Commerce does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves.⁴³⁶ Commerce believes that a strict reliance on the amounts of the reported selling expenses is not a reliable measure of the relative levels of intensity in which each selling activity is performed. Performance of a selling activity at the same level of intensity in two markets could, in theory, incur very different expenses. Additionally, expenses in a particular field might be allocated to a variety of selling activities. One cannot necessarily tell from the relative expenses incurred the degree to which a selling activity was actually performed.

The CIT has also expressed concerns with using a purely quantitative analysis.⁴³⁷ In *Prodotti*, the respondent reported ten customer categories in its home market as the basis for identifying sales at different LOTs in the chain of distribution. Rather than adopt the respondent’s grouping, Commerce developed a methodology to analyze the various selling functions of a particular seller by assigning a ranking factor (*i.e.*, high, medium, low) to a selling function solely based upon the number of observations for which a direct expense associated with the selling function actually occurred. Commerce explained that this particular analysis did not determine the final LOT, but that it instead used a more general qualitative approach.⁴³⁸ Noting that “the court questions the usefulness of this quantitative analysis for any purpose, {the respondent} has not explained how the analysis adversely affected the margin other than to state that the analysis was ‘distorted,’” the CIT declined to remand the issue.⁴³⁹

The CIT has also addressed the issue within the context of other AD duty orders.⁴⁴⁰ The CIT stated that “the focal point of Commerce’s LOT adjustment analysis is on the *selling activities* performed in each market.”⁴⁴¹ “If Commerce . . . in reviewing an administrative determination, were to narrow the focus of its LOT analysis to selling expenses, it could act contrary to law and cause misleading results. Expenses do not necessarily translate directly into activities, nor do they capture the intensity of the activities. Moreover, expenses related to several selling activities may fall under a single expense field.”⁴⁴²

It is Commerce’s standard practice to conduct a LOT analysis of selling activities for CEP sales under 19 CFR 351.412(c)(1) after deducting the selling expenses for CEP sales under section

⁴³⁴ See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, p. 829, reprinted in 1994 U.S.C.A.N. 3773, 4168.

⁴³⁵ See 19 C.F.R. § 351.412(c)(2).

⁴³⁶ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 67 FR 3155 (January 23, 2002) and accompanying decision memorandum at Comment 37.

⁴³⁷ See *Prodotti Alimentari Meridionali, S.R.L. v. United States*, 26 CIT 749, 754 (Ct. Int’l Trade 2002) (*Prodotti*).

⁴³⁸ *Id.*, at 753-754.

⁴³⁹ *Id.*, at 754.

⁴⁴⁰ See, e.g., *Alloy Piping Products, Inc., et al v. United States*, 33 CIT 1589 (CIT 2009).

⁴⁴¹ *Id.*, at 9.

⁴⁴² *Id.*, at 13.

772(d) of the Act.⁴⁴³ Under section 772(d) of the Act, selling expenses incurred by Hyosung in support of its sales to HICO America are not deducted. Thus, to the extent that activities related to such expenses are performed by Hyosung in support of Hyosung's sales to its affiliate HICO America, Commerce has included them in the CEP LOT. Commerce will not consider selling activities provided by Hyosung to unaffiliated U.S. customers, in support of HICO America's sales, as these are associated with the selling expenses that must be deducted under section 772(d) of the Act, regardless of their location in the reported expense fields.

In conducting our analysis for this proceeding, we examine four broad categories of selling functions that Commerce has sometimes used in such analysis (sales and marketing activities, inventory maintenance and warehousing, freight and delivery, and warranty and technical support) as well as all information and other arguments provided regarding the question of whether Hyosung's home market sales are at a more advanced level of trade than the CEP sales. Such an analysis, we conclude, confirms that the home market and CEP sales are at similar levels of trade.

