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April 14, 2020

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

**FROM:** James Maeder  
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; 2017-2018

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## 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 Electric & Energy Systems Co., Ltd. (Hyundai), as discussed below. For Hyosung Corporation and Hyosung Heavy Industries Corporation (collectively, Hyosung), we have made changes from the *Preliminary Results*,<sup>1</sup> 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:

### Hyundai-Specific Issues

#### Comment 1: Application of AFA

- A) Hyundai’s Completeness Failure at Verification
- B) Hyundai’s Reporting of Sales Documentation
- C) Hyundai’s Understatement of its Home Market Gross Unit Prices
- D) Application of Total AFA

#### Comment 2: Selection of AFA Rate

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<sup>1</sup> See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 55559 (October 17, 2019) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM); see also *Large Power Transformers from the Republic of Korea: Correction to the Preliminary Results of Antidumping Duty Administrative Review; 2017–2018*, 84 FR 65350 (November 27, 2019) (*Amended Preliminary Results*).



Comment 3: Reliability of Hyundai's Cost Data

Comment 4: Moot Issues

### Hyosung-Specific Issues

Comment 5: Ministerial Errors/Programming Changes

A) Revenue Capping in the Home Market – Indirect Selling Expenses

B) Installation Revenue

C) Revenue Capping in the U.S. Market – Storage Revenue

D) Other Expenses in the U.S. Market

Comment 6: Warranty Expenses

Comment 7: U.S. Customs and Border Protection (CBP) Instructions

### General Issues

Comment 8: Rate for Non-selected Respondents

## **II. BACKGROUND**

On October 17, 2019, 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, 2017 through July 31, 2018. Commerce published the *Amended Preliminary Results* of the administrative review on November 27, 2019.<sup>2</sup> The review covers five producers/exporters of the subject merchandise: Hyosung, Hyundai, ILJIN, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS. The two manufacturers/exporters that were selected as mandatory respondents were Hyosung Heavy Industries Corporation and Hyundai.

We conducted sales and cost verifications of Hyundai, and subsequently issued verification reports.<sup>3</sup> On December 11, 2019, ABB Inc. and SPX Transformer Solutions Inc. (collectively, the petitioners), Hyosung, Hyundai, and Iljin, timely submitted case briefs<sup>4</sup> commenting on the

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<sup>2</sup> The *Amended Preliminary Results* corrects the *Preliminary Results* to reflect that LSIS Co., Ltd. (LSIS) notified Commerce that it had no shipments during the POR, and that CBP indicated that it found no evidence of shipments. Consequently, Commerce preliminarily determined that LSIS had no shipments and thus would not be assigned a margin.

<sup>3</sup> See Memoranda, "Verification of the Sales Response of Hyundai Electric & Energy Systems Co., Ltd. in the Antidumping Duty Review of Large Power Transformers from the Republic of Korea," dated October 9, 2019 (Hyundai Korea Sales Verification Report); "United States Verification of the Sales Response of Hyundai Electric & Energy Systems Co., Ltd. in the Antidumping Duty Review of Large Power Transformers from the Republic of Korea," dated October 9, 2019 (Hyundai U.S. Verification Report); and "Verification of the Cost Response of Hyundai Electric & Energy Systems Co., Ltd. in the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated October 9, 2019 (Hyundai Cost Verification Report).

<sup>4</sup> See Iljin's Letter, "Large Power Transforms from Korea for the 2017-18 Review Period - Case Brief of Iljin Electric Co., Ltd.," dated December 11, 2019 (Iljin Case Brief); Hyosung's Letter, "Large Power Transformers from Korea: Affirmative Case Brief," dated December 11, 2019 (Hyosung Case Brief); Hyundai's Letter, "Large Power Transformers from Korea: HEES's Case Brief," dated December 11, 2019; and Petitioners' Letter, "Petitioner's

*Preliminary Results* as well as the Hyundai verification reports. The petitioners, Iljin, Hyosung, and Hyundai, timely filed rebuttal briefs on December 20, 2019.<sup>5</sup>

Hyundai re-filed its case brief, at the request of Commerce, to remove new factual information from the record which was contained in the original case brief.<sup>6</sup>

At the request of interested parties, Commerce held a hearing on February 25, 2020.<sup>7</sup>

### **III. SCOPE OF THE ORDER**

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

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

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

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

### **IV. 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

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Case Brief for Hyundai,” dated December 11, 2019 (Petitioners’ Case Brief). The petitioners did not file a case brief with respect to Hyosung.

<sup>5</sup> See Petitioner’s Letters, “Petitioner’s Rebuttal Brief On Hyundai,” dated December 20, 2019 (Petitioners’ Hyundai Rebuttal Brief); “Petitioner’s Rebuttal Brief For Hyosung,” dated December 20, 2019 (Petitioners’ Hyosung Rebuttal Brief); and “Petitioner’s Rebuttal Brief Regarding Iljin,” dated December 20, 2019 (Petitioners’ Iljin Rebuttal Brief); *see also* Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Rebuttal Brief,” dated December 20, 2019 (Hyundai Rebuttal Brief).

<sup>6</sup> See Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Resubmission of Case Brief,” dated January 3, 2020 (Hyundai Case Brief).

