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October 9, 2019

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

FROM: James Maeder
Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Large Power Transformers from the
Republic of Korea; 2017-2018

I. SUMMARY

The Department of Commerce (Commerce) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). The review covers seven producers/exporters of the subject merchandise: Hyosung Heavy Industries Corporation (Hyosung), Hyosung Corporation, Hyundai Electric & Energy Systems Co., Ltd. (Hyundai), Hyundai Heavy Industries Co., Ltd., ILJIN, Iljin Electric Co., Ltd. (Iljin), and LSIS Co., Ltd (LSIS). We selected two respondents, Hyosung and Hyundai, for individual examination. The period of review is August 1, 2017 through July 31, 2018. We preliminarily determine that both Hyosung and Hyundai made sales of subject merchandise at less than normal value, during the period of review.

II. BACKGROUND

On August 13, Hyosung requested an administrative review of their imports of LPTs.¹ Similarly, on August 31, 2018, Hyundai, and Iljin requested an administrative review of their imports of LPTs.² ABB Inc. and SPX Transformers Solutions, Inc., (the petitioners) also requested administrative reviews of producers/exporters of the subject merchandise from Korea on August 31, 2018.³ On October 4, 2018, in accordance with 19 CFR 351.221(c)(1)(i), we published a

¹ See Hyosung's Letter, "Large Power Transformers from Korea: Administrative Review Request," dated August 13, 2018.

² See Hyundai's Letter, "Large Power Transformers from South Korea: Administrative Review Request," dated August 31, 2018; *see also* Iljin's Letter, "Large Power Transformers from Korea — Request for Administrative Review," dated August 31, 2018.

³ See Large Power Transformers from Republic of Korea – Petitioner's Request for 2017-2018 Administrative Review, dated August 31, 2018.



notice of initiation of the administrative review of the antidumping duty order on LPTs from Korea.⁴

In the *Initiation Notice*, we stated our intention, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.⁵ We released the CBP data to interested parties under an administrative protective order on October 31, 2018, and invited interested parties to submit comments on the data as well as potential respondent selection. On November 6, 2018, we received comments from Hyosung, and on November 7, 2018, we received comments from the petitioners and Hyundai. We then received rebuttal comments from Iljin on November 13, 2018. Based on a consideration of the comments, the number of potential producers/exporters involved in this review, and the resources available to Commerce, we determined that we could reasonably individually examine two producers/exporters in the current review (*i.e.*, Hyosung and Hyundai) as the producers/exporters accounting for the largest volume of the subject merchandise from Korea, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).⁶

On January 29, 2019, Commerce exercised its discretion to toll all deadlines affected by the partial closure of the Federal Government from December 22, 2018, through January 25, 2019.⁷ On June 7, 2019, we extended the time limit for completion of the preliminary results of the review to October 2, 2019. On September 19, 2019, we extended the deadline for issuing the preliminary results of the review to October 9, 2019.

In August, Commerce conducted sales verifications of the responses at Hyundai in Korea and at Hyundai USA in California.⁸ On September 23, 2019, through September 27, 2019, Commerce conducted cost verification of the responses at Hyundai in Korea.⁹

III. DEADLINE FOR SUBMISSION OF UPDATED SALES AND COST INFORMATION

Given that most LPTs sold in the United States were made pursuant to long-term contracts and the production of LPTs in general involves long lead times, certain expenses reported by

⁴ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 83 FR 50077 (October 4, 2018) (*Initiation Notice*).

⁵ *Id.*

⁶ See Memorandum, “Antidumping Duty (AD) Administrative Review of Large Power Transformers (LPTs) from the Republic of Korea (Korea): Respondent Selection Memorandum,” dated December 13, 2018.

⁷ 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. All deadlines in this segment of the proceeding have been extended by 40 days.

⁸ See Memoranda, “Verification of the Sales Response of Hyundai Electric & Energy Systems Co., Ltd. in the Antidumping Review of Large Power Transformers from the Republic of Korea” (Hyundai Korea Sales Verification Report); and “Constructed Export Price Verification of the Sales Response of Hyundai Electric & Energy Systems Co., Ltd. in the Antidumping Review of Large Power Transformers from the Republic of Korea” (Hyundai CEP Verification Report). These verification reports are dated concurrently with this memorandum.