In its brief, Hyosung provided an analysis for four selling function categories, within which Hyosung analyzed sixteen selling functions.⁴⁴⁴ In its supplemental section A questionnaire response, Hyosung reported six selling functions for sales to HICO America in the United States,⁴⁴⁵ and fifteen in the home market.⁴⁴⁶ Hyosung divided these into the four broad categories listed below.⁴⁴⁷ Hyosung provided an updated selling functions chart in its supplemental section A response.⁴⁴⁸ Our analysis will examine all of the reported selling functions reportedly provided by Hyosung either to home market customers or to HICO America, according to these categories.

Sales and Marketing Activities

Of the claimed sixteen selling functions, those which would be classified under "sales and marketing activities" would be sales forecasting, sales personnel training, advertising, sales promotion, packing, order input/processing, sales marketing support, market research, and U.S. importation. In its case brief, Hyosung argued that it provided the same level of intensity for selling functions with respect to packing and order input/processing.⁴⁴⁹ Hyosung claimed that it provided higher intensity support in the home market for the following selling functions: sales

⁴⁴³ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 62082, 62084 (October 23, 2006) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007) ("For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act"); see also 19 C.F.R. § 351.412(c)(1)(ii).

⁴⁴⁴ See Hyosung Case Brief at 26-37.

⁴⁴⁵ See Hyosung SAQR at Exhibit S-18.

⁴⁴⁶ *Id.*

⁴⁴⁷ See Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic of Korea: Section A Questionnaire Response," dated January 9, 2018 (Hyosung AQR) at A-15 through A-29 and Exhibit A-13. See also Hyosung SAQR at Exhibit S-18.

⁴⁴⁸ See Hyosung SAQR at 28-29, and Exhibit S-18.

⁴⁴⁹ See Hyosung Case Brief at 29.

personnel training, advertising, sales promotion, sales marketing support, and market research.⁴⁵⁰ The only selling function which Hyosung claims is higher in intensity for HICO America is U.S. Importation.⁴⁵¹ The petitioner claims that if a U.S. customer requests a delay in the delivery of a completed LPT, this would require Hyosung to reschedule production and change selling functions such as sales forecasting.⁴⁵² The petitioner also claims that Hyosung in Korea would have to provide additional “procurement services” if a U.S. customer requests addition parts, and that changes in the material terms of sale would result in more intensity with respect to “order input/processing.”⁴⁵³ In our *Preliminary Determination*, we generally compared all of the selling functions performed in both the home market and to HICO America in the United States, and preliminarily concluded that there was no basis from record evidence to conclude that Hyosung performs significantly more “sales and marketing activities” for home market sales than for U.S. CEP sales.⁴⁵⁴ Based on our analysis of briefs and rebuttals, and our findings at verification, we continue to find that the sales and marketing activities provided by Hyosung in both the home market and in support of HICO America are broadly the same.

Hyosung states that it does not provide any service to HICO America with respect to sales forecasting, and that Commerce made no such finding during this proceeding.⁴⁵⁵ During verification, HICO America stated that it has a team of salespeople whose job, in part, is to forecast sales across product lines.⁴⁵⁶

With respect to advertising, Hyosung argues that it also advertises through magazines and newspapers in the home market, and thus provides a higher intensity of services in the home market.⁴⁵⁷ As we noted in the *Preliminary Results*, advertising is a relatively minor selling function and record evidence shows that Hyosung provides advertising support in both the home market and for HICO America.

Concerning sales promotion, Hyosung states that it did not attend trade *shows* in the United States, but a single trade *show*, with HICO America.⁴⁵⁸ At verification, we found no evidence to suggest that there was more than one trade show during the POR, but did find evidence that Hyosung expended monetary resources beyond its simple participation in this show.⁴⁵⁹ Thus, we do not find that Hyosung provides greater sales promotion in the home market than in support to HICO America. However, as we noted in the *Preliminary Results*, sales promotion is a relatively minor selling function and record evidence shows that Hyosung provides sales promotion activities in both the home market and for HICO America. As both advertising and sales promotion also fall under the rubric of “sales promotion,” our findings with respect to these two selling functions applies to the “sales promotion” selling function as well.

⁴⁵⁰ *Id.*, at 27-30

⁴⁵¹ *Id.*

⁴⁵² See Petitioner’s Hyosung Rebuttal Brief at 32-33.