<sup>7</sup> See Commerce’s Letter, “Closed Hearing of the 2017-18 Administrative Review of Large Power Transformers from Korea,” dated March 3, 2020; *see also* Commerce’s Letter, “Public Hearing of the 2017-18 Administrative Review of Large Power Transformers from Korea,” dated March 3, 2020.

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 from the facts otherwise available.

As discussed in Comments 1 and 2 below, we continue to find that Hyundai: (1) failed to provide reliable information regarding service-related revenues and expenses; (2) 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) failed to provide complete information with respect to merchandise under consideration in the home market. Therefore, Hyundai impeded the review and failed to cooperate to the best of its ability, thus providing the basis for the application of total AFA to Hyundai.

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

## **V. DISCUSSION OF THE ISSUES**

### **Hyundai-Specific Issues**

#### **Comment 1: Application of AFA**

##### **A) Hyundai's Completeness Failure at Verification**

##### *Hyundai's Comments:*

- Hyundai reported to Commerce all of its sales that entered the United States during the period of review (POR).<sup>8</sup>
- Commerce speculated that a sale by Hyundai USA of an LPT produced in the United States by Hyundai Power Transformers (HPT) during the POR could have been produced in Korea, ignoring significant evidence to the contrary.<sup>9</sup>
- Commerce's speculation relies on an initial purchase order and invoices that Hyundai USA issued to the customer, both which reference "customs duties" as a component of the final sales price to the U.S. customer.<sup>10</sup> Hyundai explained that the reference to customs duties was simply a clerical oversight by Hyundai USA and not a demonstration that customs duties were paid.<sup>11</sup>

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<sup>8</sup> See Hyundai's Case Brief at 31 (citing Hyundai Korea Sales Verification Report at 13-14).

<sup>9</sup> *Id.* at 31-32 (citing *Preliminary Results* PDM at 16).

<sup>10</sup> *Id.* at 33.

<sup>11</sup> *Id.*

- The original purchase order changed manufacturers, moving production to the United States.<sup>12</sup> The revised purchase order resulted in a change to the amount Hyundai USA owed the manufacturer for this sale, but did not change the price it charged to the U.S. customer.<sup>13</sup>
- Hyundai USA did not revise the initial purchase order with the U.S. customer; rather, Hyundai USA generated invoices that still included references to customs duties, although no such duties were incurred by any party.<sup>14</sup>
- Nevertheless, Commerce requested proof that HPT produced the LPT at issue, and contrary to Commerce's erroneous assertion, Hyundai USA provided that proof.<sup>15</sup>
- Further, the record does not demonstrate a finding that Hyundai produced and/or exported from Korea the LPT at issue because Commerce verified the U.S. quantity of subject merchandise at verification, and the record is devoid of any other evidence finding Hyundai produced and/or exported the LPT at issue.<sup>16</sup>

*Petitioner's Rebuttal Comments:*

- Hyundai was unable to support its claim at verification that HPT manufactured and shipped the unreported U.S. sale.<sup>17</sup>
- Hyundai cites a purchase order which it claims shows a change in manufacturer for this order, but neither the purchase order, nor the record as a whole, supports Hyundai's claim.<sup>18</sup>
- Hyundai did not provide the required document under the customer's purchase order, and instead provided only a Hyundai company to Hyundai company document showing a sales transaction between those two entities.<sup>19</sup> This document is insufficient to demonstrate a change in manufacturer.<sup>20</sup>
- The inclusion of customs duties on the purchase order and invoices to the customer supports the finding that the LPT was produced in Korea.<sup>21</sup>
- There is no evidence on the record of notification of the change of manufacturer and/or agreement to that change,<sup>22</sup> and no party to a legal contract would be willing to pay for a service that was not ultimately provided.<sup>23</sup>
- Hyundai was unable to provide a bill of lading for certain items, and the document Hyundai did provide does not demonstrate that HPT manufactured the unreported U.S. sale.<sup>24</sup> On three separate occasions during verification, Commerce requested a copy of the bill of lading, and Hyundai was unable to provide one.<sup>25</sup>

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<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 34.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 34-36.

<sup>16</sup> *Id.* at 36-39.

<sup>17</sup> See Petitioners' Hyundai Rebuttal Brief at 6.

<sup>18</sup> *Id.* at 6-7.

<sup>19</sup> *Id.* at 8.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 9.

<sup>22</sup> *Id.* at 12.

<sup>23</sup> *Id.* at 13.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 13-14.

- Documents between Hyundai entities do not prove Hyundai's claims that HPT produced the unreported LPT sale.<sup>26</sup>
- Hyundai's claim that the record cannot support a finding that Hyundai produced and/or exported the LPT at issue is contradicted by record evidence.<sup>27</sup>
- Contrary to Hyundai's claim, Commerce did not confirm that Hyundai reported all U.S. sales of subject merchandise, because Commerce's verification is necessarily based on a sampling of data.<sup>28</sup> Commerce concluded that Hyundai failed this completeness test and Commerce was unable to ascertain whether this LPT was produced in the United States or not.<sup>29</sup>

## Commerce's Position

In this review, Hyundai reported only a small number of U.S. sales. It is critical that the U.S. sales database be complete, because the omission of even a single sale can significantly distort Commerce's dumping calculation. However, during verification, Commerce discovered that the U.S. sales database was incomplete. In particular, during a completeness check of the U.S. sales database, we discovered one LPT that had been omitted from Hyundai's U.S. sales database, even though the associated documentation shows that it was produced in Korea and is covered by the period of review. It is certainly possible that there are other omitted sales that Commerce did not discover at verification. Because Hyundai failed this completeness check, Commerce affirms the determination from the *Preliminary Results* that Hyundai withheld relevant information from Commerce and impeded this review, which warrants the application of AFA to Hyundai.