⁹ See Memorandum, “Verification of the Cost Response of Hyundai in the Antidumping Duty Review of Large Power Transformers from Korea,” dated concurrently with this memorandum (Hyundai Korea Cost Verification Report).

respondents in their sales and cost databases were based upon estimates. Consistent with prior segments of this proceeding, we instructed respondents to provide actual cost and expense data for amounts for which actual data existed as of a certain date, which in this review was December 31, 2018. Therefore, when available, Commerce relied upon reported actual costs and expenses (related to sales) through and including December 31, 2018, in determining the preliminary weighted-average dumping margins for the mandatory respondents.

IV. SCOPE OF THE ORDER

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

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

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

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

V. DISCUSSION OF THE METHODOLOGY

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

Comparisons to Normal Value

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

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), Commerce calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (EPs) (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate

in a particular situation. In antidumping investigations, Commerce examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern Commerce's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.¹⁰

In recent investigations, Commerce applied a "differential pricing" analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.¹¹ Commerce finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. Commerce will continue to develop its approach in this area based on comments received in this and other proceedings, and on Commerce's additional experience with addressing the potential masking of dumping that can occur when Commerce uses the average-to-average method in calculating weighted-average dumping margins.

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

In the first stage of the differential pricing analysis used here, the "Cohen's *d* test" is applied. The Cohen's *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*,

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

¹¹ See, *e.g.*, *Xanthan Gum from the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar from Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); and *Welded Line Pipe from the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

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

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

If both tests in the first stage (*i.e.*, the Cohen's *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, Commerce examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, Commerce tests whether using an alternative comparison method, based on the results of the Cohen's *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping margins is considered meaningful if: (1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or (2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

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

B. Results of the Differential Pricing Analysis

For Hyosung, based on the results of the differential pricing analysis, we find that the value of total sales that passed the Cohen's *d* test was less than 33 percent, and, as such, these results do not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and these results do not support consideration of an alternative to the average-to-average method.¹² Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method for either respondent. Accordingly, we preliminarily determine to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyosung.¹³

Product Comparisons

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

Date of Sale

Section 19 CFR 351.401(i) states that, “[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.” The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹⁴ Commerce has a long-standing practice of

¹² See Memorandum, “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,” dated concurrently with this memorandum (Hyosung Preliminary Analysis Memorandum).

¹³ In these preliminary results, Commerce applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

¹⁴ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)).

finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹⁵

In prior segments of this proceeding, we concluded that the date of the initial purchase order was the date upon which material terms of sale had been established between the respondents and their customers.¹⁶ However, in the 2014-2015 administrative review, Commerce found that the date of shipment was the date on which the material terms of sale had been established for Hyosung.¹⁷ Hyosung indicated that a significant number of sales in both markets had changes to the material terms of sale after the initial purchase order.¹⁸ Consequently, Hyosung reported the shipment date as the date of sale for both home market and U.S. sales in this review.¹⁹

Hyosung stated that it normally issues a tax invoice to home-market customers at the time that it is preparing to ship a completed LPT unit to the customer.²⁰ However, for certain home-market sales, Hyosung indicated that it had not yet issued invoices for sales of LPT units that had been shipped to the customer.²¹ For sales in the United States, Hyosung stated that its U.S. affiliate, HICO America Sales and Technology, Inc. (HICO America), issues an invoice to its U.S. customer once the LPT unit has been shipped to the United States and certain tests have been performed.²² Thus, we preliminarily conclude that, for Hyosung, the date of sale is the shipment date, in accordance with Commerce's regulation and practice.²³

¹⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying IDM at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying IDM at Comment 2.

¹⁶ For a full discussion of this determination, see *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) and accompanying IDM at Comment 1.

¹⁷ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying IDM at Comment 17. Hyosung noted the shift by Commerce in its section A questionnaire response. See Hyosung's Letter, "Large Power Transformers from Korea: Section A Questionnaire Response," dated February 19, 2019, (Section A Response) at 38-39.

¹⁸ See Section A Response at 42-43; see also Hyosung's Letter, "Large Power Transformers from Korea: Hyosung's Supplemental Section A Response (Response to Questions 2 - 88)," dated June 19, 2019 (Supplemental Section A Response), at 54-56 and Exhibit SA-Q80.