⁴⁵³ *Id.*, at 33.

⁴⁵⁴ See Hyosung Preliminary Analysis Memorandum at 6-8.

⁴⁵⁵ See Hyosung Case Brief at 27.

⁴⁵⁶ See Hyosung CEP Verification Report at 14.

⁴⁵⁷ See Hyosung Case Brief at 28, citing to Hyosung AQR at A-16.

⁴⁵⁸ *Id.*, at 28, citing to Hyosung SAQR at 15.

⁴⁵⁹ See Hyosung CEP Verification Report at 21. See also Final Analysis Memorandum.

Hyosung argues that it engaged in packing services at the same level for both markets.⁴⁶⁰ However, Hyosung has not provided any information to address our findings at the *Preliminary Results*.⁴⁶¹ Thus, we continue to find that Hyosung provides a greater intensity of services to HICO America with respect to packing than in the home market.

Concerning market research, we made no new factual findings. We determine that market research is at a higher level in the home market than for the same service provided to HICO America.⁴⁶²

Based on our analysis of the information on the record, Commerce finds that Hyosung performs more “sales and marketing activities” for home market sales than for U.S. CEP sales. Of the nine selling functions falling under the classification of “sales and marketing activities” performed by Hyosung either for the home market and/or for HICO America, as listed in Exhibit A-13 of Hyosung’s section A response, there is evidence on the record suggesting that sales personnel training, sales forecasting, market research, advertising, and sales marketing support were performed more for home market sales. Other selling functions, such as order input/processing and sales promotion,⁴⁶³ are performed at the same or similar level in both markets. Finally, for packing services and U.S. importation, the record indicates that these services were performed more for CEP sales. While we find here that there are greater “sales and marketing activities” in the home market, we also find that the differences are not, in the aggregate, substantial. Moreover, it is clear from record evidence that Hyosung does perform significant “sales and marketing activities” selling functions in support of HICO America.

Inventory Maintenance and Warehousing

The petitioner argues that Hyosung provides a higher level of service for CEP sales in terms of inventory maintenance than it does for home market sales.⁴⁶⁴ As we noted above, while Commerce does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves. For inventory maintenance, record evidence indicates that Hyosung provides inventory maintenance for both markets.⁴⁶⁵ However, we believe that record evidence, including the reported inventory carrying expense, indicates that Hyosung provides this selling function at a more advanced level in the United States than it does in the home market.⁴⁶⁶

⁴⁶⁰ See Hyosung Case Brief at 29.

⁴⁶¹ See Hyosung Preliminary Analysis Memorandum at 6.

⁴⁶² See Hyosung AQR at A-17, A-20.

⁴⁶³ The petitioner argues that because sales to the United States incurred more changes to the material terms of sale, Hyosung engaged in an increased intensity of the “order input/processing” selling function for sales to HICO America. See Petitioner’s Hyosung Rebuttal Brief at 31-32. We do not find that a different level of intensity with respect to changes in the material terms of sale necessarily translates into a different level of intensity for the provision of the “order input/processing” selling function.

⁴⁶⁴ See Petitioner’s Hyosung Rebuttal Brief at 32.

⁴⁶⁵ See BCQR at B-24 and B-48, C-55; see also SBCQR at 26, 33-34, and 73-74; see also SAQR at 28-29.

⁴⁶⁶ See Hyosung Final Analysis Memorandum for further discussion.

Hyosung states that the inventory maintenance selling function is the same in both markets.⁴⁶⁷ Therefore, we conclude that the inventory maintenance and warehousing category is at a less advanced stage for Hyosung's home market than for CEP sales. With respect to Commerce's analysis of the values in the DINVCARU and INVCARH fields, Hyosung argues that Commerce must assess the selling activities themselves.⁴⁶⁸ Again, as noted above, while Commerce does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves. Here, we find that a comparison of the reported values in the DINVCARU and INVCARH fields is useful in determining the level of selling activities provided by Hyosung. The differences indicate that the storage times for sales to the United States are longer. *See* Hyosung Final Analysis Memorandum for further discussion. Based on our analysis, we determine that the inventory management selling function provided by Hyosung for U.S. sales is equal to, or higher than, the same function provided for home market sales.