In the Initial Questionnaire to Hyundai, Commerce requested that Hyundai report each sale of subject merchandise imported into the United States from Korea during the POR (*i.e.*, August 1, 2017 through July 31, 2018).<sup>30</sup> Hyundai submitted a U.S. sales database in response. During verification, Commerce conducted a completeness check of the U.S. sales database. As the verification agenda states, "completeness is the process which confirms the accuracy and thoroughness of reported sales and expenses."<sup>31</sup>

Specifically, during CEP verification, Commerce selected a particular sale that was not included in Hyundai's U.S. sales database, and examined it. This sale was booked in Hyundai USA's accounting system as outside of the POR, but which was shipped and installed during the POR.<sup>32</sup> Documentation indicated that this sale was made on behalf of HPT in Alabama, while Hyundai USA had invoiced, and the customer had paid to Hyundai USA, customs duties.<sup>33</sup> This raised the question of whether the sale was in fact for an imported, Korean-manufactured LPT, in which case it should have been reported in response to Commerce's questionnaires and included

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<sup>26</sup> *Id.* at 15-16.

<sup>27</sup> *Id.* at 18-20.

<sup>28</sup> *Id.* at 20.

<sup>29</sup> *Id.* at 21.

<sup>30</sup> See Commerce's Letter, "Antidumping Duty Questionnaire," dated December 17, 2018 (Initial Questionnaire).

<sup>31</sup> *Id.* at 9.

<sup>32</sup> *Id.* at 9-10.

<sup>33</sup> *Id.*

in Hyundai's U.S. sales database. Accordingly, Commerce officials examined this sale throughout this day of verification.<sup>34</sup>

During verification, Hyundai officials asserted that the LPT at issue was originally planned to be produced in Korea, but then production was transferred to the United States after the initial purchase order.<sup>35</sup> However, Hyundai company officials were unable to substantiate this explanation during verification. Specifically, if production had been transferred as Hyundai claimed, then (pursuant to the purchase order) Hyundai USA would have been required to provide a certain notification, and receive approval from the customer.<sup>36</sup> Commerce officials requested documentation of this notification and approval, which Hyundai failed to provide.<sup>37</sup> Furthermore, three times, Commerce requested a bill of lading, which (based on Hyundai's explanation) should have shown that all parts of the LPT were transferred from the production site in the United States to the final project site.<sup>38</sup> Hyundai failed to provide such documentation as well.<sup>39</sup> Instead, Hyundai provided other documents that do not indicate whether the LPT at issue originated in Korea, but rather merely confirms that the LPT was installed at the destination in the United States.<sup>40</sup>

There is additional documentation on the record that confirms that the LPT at issue was in fact produced in Korea. In particular, Hyundai USA's accounting records and an invoice sent by Hyundai USA indicate that the U.S. customer paid customs duties.<sup>41</sup> This suggests that the U.S. customer believed the LPT was imported from Korea. In addition, Hyundai USA paid its Korean parent company a commission associated with the sale of this LPT, which listed Hyundai (a Korean entity) as the seller of the LPT.<sup>42</sup> This commission payment document post-dates the time when (according to Hyundai) HPT supposedly contracted to produce the LPT in question. This documentation confirms that Hyundai produced the LPT in Korea.

Hyundai does not admit any error on its part. Instead, Hyundai argues that customs duties are only referenced on the sales documentation for the LPT at issue due to a clerical error by Hyundai USA. However, there is no evidence to corroborate this assertion of clerical error. Moreover, there are multiple pieces of evidence confirming that the LPT at issue was in fact of Korean-origin, as discussed above. Commerce's determination must be based on evidence on the record – not speculation that evidence on the record does not show what it purports to show.

In addition, Hyundai argues that a revised purchase order shows that the LPT at issue, although originally planned for production in Korea, was subsequently changed to be produced in the United States. However, the totality of the record evidence does not support this argument. As

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<sup>34</sup> *Id.* at 10.

<sup>35</sup> *Id.*

<sup>36</sup> *Id.*

<sup>37</sup> *Id.*

<sup>38</sup> *Id.*

<sup>39</sup> *Id.*

<sup>40</sup> *Id.*

<sup>41</sup> *Id.*

<sup>42</sup> See Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Verification Exhibits for Constructed Export Price Sales Verification," dated September 6, 2019, at Exhibit CEPSVE-8, pg. 36.

discussed above, the invoiced and recorded payment of customs duties confirms that the LPT was in fact produced outside the United States, as does the commission payment (which lists Hyundai as the seller of the LPT) to Hyundai Corporation, a Korean entity. Both the documentation with the customs duties, and the documentation with the commission payment, post-date the supposed revision to the purchase order that Hyundai invokes. Thus, the evidence does not support Hyundai's argument.