¹⁹ See Section A Response at 39.

²⁰ See Hyosung's Section A Response at 44.

²¹ See Hyosung's Letter, "Large Power Transformers from Korea: Sections B-D Questionnaire Responses," dated March 11, 2019, (Section B-D Responses) at B-25; see also Hyosung's Letter, "Large Power Transformers from Korea: Hyosung's Supplemental Sections B-C Response," dated July 12, 2019, (Supplemental Section B-C Response), at 11 and Exhibit SBC-Q10.

²² See Hyosung's Section A Response at 36.

²³ See Hyosung Preliminary Analysis Memorandum for further discussion regarding the date of shipment for certain home market sales.

Constructed Export Price

For the price to the United States, we used CEP, in accordance with section 772(b) of the Act. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise.²⁴ We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

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

Normal Value

C. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of LPTs in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), Commerce compared the volume of Hyosung's home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.²⁵ Based on this comparison, we determined that Hyosung had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

D. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP.²⁶ Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit. For CEP sales, the U.S. level of trade is based on

²⁴ See section 772(b) of the Act.

²⁵ See Hyosung's Section A Response at Exhibit A-1.

²⁶ See section 773(a)(7) of the Act.

the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer.²⁷

To determine if normal value sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁸ If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level of trade is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision).²⁹

For Hyosung, the company reported a single channel of distribution to one category of customers for both home market and U.S. sales.³⁰ We reviewed the intensity of all selling functions Hyosung claimed to perform for this single channel of distribution in the home market and, based on our analysis of all Hyosung's comparison-market selling functions, we preliminarily find all home-market sales were made at the same level of trade, or the normal-value level of trade.³¹ With regard to U.S. sales, Hyosung also reported one channel of distribution for all sales (*i.e.*, sales through HICO America).³² Finally, we reviewed the selling-functions chart provided by Hyosung. Our review indicated that many of the selling activities were performed by the affiliate HICO America in the United States.³³ Based on this information, we preliminarily find that all CEP sales constitute one level of trade, or the CEP level of trade. We then compared the normal-value level of trade, based on the selling functions associated with the transactions between Hyosung and its customers in the home market, to the CEP level of trade, based on the selling functions associated with the transactions between Hyosung and HICO America. Our analysis indicated that the selling functions performed for home-market customers are not performed at a higher degree of intensity, or are greater in number, than the selling functions performed for HICO America. Thus, we preliminarily concluded that the normal-value level of trade is not at a more advanced stage than the CEP level of trade. Accordingly, we preliminarily have not applied a CEP offset to normal value. For further analysis and discussion, *see* the Preliminary Analysis Memorandum.

²⁷ See 19 CFR 351.412(c)(1)(ii).

²⁸ See 19 CFR 351.412(c)(2).

²⁹ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-33 (November 19, 1997) (applying the CEP offset analysis under section 773(a)(7)(B)).

³⁰ See Hyosung's Section A response at 21, 28.-.

³¹ See Section A Response at 22-24 and 29-32, and Exhibit A-13; *see also* Supplemental Section A Response 19-28, 41, 44-47, and 57-58.

³² See Section A Response at 25-28, and Exhibit A-13; *see also* Supplemental Section A Response at 29-43, 47-53.

³³ *Id.*

E. Cost of Production

Pursuant to section 773(b)(2) of the Act,³⁴ Commerce required that both respondents provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

1. Calculation of Cost of Production

We calculated the COP for the respondents based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses, interest expenses, and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Hyosung, except as follows:³⁵

- We adjusted Hyosung's reported G&A expense rate to exclude offsets related to scrap and by-product sales.
- We included and excluded specific line items from the general and administrative and financial expense ratios. We recalculated the ratios and applied them to the revised per-unit total costs of manufacturing.

2. Test of Comparison Market Sales Prices

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

³⁴ See 19 USC 1677b(b)(2)(A)(ii).

³⁵ See Memorandum, "Cost of Production and Constructed Value Calculation Adjustments for the Preliminary Determination – Hyosung Corporation," dated concurrently with this memorandum.

3. Results of the Cost of Production Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” Commerce may disregard such sales when calculating normal value. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”³⁶ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.³⁷

For Hyosung, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time.³⁸ Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the companies’ home-market sales data and used the remaining sales to determine normal value.