Hyosung states that our analysis of inventory management should carry little weight, as the storage of completed LPTs is not "inventory in the traditional sense."⁴⁶⁹ However, record evidence (as indicated above) shows that these units are stored prior to shipment as part of Hyosung's sales process for LPTs. As Hyosung stated in its argument against Commerce's capping methodology, "{t}he freight, delivery, and installation terms are central to the transaction and the functionality of the LPT" and that the purchaser of an LPT "is purchasing a service as much as they are purchasing a good, and the price of the physical LPT is inextricably intertwined with the service-related components of the transaction."⁴⁷⁰ The storage of completed LPTs is thus part of the "service" that Hyosung provides to its customers and it is appropriate to consider this as part of our selling function analysis.

Freight and Delivery

Of the claimed selling functions, the one that would be classified under freight and delivery is "freight delivery." Hyosung reported significant selling activities related to freight delivery for both markets.⁴⁷¹ Additionally, we found that Hyosung's logistics managers work hand-in-hand with HICO America during the early stages of the sales process to plan for shipment from Korea to the United States.⁴⁷² Hyosung also indicates that it served as the importer of record.⁴⁷³ While Hyosung has classified this selling function under the "sales and marketing" category, the selling function also relates to freight and delivery. Therefore, there is no basis for concluding that the level of "freight and delivery" activity performed by Hyosung for its home market sales exceeds that performed by Hyosung for its CEP sales.

⁴⁶⁷ *See* Hyosung Case Brief at 34-35.

⁴⁶⁸ *Id.*

⁴⁶⁹ *Id.*, at 35.

⁴⁷⁰ *Id.*, at 11-12.

⁴⁷¹ *See* Hyosung SAQR at 28 and Exhibit S-18.

⁴⁷² *See* Hyosung CEP Verification Report at 12.

⁴⁷³ *See* Hyosung SAQR at 28 and Exhibit S-18.

Warranty and Technical Support

Commerce believes that an analysis of this category strongly indicates that Hyosung provides significant selling function support to HICO America.

Of the claimed selling functions, those which would be classified under warranty and technical support are “engineering services,” “technical assistance,” “provide warranty services,” “provide guarantees,” and “provide after-sales services.” For engineering services, Hyosung reports that it provided a lower level of selling function activity for CEP sales than for the home market sales.⁴⁷⁴ For the remaining selling functions in this category, Hyosung reports that it provided no activity or support for the remaining selling functions.⁴⁷⁵ However, our analysis of record evidence indicates that Hyosung provided greater selling activities related to the engineering services, technical services, and after-sales services selling functions than previously reported.

Commerce performed a comprehensive review of the selling functions in this category in the Hyosung Preliminary Analysis Memorandum.⁴⁷⁶ Additionally, our findings at verification bolster our preliminary analysis. At verification, Commerce found cost-sharing agreements between HICO America and affiliates of Hyosung which support HICO America’s operations.⁴⁷⁷ Moreover, we found that Hyosung provides numerous support services to HICO America during the early phases of the sales process with respect to the engineering of the LPT.⁴⁷⁸ Hyosung provides engineering mock-ups for both HICO America and certain home market customers.⁴⁷⁹

The petitioner argues that Hyosung provided more intensive warranty services for U.S. sales rather than home market sales.⁴⁸⁰ We agree with the petitioner.⁴⁸¹ Furthermore, we agree with the petitioner that Hyosung cannot claim higher levels of guarantees for home market sales, given that the cost of such guarantees are captured by a direct selling expense.⁴⁸² Therefore, we find that there is insufficient basis for concluding that the “warranty and technical support” grouping is characterized by significant differences in selling function activity between home market sales and U.S. CEP sales.⁴⁸³

Conclusion

We find that analysis of the relevant selling functions, as classified under the four general categories of selling functions, yields the conclusion that there is no basis for concluding that a significant variation in overall selling activity exists for home market sales versus CEP sales.