Commerce must base its determinations on the administrative record – not on speculation.<sup>43</sup> In effect, Hyundai is asking Commerce to speculate that documents uncovered at verification do not say what they purport to say (*i.e.*, that customs duties and a commission were paid for the LPT at issue). Hyundai also has no explanation for its failure to respond to Commerce's requests at verification for documents that would have supported its theory that the LPT at issue was produced in the United States, nor do the documents Hyundai provided support this theory. Because calculating a dumping margin depends on a complete and accurate U.S. sales database, Commerce has a strong policy interest in deterring the incomplete reporting of U.S. sales, particularly when there is a small number of sales at issue, each of high value.

For these reasons, we determine that Hyundai impeded this review by failing to act to the best of its ability by failing a completeness test at verification, which leaves Commerce with an unreliable U.S. sales database from Hyundai. Accordingly, we determine that the record evidence warrants the application of AFA to Hyundai.

## **B) Hyundai's Reporting of Sales Documentation**

### *Hyundai's Comments:*

- Commerce's position that it may apply AFA because Hyundai failed to provide reliable information regarding service-related revenues and expenses is not based on substantial evidence and is not supported by law. Hyundai has provided every piece of information requested by Commerce.<sup>44</sup>
- Commerce has sufficient information on the record to calculate a dumping margin for Hyundai.<sup>45</sup>
- Commerce's decision to apply AFA violates the statute because Commerce did not provide Hyundai an opportunity to remedy or explain any deficiencies that may exist in its questionnaire responses, despite Commerce being aware of Hyundai's methodology in this review.<sup>46</sup>
- Hyundai responded to Commerce's questionnaires and treated its U.S. sales as constructed export price (CEP) sales; Commerce never identified any deficiencies in this regard.<sup>47</sup>
- Hyundai stated from the outset that it intended to report its information in the current administrative review in the same manner as previous reviews (*i.e.*, to treat U.S. sales to final

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<sup>43</sup> See Hyundai Case Brief at 31-32

<sup>44</sup> *Id.* at 18-19.

<sup>45</sup> *Id.* at 19.

<sup>46</sup> *Id.*

<sup>47</sup> *Id.*

U.S. customers through Hyundai USA as CEP sales) despite the fact that Hyundai and Hyundai USA were not affiliated according to the statutory definition.<sup>48</sup>

- Because Hyundai reported that it would treat U.S. sales through Hyundai USA as CEP sales, Hyundai reported revenues and associated expenses for the sales to its final U.S. customs, and treated the transactions between Hyundai and Hyundai USA as intercompany internal transactions.<sup>49</sup>
- Hyundai complied with Commerce's request to separately report all service-related revenues documented on any external sales correspondence with U.S. customers.<sup>50</sup>
- Commerce never asked Hyundai to submit a database in which its sales to the U.S. market would be treated as export price (EP) sales.<sup>51</sup>
- Commerce gave every indication that it would treat Hyundai's U.S. sales as CEP sales.<sup>52</sup> Hyundai never stated that it had provided all information Commerce may need to calculate a dumping margin should Commerce treat the sales as EP sales.<sup>53</sup>
- Commerce cannot disregard Hyundai's submitted information and apply facts available or AFA for Hyundai's reporting of its U.S. sales as CEP sales.<sup>54</sup>

*Petitioner's Rebuttal Comments:*

- Commerce correctly found that Hyundai failed to provide documentation reflecting separately-negotiated revenues and expenses for U.S. sales.<sup>55</sup>
- Hyundai's argument regarding the difference between sales documentation required for the reporting of EP versus CEP sales is irrelevant.<sup>56</sup>
- There was no confusion over whether Hyundai provided all sales documentation necessary to calculate U.S. price.<sup>57</sup> The verification report clearly states that Hyundai claimed to have provided all necessary information and data for Commerce to calculate an EP or CEP U.S. price.<sup>58</sup>
- Hyundai's internal reporting is inconsistent because Hyundai's position is that Hyundai and Hyundai USA are no longer affiliated; however, Hyundai failed to provide sales documentation of the relevant sales for purposes of the AD law, which are the sales between Hyundai and Hyundai USA.<sup>59</sup>

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<sup>48</sup> *Id.* at 20-21.

<sup>49</sup> *Id.* at 22.

<sup>50</sup> *Id.* at 23.

<sup>51</sup> *Id.* at 24.

<sup>52</sup> *Id.* at 26. (citing 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 6; and, *generally*, Hyundai U.S. Verification Report).

<sup>53</sup> *Id.* at 25.

<sup>54</sup> *Id.* at 27-31.

<sup>55</sup> See Petitioners' Hyundai Rebuttal Brief at 21.

<sup>56</sup> *Id.* at 22.

<sup>57</sup> *Id.*

<sup>58</sup> *Id.*

<sup>59</sup> *Id.* at 22-23.