F. Calculation of Normal Value Based on Comparison Market Prices

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

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

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.³⁹

³⁶ See section 773(b)(2)(C)(ii) of the Act.

³⁷ See section 773(b)(2)(D) of the Act.

³⁸ See Hyosung Preliminary Analysis Memorandum.

³⁹ See 19 CFR 351.411(b).

G. Price-to-Constructed Value Comparison

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

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of the respondents' material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of constructed value as described above in the "Calculation of Cost of Production" section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. Commerce's normal practice is to rely on the financial information most contemporaneous with the period of review.⁴⁰ Because the majority of this period fell within fiscal year 2017 rather than fiscal year 2016, we relied on Hyosung's G&A and financial expense rates for fiscal year 2017.

Currency Conversion

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

VI. AFFILIATION

On April 1, 2017, Hyundai, a division of Hyundai Heavy Industries Co., Ltd. (HHI) was spun off to be its own separate company. On September 5, 2018, in a separate, changed circumstances review, Commerce determined that Hyundai is the successor-in-interest to Hyundai Heavy Industries Co., Ltd.'s (HHI) dumping margin.⁴¹ On December 17, 2018, Commerce sent Hyundai the antidumping duty questionnaire.⁴² Before responding to the initial questionnaire, Hyundai informed Commerce that it intended to report affiliated companies and customers in a manner consistent with prior reviews, but as a result of the spin-off from HHI, Hyundai reported that "a number of Hyundai's affiliates in prior reviews are no longer affiliates of {Hyundai} in the current review, according to the statutory definition of that term (found at 19 U.S.C1677(33))."⁴³

⁴⁰ See, e.g., *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompany IDM at Comment 3.

⁴¹ See *Large Power Transformers from the Republic of Korea: Notice of Final Results of Antidumping Duty Changed Circumstances Review*, 83 FR 45094 (September 5, 2018), and accompanying IDM.

⁴² See Commerce's Letter, "Antidumping Duty Questionnaire," dated December 17, 2018 (Initial Questionnaire).

⁴³ See Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Initial Methodology Comments," dated December 31, 2018, at 21.

Hyundai clarified in its Section A questionnaire response that although it made sales to the United States through Hyundai Corporation USA (Hyundai USA), these companies are not affiliated under the statute.⁴⁴ Hyundai explained that the only relationship between Hyundai USA and Hyundai “arises by virtue of {Hyundai USA} being a 100%-owned subsidiary of Hyundai Corporation. . .” and a company, KCC Corporation, owns 12% of Hyundai Corporation and thus indirectly over 5% of Hyundai USA and KCC Corporation owns more than 5% of Hyundai.⁴⁵

On May 29, 2019, Commerce sent a supplemental to Hyundai and asked that Hyundai “please explain in detail how these companies are not affiliated with Hyundai under the statute.”⁴⁶ Hyundai responded that “. . . Hyundai USA. . . and other Hyundai entities (*i.e.*, other companies owned/operated by the Chung family that are not affiliates of {Hyundai} under the statute) are not affiliated with {Hyundai} under the statute because the statute provides specific categories of relationship that constitute affiliation, and the relations between {Hyundai} and these companies do not fall within those categories.”⁴⁷ At the sales verifications, Hyundai reiterated its view with respect to this affiliation and provided supporting documentation.⁴⁸ Therefore, we find that this chain of ownership does not meet the statutory criteria for affiliation.

Hyundai Corporation also explained that the companies are not affiliated by reason of the family relationship because they are owned by cousins.⁴⁹ Therefore, we find that they do not meet the family relationship affiliation.

The record further does not contain any information that the Hyundai and Hyundai USA meet any of the remaining affiliation criteria. Thus, based on our review of Hyundai’s reporting and statements, we preliminarily determine that Hyundai and Hyundai USA are not affiliated parties pursuant to the statute.

In its CQR, Hyundai stated that Hyundai USA, and its wholly-owned subsidiary Hyundai Platform Corporation (HPC), are responsible for providing certain services (*e.g.*, installation).⁵⁰ Hyundai explains that the work itself (*e.g.*, installation) is performed by unaffiliated entities; HPC only arranges with and is charged by the unaffiliated service provider, and then HPC charges Hyundai USA.⁵¹ As Hyundai USA owns 100% of HPC, we find them to be affiliated.