⁴⁷⁴ See Hyosung AQR at Exhibit A-13; *see also* Hyosung SAQR at Exhibit S-18.

⁴⁷⁵ *Id.*

⁴⁷⁶ See Hyosung Preliminary Analysis Memorandum at 9-10.

⁴⁷⁷ See Hyosung CEP Verification Report at 6.

⁴⁷⁸ *Id.*, at 13.

⁴⁷⁹ See Hyosung Korea Sales Verification Report at 11-12.

⁴⁸⁰ See Petitioner Hyosung Case Brief at 34.

⁴⁸¹ See Hyosung Final Analysis Memorandum for further discussion.

⁴⁸² See Petitioner Hyosung Case Brief at 35.

⁴⁸³ See Hyosung Final Analysis Memorandum for further discussion of proprietary information with respect to this category.

For three of those categories—warranty and technical support, freight and delivery, inventory maintenance and warehousing,—there is no basis on the record for concluding Hyosung’s level of selling function activity is greater for home market sales than for CEP sales. For and sales and marketing activities, we find that Hyosung’s level of selling activities is higher in the home market. However, the level of selling functions performed in this category is not significantly higher for the home market than to HICO America. Additionally, weighted against the remaining categories, we do not find that the provision of these selling functions in the home market outweigh the totality of our finding that the two levels of trade are equal. Given that we did not find sufficient evidence to suggest that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade, there is no basis for concluding that there are differences in levels of trade between home market sales and CEP sales, and no CEP offset is warranted.⁴⁸⁴

Comment 25: Constructed Value for Normal Value

Hyosung’s Comments:

- Commerce should use constructed value (CV) to calculate normal value for this administrative review.⁴⁸⁵
- The statute allows Commerce to determine that home market sales are inappropriate for determining normal value, if there is a reasonable basis to believe that such comparisons would not be proper.⁴⁸⁶
- Commerce has found CV appropriate for normal value in all prior cases which involve large, custom-made, capital-intensive products, including prior proceedings which involve LPTs from other counties.⁴⁸⁷
- Commerce resorted to CV in previous cases due to the complications associated with accounting for physical differences among product matches, specifically for large and custom-made products.⁴⁸⁸
- Many of the issues raised by petitioner over the course of this proceeding concerning model match are the result of “inherent difficulties of making an apples-to-apples comparison of complex infrastructure goods manufactured to meet the specifics of the power grid for which they are manufactured” and that the use of CV would alleviate these issues.⁴⁸⁹

⁴⁸⁴ See, e.g., *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) and accompanying decision memorandum at Comment 2.

⁴⁸⁵ See Hyosung Case Brief at 37.

⁴⁸⁶ *Id.*, at 37-38 (citing to 19 U.S.C. § 1677b(a)(1)(C)(iii)).

⁴⁸⁷ *Id.*, at 38 (citing to *Large Newspaper Printing Presses and Components Thereof, Whether Assembled or Unassembled, from Germany*, 65 FR 62695 (October 19, 2000); *Large Power Transformers from France*, 61 FR 15461 (April 8, 1996); *Large Power Transformers from France*, 60 FR 62808 (December 7, 1995); *Mechanical Transfer Presses from Japan*, 58 FR 68117 (December 23, 1993)).

⁴⁸⁸ *Id.*, at 38-39.

⁴⁸⁹ *Id.*, at 39-40.