- Commerce’s decision to apply total AFA to Hyundai for its failure to correctly report service-related revenues and their related expenses has already been sustained by the Court of International Trade (CIT) in the appeal of the third administrative review.<sup>60</sup>

## Commerce’s Position

We continue to find that Hyundai failed to provide the information and documentation in the form and manner Commerce requested.<sup>61</sup> Hyundai argues that Commerce was aware from the outset of the proceeding that Hyundai was reporting CEP sales, and Commerce did not direct Hyundai to do otherwise.<sup>62</sup> For this reason, according to Hyundai, the statute does not permit Commerce to apply AFA with respect to the failure to submit EP sales information.<sup>63</sup> Hyundai attempts to characterize this as a question of whether it should have reported sales as CEP sales or EP sales. However, the central issue is Hyundai’s failure to submit complete sales documentation in response to Commerce requests. Regardless of whether Commerce treats Hyundai’s U.S. sales as CEP or EP sales, respondents have an obligation to provide documentation requested by Commerce. Hyundai failed to do so in this case.

As explained in the *Preliminary Results*, we asked Hyundai to report service-related revenues and the associated expenses on two separate occasions.<sup>64</sup> In addition, because of the importance of service-related revenues over the course of this proceeding, upon Hyundai’s request, we sent a letter to Hyundai clarifying the nature of our question in the First Sales Supplemental Questionnaire.<sup>65</sup> In response, Hyundai only reported service-related revenues that were reflected on any external sales documentation with final U.S. customers.<sup>66</sup> However, Hyundai failed to submit other information that was responsive to the question, and which we discovered at verification – namely, documentation that exists for every single sale, which shows a service-related revenue allocation document between Hyundai and Hyundai USA.

Hyundai argues that Commerce knew that Hyundai was reporting its U.S. sales as CEP sales through Hyundai USA, despite Hyundai and Hyundai USA not being affiliated parties under the statute. Hyundai also argues that it provided all necessary information for Commerce to calculate a margin, based on CEP, and appropriately cap service-related revenues to the

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<sup>60</sup> *Id.* (citing Hyundai AR3 First Opinion, 332 F. Supp. 3d at 1340-43); *see also Hyundai Heavy Industries v. United States*, 2019 Ct. Intl. Trade LEXIS 103 (August 2, 2019) (sustaining the application of total AFA in Commerce’s remand redetermination).

<sup>61</sup> *See Preliminary Results* PDM at 14-16.

<sup>62</sup> *See* Hyundai Case Brief at 19.

<sup>63</sup> *Id.*

<sup>64</sup> *See Preliminary Results* PDM at 15; *see also* Initial Questionnaire at B-1; and, First Sales Supplemental Questionnaire at 6.

<sup>65</sup> *See* Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: Clarification of Certain Questions in the Department’s First Sales Supplemental Questionnaire,” dated June 12, 2019 (Hyundai’s Clarification Letter); *see also* Commerce’s Letter, “Clarification of First Sales Supplemental Questionnaire,” dated June 20, 2019 (Commerce’s Clarification Letter).

<sup>66</sup> *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 (Remaining SQR).

associated expense.<sup>67</sup> Hyundai asserts that if Commerce wanted an EP sales database, Commerce could have simply requested one.<sup>68</sup> Further, Hyundai argues it stated it would provide whatever information Commerce needed if Commerce were to treat its U.S. sales as EP sales.<sup>69</sup>

However, Hyundai's statements informing Commerce that it would report U.S. sales as CEP sales do not justify an incomplete response to Commerce's requests for information. Commerce requested in the Initial Questionnaire for Hyundai to:

Describe your agreement(s) for sales in the United States and the foreign market (*e.g.*, long-term purchase contract, short-term purchase contract, purchase order, order confirmation). Provide a copy of each type of agreement and **all sales-related documentation generated in the sales process** (including the purchase order, internal and external order confirmation, invoice, and shipping and export documentation) for a sample sale in the foreign market and U.S. market during the POR.<sup>70</sup>

Hyundai responded by submitting a copy of what seemed to be each type of agreement and all sales-related documentation generated in the sales process.<sup>71</sup> After reviewing the sample documentation submitted by Hyundai, in a supplemental questionnaire Commerce requested complete copies of each type of sales-related documentation (and each change order) for certain sequence numbers reported in the home and U.S. market sales databases.<sup>72</sup> In response, Hyundai stated that it submitted copies of the sales-related documentation that Commerce had requested.<sup>73</sup> However, Hyundai failed to disclose that there was a category of sales-related documentation that it omitted from its responses – *i.e.*, the service-related revenue allocation document between Hyundai and Hyundai USA.

Further, as noted above, Commerce again requested documentation related to service-related revenues, as well as other sales-related documentation, related to the two home market sales and two U.S. sales, in the First Sales Supplemental Questionnaire.<sup>74</sup>

15. Please separately report all service-related revenues (*i.e.*, not grouped together or bundled) if those revenues are reflected on **any sale documentation** (*e.g.*, invoice, purchase order, contract, proposal, *etc.*). (emphasis added)

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<sup>67</sup> See Hyundai's Case Brief at 18-19.

<sup>68</sup> *Id.*

<sup>69</sup> *Id.*

<sup>70</sup> See Commerce's Letter, "Antidumping Duty Questionnaire, at A-9-A-10," dated December 17, 2018 (Initial Questionnaire) (emphasis added).

<sup>71</sup> See Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Section A Questionnaire Response," dated February 19, 2019 (AQR), at Exhibit A-14; *see also* Hyundai's Letter, "Large Power Transformers from the Republic of Korea: HEES's Section C Questionnaire Response," dated March 11, 2019, at Exhibit A-14.