⁴⁴ See Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Section A Questionnaire Response,” dated February 19, 2019, at A-11.

⁴⁵ *Id.* at A-22-A-33

⁴⁶ See Commerce’s Letter, “Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: First Sales Supplemental Questionnaire,” dated May 29, 2019, (First Sales Supplemental Questionnaire) at 4.

⁴⁷ See Letter from Hyundai, “Large Power Transformers from the Republic of Korea: HEES’s Responses to the Department’s First Sales Supplemental Questionnaire,” dated June 19, 2019, (SQR) at ISS-12.

⁴⁸ See Hyundai Korea Sales Verification Report at 2; *see also* Hyundai CEP Verification Report at 2.

⁴⁹ See SQR at ISS-12-15.

⁵⁰ See Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Section C Questionnaire Response,” dated March 11, 2019, (CQR) at C-77.

⁵¹ *Id.*

VII. APPLICATION OF FACTS AVAILABLE AND USE OF ADVERSE INFERENCE

We have preliminarily based Hyundai's dumping margin on adverse facts available. As is further explained below, there are several bases for this determination: (1) Hyundai failed to provide reliable information regarding service-related revenues and expenses; (2) Hyundai also failed a completeness check at verification when it could not provide information necessary to demonstrate that a U.S. sale was properly excluded from its database; and (3) Hyundai also failed to provide complete information with respect to merchandise under consideration in the home market.

A. Application of Facts Available

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

1. Service-Related Revenues and Expenses:

It has been Commerce's practice to decline to treat service-related revenues as an addition to U.S. price under section 1677a(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38).⁵² Instead, Commerce will treat service-related revenues as an offset to the associated service-related expenses. In *Thai Pipe and Tube*, Commerce articulated this methodology, stating that Commerce "is following its normal practice by treating freight revenue

⁵² See *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Notice of Intent Not to Revoke Antidumping Duty Order in Part*, 75 FR 50999 (August 18, 2010), and accompanying IDM at Comment 2.

as an offset to freight costs rather than as an addition to U.S. price where freight revenue exceeds freight expenses” and 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, {Commerce} will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase the gross unit selling price for subject merchandise as a result of profit earned on the sale of services (*i.e.*, freight).⁵³ The Court of International Trade (CIT) upheld Commerce’s practice to “cap” service-related revenues by the associated service-related expenses in previous segments of this proceeding.⁵⁴ However, the CIT held that Commerce cannot rely on internal company documentation or other intercompany communications for its capping methodology.⁵⁵

We asked Hyundai to “report revenue in separate fields (*e.g.*, ocean freight revenue, inland freight revenue, oil revenue, installation, *etc.*) and identify the related expense(s) for each revenue” for home market sales and sales to the United States in the initial questionnaire.⁵⁶ In the First Sales Supplemental Questionnaire, we again requested from Hyundai that it “separately report all service-related revenues (*i.e.*, not grouped together or bundled) if those revenues are reflected on any sales documentation (*e.g.*, invoice, purchase order, contract, proposal, *etc.*).”⁵⁷ In response to the initial questionnaire, Hyundai explained that it reported “service revenue in separate fields as instructed . . . based on the amounts listed in the documents between {Hyundai} and the customer.”⁵⁸ In its SQR, Hyundai stated that it reported “service-related revenues as reflected on any sales documentation with the customer.”⁵⁹

During the CEP sales verification at Hyundai USA, we learned of a previously unreported commission agreement in which Hyundai USA allocates revenue from the sale of subject merchandise to its subsidiary HPC.⁶⁰ We then discovered unreported sales documentation in which Hyundai and Hyundai USA negotiated and allocated expenses and revenues between each other.⁶¹ Hyundai explained that every U.S. sale has these documents. During verification, upon Commerce’s request, Hyundai provided these documents for two additional U.S. transactions.⁶² When we asked why Hyundai had not previously provided such documentation for all U.S. sales (pursuant to Commerce’s initial and supplemental questionnaires), Hyundai responded that it considers these documents to be intercompany, internal communications.⁶³

⁵³ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand*, 77 FR 61738 (October 11, 2012) (*Thai Pipe and Tube*), and accompanying IDM at Comment 3.