- Unit-specific costs can differ between LPTs with the same control number, “making LPTs with similar characteristics not comparable” and creating comparison distortions.⁴⁹⁰
- By relying on CV, Commerce “would necessarily account for the differences between LPTs that are attributable to the fact that LPTs are large capital goods made to unique customer specifications.”⁴⁹¹

Petitioner’s Rebuttal Comments:

- The statute and Commerce precedent require Commerce to used price-to-price comparisons, rather than CV, to calculate margins.⁴⁹²
- Hyosung conceded that the statute contains a preference for using price-to-price comparisons.⁴⁹³
- Hyosung has used identical arguments in the investigation and in each administrative review, and that Commerce has rejected these arguments each time.⁴⁹⁴
- Hyosung has provided no evidence of distortion, or provided any other justification using evidence on the record, for Commerce to alter its methodology.⁴⁹⁵
- All of the cases cited by Hyosung in support of moving to CV pre-date a decision by the Court of Appeals for the Federal Circuit (CAFC) requiring Commerce first to make price-to-price comparisons.⁴⁹⁶
- Commerce, in an earlier administrative review of this proceeding, stated that the statute requires Commerce to determine first that it is unable to base NV on price-to-price comparisons before using CV.⁴⁹⁷
- None of the requirements necessary to use CV have been met in this administrative review.⁴⁹⁸
- Record evidence supports Commerce using price-to-price comparisons, as Commerce was able to make price-to-price comparisons for the majority of sales.⁴⁹⁹
- Hyosung has not offered any argument that the model-match hierarchy is defective, or that there were any anomalies in price-to-price comparisons.⁵⁰⁰
- Hyosung has not offered any explanation as to why the use of CV would remedy any problems with the price-to-price methodology.⁵⁰¹

⁴⁹⁰ *Id.*, at 40.

⁴⁹¹ *Id.*

⁴⁹² See Petitioner’s Hyosung Rebuttal Brief at 37-38.

⁴⁹³ *Id.*, at 38.

⁴⁹⁴ *Id.*

⁴⁹⁵ *Id.*

⁴⁹⁶ *Id.*, at 39 (citing to *Cemex v United States*, 133 F.3d 897,903-904 (Fed. Cir. 1998))

⁴⁹⁷ *Id.*, at 39-42.

⁴⁹⁸ *Id.*, at 42-43.

⁴⁹⁹ *Id.*, at 43.

⁵⁰⁰ *Id.*, at 43-44

⁵⁰¹ *Id.*, at 44-45.

Commerce's Position

After examining the parties' arguments, we find it appropriate to base our determination on price-to-price comparisons, when possible, rather than proceeding directly to CV for purposes of NV. Section 773(a) of the Tariff Act of 1930, as amended (the Act), directs Commerce to base NV upon price comparisons rather than using CV: “the normal value of the subject merchandise shall be the price, unless an exception to that method is established, thereby creating a preference for price-to-price comparisons for purposes of determining the margin of dumping.”⁵⁰² The relevant price is “the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale)” in the home market. However, if Commerce cannot determine NV using this price, then the Act provides that “the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).”⁵⁰³ Thus, the statute is clear that the preferred method for identifying and measuring dumping is to compare home market sales of the foreign like product to export sales to the United States. Absent any showing that the use of such prices was inappropriate, Commerce followed its statutory obligation to consider this preference in its determination. Here, the record evidence confirms Commerce's decision in the *Preliminary Results* to use price-to-price comparisons as the basis for NV.

With regard to proper price-to-price comparisons, the model matching criteria resulted in a majority of price-to-price comparisons, rather than having to resort to CV for purposes of NV. In other words, an analysis of how products are chosen for comparison demonstrated that the majority of CONNUMs matched to products that were similar in terms of physical characteristics, particularly with respect to those physical characteristics at the top of the model match hierarchy. Where the comparisons were unreasonable, *i.e.*, where we were unable to find a proper match based upon the established criteria, Commerce relied on CV as provided by the statute, and to ensure the accuracy of the overall margin. Further, Hyosung participated in the process of developing the model match criteria, but did not voice any objections. In the *Investigation Initiation Notice*,⁵⁰⁴ Commerce specifically asked for comments on the product comparison criteria and the hierarchy under which the physical characteristics should be considered in product matching.⁵⁰⁵ In response, Petitioner, but notably not the respondents, provided extensive comments and proposed a hierarchy of product characteristics.⁵⁰⁶ Hyosung

⁵⁰² See section 773(a)(1)(A) of the Act.