<sup>72</sup> See First Sales Supplemental Questionnaire at 7; *see also* Commerce's Clarification Letter at 1.

<sup>73</sup> See Hyundai U.S. Verification Report at 9 and Attachment 1.

<sup>74</sup> See First Sales Supplemental Questionnaire at 6-7.

21. For SEQHs {AA} and {BB} and SEQUs {YY} and {ZZ} please submit complete copies of each type of XX and each change order.<sup>75</sup>

After Hyundai sought clarification with respect to question 15 and 21 of the First Sales Supplemental Questionnaire Commerce clarified this request in a letter to Hyundai, stating:

For Questions 15 and 63, if you choose to bundle (*i.e.*, group together) related expenses and service-related revenues, you should provide a detailed explanation as to why you bundled these expenses and service-related revenues. Further, you should report service-related revenues if they are reflected on *any* documented external sales correspondence with customers (*i.e.*, not just the bid or purchase order), in accordance with Commerce's practice.

In Question 21, we ask:

21. For SEQHs AA and BB and SEQUs YY and ZZ, please submit complete copies of each type of XX and each change order.

Please confirm your reporting of field WINDH/U in both the home and U.S. sales databases. If WINDH/U has been misreported, please correct the databases and submit source documentation (*e.g.*, contracts, invoices, test documents, *etc.*) to support the updated code.'

Please note that this question, besides asking you to confirm your reporting in field WINDH/U (which would include addressing any inconsistencies in your reporting of WINDH, for example, between home market sales reported in both the prior 2016/2017 and instant reviews), also requires you to submit copies of certain documentation for the requested SEQH/Us. Therefore, further response to this question is necessary."<sup>76</sup>

Thus, based on the First Supplemental Sales Questionnaire, Hyundai should have provided information on service-related revenues because these revenues were reflected on documentation with its customer, Hyundai USA. Further, Hyundai should have provided several specific types of documents, including the service-related revenue allocation documents between Hyundai and Hyundai USA, which were subsequently discovered at verification.<sup>77</sup> However, as discussed above, Hyundai responded to questions 15 and 21 of the First Sales Supplemental Questionnaire without disclosing that there was a category of sales-related documentation that was omitted from its responses – *i.e.*, the service-related revenue allocation documents between Hyundai and Hyundai USA.<sup>78</sup>

Commerce proceeded to verification on that basis with a seemingly complete and accurate database from Hyundai. In our verification outline, we selected the same sale from question 21

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<sup>75</sup> *Id.*

<sup>76</sup> See generally, Hyundai's Clarification Letter; see also Commerce's Clarification Letter at 1-2.

<sup>77</sup> See Remaining SQR at 1SS-3.

<sup>78</sup> See Remaining SQR at 1SS-3.

of the First Sales Supplemental Questionnaire as a U.S. pre-selected sale in order to verify Hyundai's reporting.<sup>79</sup> Specifically, we requested that Hyundai prepare "a complete set of documents . . . for that sale supporting all sale specific information listed in the U.S. or comparison files" that Hyundai had reported to Commerce.<sup>80</sup> In response, during verification, Hyundai provided what purported to be a complete sales database and documentation. Yet again, at verification, Hyundai failed to disclose that there was a category of sales-related documentation that was omitted – *i.e.*, the service-related revenue allocation documents between Hyundai and Hyundai USA.

As part of a completeness check during verification, Commerce officials asked to visit and examine the location where Hyundai was storing and retrieving sales documents. Commerce officials walked to the desk where documents were stored and began to examine them. It was only at this point that Commerce discovered previously undisclosed sales-related documents that included separately negotiated services between Hyundai and Hyundai USA.<sup>81</sup> Such documentation exists for every single U.S. sale.<sup>82</sup> This documentation was responsive to the questions previously posed to Hyundai in the Initial Questionnaire and the First Sales Supplemental Questionnaire (quoted above). At verification, Commerce officials asked Hyundai company officials why they had not previously provided these documents in response to Commerce's questionnaires and the questions posed by Commerce officials during the verification. Hyundai responded that it did not provide these documents because it considers these documents to be intercompany, internal communications.<sup>83</sup> However, Commerce routinely requests that respondents supply internal company documents during the course of investigations and administrative reviews. It is largely for this reason that Commerce maintains an Administrative Protective Order (APO) system, which protects the confidentiality of such information. The fact that Hyundai considered the documents to be intercompany, internal communications does not excuse Hyundai's repeated failure to provide the documents – or even disclose that they existed.

In response to Commerce's *Preliminary Results* regarding Hyundai's failure to submit sales-related documentation, Hyundai argues that Commerce gave every indication that it would treat Hyundai's U.S. sales as CEP sales. However, contrary to Hyundai's claim, Commerce did not make a decision on how to treat Hyundai's sales until the *Preliminary Results* – consistent with Commerce's standard practice. Over the course of an administrative review, Commerce gathers necessary information to analyze and make a determination. Hyundai bears the burden to build the record by reporting accurate and complete responses to Commerce's initial and supplemental questionnaires.<sup>84</sup> Further, a respondent is obligated to be forthcoming regarding any potential

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<sup>79</sup> See Hyundai U.S. Verification Report at 9.