⁵⁴ See *ABB Inc. v. United States*, 355 F. Supp. 3d at 1221 (CIT 2018).

⁵⁵ *Id.*

⁵⁶ See Initial Questionnaire at B-1.

⁵⁷ See First Sales Supplemental Questionnaire at 6.

⁵⁸ See CQR at C-6.

⁵⁹ See Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Responses to the Remainder of the Department’s First Sales Supplemental Questionnaire,” dated July 1, 2019, at 1SS-3.

⁶⁰ See Hyundai CEP Verification Report at 12.

⁶¹ *Id.* at 9-11.

⁶² *Id.* at 11.

⁶³ *Id.* at 10.

However, Hyundai's attempted justification for withholding these documents contradicts its own representations (as detailed above) that Hyundai and Hyundai USA are not affiliated parties.⁶⁴ On the contrary, the two entities are unaffiliated. Accordingly, Hyundai's attempted justification is unavailing. Communications between Hyundai and Hyundai USA are not internal company communications, but instead sales negotiations and communications between Hyundai and its unaffiliated trading company, which should have been reported to Commerce. Without this information, we cannot determine the actual price for each U.S. sale to calculate a dumping margin.

2. U.S. Sales:

In Commerce's antidumping duty questionnaire to Hyundai, Commerce requested that Hyundai report a data file containing each sale of subject merchandise produced in the United States during the POR.⁶⁵ In response, Hyundai reported what was supposed to be Hyundai's universe of U.S. sales to Commerce.⁶⁶

However, during the CEP verification in the United States, we examined various line items in the sales ledger to verify the accuracy of Hyundai's reported U.S. sales quantity and value. At verification, we discovered that a subsidiary of Hyundai in the United States (*i.e.*, Hyundai Power Transformers, or HPT), which manufactures LPTs in the United States, sold LPTs through Hyundai USA.⁶⁷ As part of our completeness check, we selected and reviewed documentation related to a sale of an LPT that Hyundai USA booked in its accounting system.⁶⁸ Initial documentation provided by Hyundai (at our request, during verification) appeared to indicate that the sale was on behalf of HPT, through Hyundai USA, to a U.S. customer.⁶⁹ Accordingly, Hyundai had not reported this sale in its U.S. sales database. However, upon further review of associated documentation, including the purchase order, we discovered information which appeared to indicate that the LPT could have been produced in Korea.⁷⁰ If the LPT was produced in Korea, then it should have been reported as a sale in Hyundai's U.S. sales database.

To ascertain whether this LPT was produced in the United States rather than in Korea, we requested additional documentation, some of which Hyundai failed to provide.⁷¹ Thus, Hyundai failed this completeness test. Commerce is unable to determine whether this LPT was produced

⁶⁴ See Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Initial Methodology Comments," dated December 31, 2018, at 21; *see also* Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Section A Questionnaire Response," dated February 19, 2019, at A-11.

⁶⁵ See Antidumping Duty Questionnaire to Hyundai, dated December 17, 2018, at page C-2.

⁶⁶ See Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Section C Questionnaire Response," dated March 11, 2019, at page C-1 and accompanying data file.

⁶⁷ See Hyundai CEP Verification Report at 9-11.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ See Memorandum, "Analysis of Data/Questionnaire Responses Submitted by Hyundai Electric & Energy Systems in the Preliminary Results of the 2017-2018 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated concurrently with this memorandum (Hyundai Preliminary Analysis Memorandum), at 2.

⁷¹ *Id.*

in the United States, rather than in Korea, and whether it should have been reported as a U.S. sale.⁷²

Hyundai's failure calls into question the completeness and accuracy of its March 11, 2019 submission, and of its reporting of U.S. sales in general. Our concern is heightened because of the relatively small number of total U.S. sales reported by Hyundai.⁷³ Without an accurate and complete record of the total number of sales of subject merchandise produced in Korea and sold to the United States, Commerce is unable to accurately calculate antidumping duty margins or assess dumping duties on all appropriate U.S. sales. Given the business proprietary nature of the information regarding this issue, for further analysis and discussion, *see* the Hyundai Preliminary Analysis Memorandum.⁷⁴