⁵⁰³ See section 773(a)(4) of the Act. Similarly, the SAA expresses a preference for price rather than CV, stating that “under new section 773(a), as under existing law, the preferred method for identifying and measuring dumping is to compare home market sales of the foreign like product to export sales to the United States. Consistent with the Agreement, if home market sales of a foreign like product do not exist or are not useable as a basis for determining NV, Commerce may identify and measure dumping by comparing the EP or CEP to NV based on either: (1) sales of the foreign like product to a country other than the United States; or (2) constructed value.”⁵⁰³

⁵⁰⁴ See *Large Power Transformers from the Republic of Korea: Initiation of Antidumping Duty Investigation*, 76 FR 49439 (August 10, 2011) (*Investigation Initiation Notice*).

⁵⁰⁵ See *Investigation Initiation Notice*, 76 FR at 49439-43 (“We are requesting comments from interested parties regarding the appropriate physical characteristics of large power transformers to be reported in response to the Department's antidumping questionnaire. This information will be used to identify the key physical characteristics of the subject merchandise in order to more accurately report the relevant factors and costs of production, as well as to develop appropriate product comparison criteria.”).

⁵⁰⁶ See *LPTs Final Determination* and accompanying Issues and Decision Memorandum at Comment 10, pages 48-49.

did not propose suggested product characteristics or any possible hierarchy but rather submitted comments on reasons why it believed Commerce should proceed directly to using CV in this case.⁵⁰⁷ Therefore, Commerce notes it gave parties an opportunity to submit a suggested hierarchy of model match criteria in their initial comments to Commerce, and both companies declined to do so.⁵⁰⁸ Commerce carefully considered both Petitioner's initial comments and Hyundai's and Hyosung's rebuttal comments with regard to the product characteristics and the model matching hierarchy to be used in this investigation.⁵⁰⁹ The models were selected as the result of a thorough and deliberative analysis (in which all parties had the opportunity to participate) for selecting the most representative, meaningful model match criteria.

Next, respondents cite to several past cases where Commerce used CV and argue that Commerce should follow these cases. These cases are all distinguishable from the facts of this case. For example, in *LNPPs from Germany* and *LNPPs from Japan*, the sales of large newspaper printing presses occurred in markedly smaller quantities, and the degree of customization in the individual large newspaper printing press products far exceeds any customization of LPTs in this case. More specifically, LNPPs are "one-off" custom made products designed to fit a particular customer's needs and specific location whereas LPTs are custom made, but generally are somewhere between an "off-the-shelf" commodity product, like steel, and a "one-off" product like LNPPs or MTPs. Further, previous case precedent is not as clear cut as Hyosung has claimed. For example, in the *MTPs from Japan* investigation, Commerce actually "calculated foreign market value based on a home market sale or constructed value, as appropriate," and resorted to CV only when there "were no sales of merchandise which were sufficiently similar to that sold to the United States to serve as a basis for comparison."⁵¹⁰

When Commerce originally considered the issue of whether price-to-price comparisons for LPTs would be administrable and would yield proper comparisons of products, Commerce examined the nature of the matching criteria and whether such criteria would provide a basis for identifying LPTs sold in Korea that were comparable products to LPTs exported to, and sold in, the United States.⁵¹¹ In the original investigation and first review, Commerce's determinations demonstrated that such price-to-price comparisons were administrable, and yielded comparisons of comparable products.⁵¹² No party has identified any changes in the industry or products sold in the home and U.S. markets for these products, and therefore Commerce has continued to base its determination on price-to-price comparisons, where such comparisons are possible, and to address those instances in which price-to-price comparisons create possible distortion in the margin of dumping by relying on price-to-CV comparisons when the comparisons were unreasonable.

We stress that the unique factors in this case are different from both commodity products such as steel and "one-off" custom made products such as mechanical transfer presses and large newspaper printing presses. LPTs are neither a "one-off" special product nor an "off-the-shelf"

⁵⁰⁷ *Id.*

⁵⁰⁸ *Id.*

⁵⁰⁹ *Id.*

⁵¹⁰ See *Preliminary Determination of Sales at Less Than Fair Value; Mechanical Transfer Presses From Japan*, 54 FR 34208 (August 18, 1989) (*MTPs from Japan*).