<sup>80</sup> *Id.*

<sup>81</sup> See *Preliminary Results* PDM at 15; see also Hyundai U.S. Verification Report at 9-11.

<sup>82</sup> *Id.*

<sup>83</sup> *Id.*

<sup>84</sup> See *Fujian Lianfu Forestry Co. Ltd. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) ("A respondent has a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.") (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001)).

discrepancies on the record.<sup>85</sup> Also, while Commerce does not require perfection in reporting, the standard for acting to best of one's ability "does not condone inattentiveness, carelessness, or inadequate record keeping."<sup>86</sup> Without Hyundai providing full and complete sales documentation, which includes separately negotiated services, Hyundai deprived Commerce of the ability to analyze Hyundai's sales process, capping methodology, and affiliations. Thus, Hyundai's unilateral decision to report U.S. sales as CEP sales does not permit Hyundai to withhold documents that are responsive to Commerce's questions, without even disclosing to Commerce that the documents existed. Indeed, if Hyundai's arguments were correct, it would effectively enable respondents to refuse Commerce's requests for information based on a broad initial description of the methodology, and not respond fully to the plain questions asked by Commerce. This would undermine the integrity of Commerce's proceedings in general.

As explained in the *Preliminary Results*, 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).<sup>87</sup> The CIT upheld Commerce's practice to "cap" service-related revenues by the associated service-related expenses in previous segments of this proceeding.<sup>88</sup> The CIT further held that Commerce cannot rely on internal company communication or internal company documentation to cap service-revenues to the associated expense.<sup>89</sup> However, while Commerce cannot use the information on the document to apply its capping methodology, Commerce may still request the documentation to make its own determination about information the documents contain. In the instant case, documents, including negotiations and allocation between Hyundai and Hyundai USA, were necessary since Commerce eventually determined that these parties were unaffiliated. However, Hyundai never provided such documentation for Commerce to review. Without complete sales documentation, which includes information regarding service-related revenues and expenses, we cannot calculate an accurate dumping margin because we cannot determine the actual gross unit price for each U.S. sale.

For the reasons stated above, in these final results, we continue to find that Hyundai withheld necessary information and otherwise impeded this review. Furthermore, we continue to find that Hyundai failed to cooperate to the best of its ability because it did not provide the requested documentation regarding service-related revenues and expenses, nor did Hyundai even disclose prior to verification that the documentation existed. As such, we determine that the application of total AFA is warranted.

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<sup>85</sup> See *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1124 (CIT 1989), *aff'd* 901 F. 2d 1089 (Fed. Cir. 1990). ("{P}arties must submit data promptly, and be very clear as to what the data indicates.").

<sup>86</sup> See *Hyundai Steel Co. v. United States*, 279 F. Supp. 3d 1349 (CIT 2017) (citing *Papierfabrik Aug. Koehler SE v. United States*, 843 F. 3d 1373, 1379 (Fed. Cir. 2016) (quoting *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382 (Fed. Cir. 2003)).

<sup>87</sup> See *Preliminary Results* PDM at 14 (citing *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 Issues and Decision Memorandum (IDM) at Comment 2).

<sup>88</sup> See *ABB Inc. v. United States*, 355 F. Supp. 3d at 1221 (CIT 2018).

<sup>89</sup> *Id.*

### C) Hyundai's Understatement of its Home Market Gross Unit Prices

#### *Hyundai's Comments:*

- Hyundai provided complete and consistent information with respect to its treatment of certain LPT parts in the home market.<sup>90</sup> Specifically, Hyundai provided documentation at verification that supports the distinct nature of two LPT parts.<sup>91</sup>
- Commerce incorrectly determined that Hyundai inconsistently reported these two LPT parts by conflating them as the “same parts.”<sup>92</sup>
- Commerce lacks substantial evidence to find any gap in the record exists for Hyundai's treatment of these parts in the home market.<sup>93</sup> Further, Commerce may not apply facts available, let alone AFA, because Commerce failed to inform Hyundai of any deficiency in its responses and provide an opportunity to remedy or explain it to Commerce.<sup>94</sup>
- Hyundai explained that it treated one part as non-merchandise under consideration because of its use and function, and because of its physical attributes and location.<sup>95</sup> By contrast, Hyundai treated the other part as subject merchandise under consideration because of its operation.<sup>96</sup>
- Hyundai asserts that the LPT part is only a tiny percentage of the total price of home market sales reported.<sup>97</sup>

#### *Petitioner's Rebuttal Comments:*

- Commerce properly found that Hyundai treated the same LPT part inconsistently (merchandise under consideration versus non-merchandise under consideration).<sup>98</sup>
- Hyundai's position prior to verification was that these parts are not subject merchandise because they are located away from the LPT and are not attached to the LPT.<sup>99</sup> Hyundai repeated this claim at verification before Commerce discovered Hyundai treated these LPT parts as merchandise under consideration versus non-merchandise under consideration depending on what the part operates.<sup>100</sup>
- Hyundai had not previously explained in its responses the difference in its reporting of these parts.<sup>101</sup>
- Despite Hyundai's efforts to cover this issue, the verification report clearly identifies the parts that Hyundai reported as merchandise under consideration.<sup>102</sup>

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<sup>90</sup> See Hyundai's Case Brief at 44 and 48.

<sup>91</sup> *Id.* at 46-47.