3. Home Market Sales:

In its initial questionnaire response, Hyundai identified certain LPT components as being out-of-scope, and therefore excluded them from its home market sales.⁷⁵ In a letter to Commerce, the petitioners alleged that Hyundai may have misclassified this merchandise as out-of-scope.⁷⁶ In response to the petitioners' comments, Hyundai attempted to defend its initial questionnaire response by stating that these components do not fall under the scope of the order and are not part of an LPT.⁷⁷ Specifically, Hyundai argued that these components are neither attached to, nor physically part of the LPT, and are typically located 50 to 100 meters from the LPT, and accordingly should be treated as being out-of-scope.⁷⁸

During the sales verification in Korea, Hyundai further explained its stance with respect to these components.⁷⁹ However, we noted during verification that Hyundai occasionally classifies these same parts as within the scope.⁸⁰ Thus, Commerce was unable to verify the information provided by Hyundai regarding whether these components should be included in its U.S. sales. Indeed, we are concerned that Hyundai's letter on this issue was misleading.

Because Hyundai failed to provide necessary service-related revenue information, failed a completeness test at verification, and inconsistently reported certain subject parts for home market sales, we find that Hyundai has withheld information requested by Commerce,

⁷² *Id.*

⁷³ *See* Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Section C Questionnaire Response," dated March 11, 2019, at page C-1 and accompanying data file.

⁷⁴ *See* Hyundai Preliminary Analysis Memorandum.

⁷⁵ *See, e.g.,* Hyundai's Letter "Large Power Transformers from the Republic of Korea: HEES's Responses to the Department's First Sales Supplemental Questionnaire," dated June 19, 2019, at Exhibit B-2.

⁷⁶ *See* Petitioners' Letter, "6th Administrative Review of Large Power Transformers from South Korea – Petitioners' Comments on the Supplemental Sections B and C Questionnaire Response of Hyundai Electric & Energy Systems (HEES)," dated July 19, 2019, at 9-12.

⁷⁷ *See* Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Rebuttal to Petitioners' Comments on HEES's First Sales Supplemental Response," dated August 2, 2019, at 9-14.

⁷⁸ *Id.* at 11.

⁷⁹ *See* Hyundai Korea Sales Verification Report at 11.

⁸⁰ *Id.* at 16; *see also* Hyundai Preliminary Analysis Memorandum at 2-3.

significantly impeded the proceeding, and provided information which could not be verified. Accordingly, pursuant to sections 776(a)(1), 776(a)(2), and 782(e) of the Act, we preliminarily find that we must apply facts available for the missing and unverified information in order to determine Hyundai's dumping margins.

B. Use of Adverse Inference

Section 776(b) of the Act provides that, if Commerce finds that an interested party has failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.⁸¹ In so doing, and under the Trade Preferences Extension Act of 2015 (TPEA),⁸² 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.⁸³ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁸⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.⁸⁵ 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.⁸⁶

We preliminarily find that Hyundai has failed to cooperate by not acting to the best of its ability. As discussed above, Hyundai failed to provide all service-related revenues which are reflected on its sales documentation. The missing information is necessary for Commerce to offset the service-related revenues by the associated service-related expenses. Indeed, Hyundai's attempted justification for withholding these documents contradicts its own representations (as well as Commerce's preliminary determination) that Hyundai and Hyundai USA are not affiliated parties.

⁸¹ 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).

⁸² As noted above, on June 29, 2015, the President of the United States signed into law the TPEA, which made numerous amendments to the antidumping duty and countervailing duty law, including amendments to sections 776(b) and 776(c) of the Act and the addition of section 776(d) of the Act, as summarized below. See TPEA. The amendments to section 776 of the Act are applicable to all determinations made on or after August 6, 2015. See *Applicability Notice*, 80 FR at 46794-95. Therefore, the amendments apply to this investigation.

⁸³ See section 776(b)(1)(B) of the Act.

⁸⁴ See Statement of Administrative Action, H.R. Rep. No. 103-316, Vol. 1 (1994) (SAA) at 870; see also *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁸⁵ 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.

⁸⁶ 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 IDM 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).

Further, Hyundai failed completeness checks at verifications when Hyundai could not demonstrate that a U.S. sale was manufactured and produced in the United States, rather than in Korea, thus calling into question the integrity of the U.S. sales database. Without an accurate and complete record of the total number of sales of subject merchandise produced in Korea and sold to the United States, Commerce is unable to calculate accurately antidumping duty margins or assess dumping duties on all appropriate U.S. sales.