⁵¹¹ See *LPTs Final Determination*, and accompanying Issues and Decision Memorandum at Comment 10.

⁵¹² See, e.g., *id.*

commodity. Rather, Commerce's experience with this case, as developed by the record and through parties' comments, demonstrates that price-to-price comparisons can be properly made in light of the current industry practices and model match criteria used in this case. Further, we note there are a number of sales by both respondents in both the home and U.S. markets when compared to the other cases respondents cite to where Commerce based NV on CV (*i.e.*, providing an opportunity for more matches between home market and U.S. sales. As we stated above, while there are no identical matches when relying upon price-to-price comparison in this case, where the comparisons were unreasonable, *i.e.*, where we were unable to find a proper match based upon the established criteria, we relied on CV.

As a further example of Commerce's evolving practice, it is also important to note that even in an administrative review of *Large Power Transformers from France*, Commerce disagreed that CV should be preferred to price lists despite significant physical differences; Commerce instead stated that it needed "to establish a reasonable, uniform methodology by which differences in physical characteristics of the transformers being compared can be quantified."⁵¹³ Similarly, in this case, Commerce has captured these physical characteristics by using its model match criteria and the DIFMER to quantify differences in physical characteristics.

Therefore, based on record evidence and consideration of interested parties' comments, we have found it appropriate to continue to rely upon price-to-price analysis in our final results, except for those instances in which the DIFMER analysis indicated the products being compared were not comparable, in which case we relied upon CV. While there are no identical matches when relying upon price-to-price comparison, Commerce's matches achieve the level of similarity required by the statute. The statute establishes a preference for a price-to-price comparison (which the courts have recognized) unless there is a problem with a price-to-price comparison such as a particular market situation. No party has sufficiently identified a systematic or categorical flaw in the matches that would require disregarding price-to-price comparisons altogether for purposes of NV, and instead proceed directly to CV. Thus, we have used a price-to-price analysis for purposes of these final results.

C. General Issues

Comment 26: Rate for Non-selected Respondents

Iljin's Comments:

- Iljin agrees with Commerce assigning a dumping margin rate of 0.00 percent to Iljin in the *Preliminary Results*.⁵¹⁴
- If Commerce were to apply AFA to the mandatory respondents, Commerce should not assign Iljin a rate based on the AFA rate because AFA rates can be "reasonably reflective" of the dumping margin for non-examined respondents when it was Commerce's decision to limit the investigation to two mandatory respondents.⁵¹⁵

⁵¹³ See *Large Power Transformers From Japan; Final Results of Administrative Review of Antidumping Finding*, 48 FR 26498 (June 8, 1983).

⁵¹⁴ See *Iljin Case Brief* at 2.

⁵¹⁵ See *Iljin Rebuttal Brief* at 2.

No other interested parties commented on the issue.

Commerce's Position

Since we are applying the AFA rate to only one respondent, Hyundai, the weighted-average dumping margin for the three non-selected companies will be the margin assigned to Hyosung in accordance with the statute and our practice. We believe that this is a reasonable method and the expected method of calculating such a margin, as set forth in the SAA.⁵¹⁶ We also find, consistent with *Bestpak*, that the statute and the SAA allow Commerce to use rates from mandatory respondents in calculating a margin for a non-selected company.⁵¹⁷ We have no evidence on the record of Iljin's actual dumping margin, so we find that a mandatory respondent's rate is reflective of dumping found during a segment of this proceeding for a non-selected company. Thus, there is neither a need nor a requirement to request additional information regarding Iljin's sales during this administrative review. Therefore, we assign the final rate of 15.74 percent to Iljin.

VII. RECOMMENDATION

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

☒

☐

Agree

Disagree

X  _____

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

⁵¹⁶ See the SAA at 873.

⁵¹⁷ See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1370, 1379 (Fed. Cir. 2013) (*Bestpak*).