In addition, Hyundai excluded certain parts for home market sales which should have been reported. After the error was called to its attention, Hyundai provided an attempted justification that contradicts other information uncovered by Commerce during the sales verification.

The missing and unverifiable data is critical to the dumping calculation. Without a complete verifiable reporting of home market and U.S. sales, Commerce cannot complete and accurate dumping calculations. Without accurately reported service-related revenues and expenses, the U.S. price cannot be properly determined. Without consistent and accurate reporting of certain parts in the home market sales database, again the home market prices cannot be established for use in the basic dumping comparison. The record established that Hyundai had all of the information in its books and records, and thus could have provided it to the Department in its questionnaire responses. Furthermore, Commerce gave Hyundai opportunities to correct these deficiencies – but rather than correct them, Hyundai attempted to defend them. Hyundai’s defenses failed to withstand scrutiny during verification.

Accordingly, we find that Hyundai has failed to cooperate to the best of its ability by not providing the missing information and providing unverifiable information. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we preliminarily determine to use an adverse inference when selecting from among the facts otherwise available.⁸⁷

C. Selection and Corroboration of the Adverse Facts Available Rate

Section 776(b)(2) of the Act states that Commerce, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.⁸⁸ In selecting a rate based on adverse facts available (AFA), Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁸⁹

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

⁸⁷ 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); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR at 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

⁸⁸ See 19 CFR 351.308(c).

⁸⁹ See SAA at 870.

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.⁹⁰ The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.⁹¹ To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.⁹²

Finally, under section 776(d) of the Act, Commerce may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.⁹³ The Act also makes clear that when selecting an AFA margin, Commerce is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.⁹⁴

As AFA, we are preliminarily assigning Hyundai a dumping margin of 60.81 percent, an AFA rate used in the previous review.⁹⁵ According to 776(c)(2) of the Act, where Commerce has applied a dumping margin in a separate segment of the same proceeding (*i.e.*, a previously calculated dumping margin or where it previously corroborated a rate for facts available), it need not corroborate (again) the rate to be used in the current segment for purposes of facts available.

When a respondent is not cooperative, such as Hyundai in this review, Commerce has the discretion to presume that the highest prior dumping margin is the most probative evidence of the current weighted-average dumping margin.⁹⁶ If this were not the case, the party would have produced current information showing its rate to be less.⁹⁷ Therefore, we preliminarily determine that the AFA rate is appropriate for purposes of this administrative review.

In addition, as discussed above, Commerce fulfilled its requirements under Section 782(d) of the Act by allowing Hyundai numerous attempts to report its service-related revenues and U.S. transactions accurately. Further, Hyundai never reported to Commerce that it was unable to

⁹⁰ *Id.*

⁹¹ See *id.*; see also 19 CFR 351.308(d).

⁹² 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).

⁹³ See section 776(d)(1)-(2) of the Act.

⁹⁴ See sections 776(d)(3)(A) and (B) of the Act.

⁹⁵ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*2014-2015 LPT Korea Final*).

⁹⁶ See *Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1339 (Fed. Cir. 2002) (citing *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1190 (Fed. Cir. 1990) (*Rhone Poulenc*)).

⁹⁷ See *Rhone Poulenc*, 899 F.2d at 1190.

submit the information in the form and manner requested for Commerce to consider in accordance with Section 782(c)(1) of the Act. Thus, pursuant to Section 782(e) of the Act, Hyundai has not acted to the best of its ability, and the information cannot be used without undue difficulties. Therefore, we have applied total adverse facts available to Hyundai for purposes of the preliminary determination.

VIII. RATE FOR NON-SELECTED COMPANIES

The statute and Commerce's regulations do not address the rate to be applied to companies not selected for individual examination when Commerce limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, Commerce looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, Hyosung and Hyundai are two mandatory respondents and Hyundai has a margin determined entirely on the basis of facts available. Accordingly, we have applied a rate of 40.73 percent from Hyosung to the non-selected companies.

IX. RECOMMENDATION

We recommend applying the above methodology for these preliminary results.



Agree

Disagree

10/9/2019

X 

Signed by: JEFFREY KESSLER