<sup>92</sup> *Id.* at 45.

<sup>93</sup> *Id.*

<sup>94</sup> *Id.*

<sup>95</sup> *Id.* at 49.

<sup>96</sup> *Id.*

<sup>97</sup> *Id.* at 56.

<sup>98</sup> See Petitioners' Hyundai Rebuttal Brief at 24.

<sup>99</sup> *Id.*

<sup>100</sup> *Id.* (citing Hyundai Korea Sales Verification Report at 2).

<sup>101</sup> *Id.* at 26

<sup>102</sup> *Id.* at 27.

- Hyundai is the party responsible for developing the record, and, therefore, failed to fulfil its responsibility to accurately develop the record with respect to its treatment of these parts as merchandise under consideration versus non-merchandise under consideration.<sup>103</sup>

## Commerce's Position

One of the important issues in this proceeding is the classification of incomplete LPTs as in-scope or out-of-scope. The incomplete LPTs at issue can have a high value and therefore a large impact on Commerce's dumping calculation. Prior to verification and at verification (initially), Hyundai informed Commerce that it classified certain parts and components sold in the home market as out-of-scope if the merchandise met certain criteria.<sup>104</sup> However, during the course of verification, Commerce discovered that this explanation was inaccurate.<sup>105</sup> Given this inaccuracy, Commerce now believes that these certain parts and components at issue should have been treated as in-scope, which would tend to increase normal value. Yet Commerce did not gather adequate information about these certain parts and components, because the inaccuracy only became apparent during verification. Given Hyundai's shifting explanations, and their role in preventing Commerce from gathering information necessary to accurately calculate normal value, we affirm the finding in the *Preliminary Results* that Hyundai impeded this review by failing to act to the best of its ability in providing Commerce with complete and accurate information about certain parts and components.

The issue of reporting gross unit prices inclusive of all subject parts has been a recurring issue in this proceeding (*i.e.*, prior administrative reviews under this order).<sup>106</sup> We have applied total AFA to Hyundai on the basis of inconsistent reporting of parts in previous reviews. Further, over the course of this proceeding, we reconsidered how to treat parts as defined within the scope of the order (*e.g.*, accessories).<sup>107</sup> During prior administrative reviews and redeterminations, we considered function and necessity of certain parts when analyzing whether they should be properly included in gross unit prices.<sup>108</sup> Upon reconsideration and following CIT rulings on this issue, we explained that we will treat parts and components as subject or non-subject merchandise based on the language in the scope of the order.<sup>109</sup>

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<sup>103</sup> *Id.* at 27-28.

<sup>104</sup> *I.e.*, if the merchandise is neither attached to, nor physically part of the LPT, and is located 50 to 100 meters from the LPT and attached by cables, *supra*, Section III. Scope of the Order.

<sup>105</sup> *I.e.*, as explained below, Hyundai informed Commerce at verification that it treats incomplete LPTs as in-scope only if it only controls in-scope LPTs. See Hyundai Korea Sales Verification Report at 16. As explained below, this explanation has no basis in the scope language.

<sup>106</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*LPTs 14-15 Final*), and accompanying IDM; see also *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018) (*LPTs 15-16 Final*), and accompanying IDM.

<sup>107</sup> See *LPTs 14-15 Final*; and *LPTs 15-16 Final*.

<sup>108</sup> See *LPTs 14-15 Final*; *LPTs 15-16 Final*; Final Results of Redetermination Pursuant to Court Remand at 9, *Hyundai Heavy Indus. Co., Ltd. v. United States*, No. 17-00054 (CIT 2018); see also Final Results of Redetermination Pursuant to Court Remand at 15-16, *Hyundai Heavy Indus. Co. v. United States*, No. 18-00066 (CIT 2019).

<sup>109</sup> See *LPTs 14-15 Final*; *LPTs 15-16 Final*; Final Results of Redetermination Pursuant to Court Remand at 9, *Hyundai Heavy Indus. Co., Ltd. v. United States*, No. 17-00054 (CIT 2018); see also Final Results of

On December 17, 2018, Commerce issued the Initial Questionnaire to Hyundai, to which Hyundai responded accordingly with its sections A, B, C, and D responses.<sup>110</sup> This was Hyundai's first opportunity to properly report all subject parts in its home market gross unit prices. In Appendix III of Commerce's Initial Questionnaire, the description of products under review states:

*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.*<sup>111</sup>

Thus, Commerce's questionnaire, and the scope itself, identify parts physically attached to, imported with, or invoiced with active parts of merchandise under consideration as being within the scope of the order. This scope language has been in place since the investigation. Thus, Hyundai should have known that such parts should be included in the gross unit price.<sup>112</sup>

In response to the initial questionnaire, Hyundai submitted a chart that included all merchandise under consideration in the home market. Subsequently, the petitioners submitted comments on this revised chart, arguing that Hyundai may have misclassified the incomplete LPTs as out-of-scope.<sup>113</sup> Commerce then issued the First Sales Supplemental Questionnaire, which asked Hyundai to revise the chart.<sup>114</sup> The First Sales Supplemental Questionnaire also requested that Hyundai include all merchandise under consideration in a home market sales reconciliation.<sup>115</sup> In response to the First Sales Supplemental Questionnaire, Hyundai submitted a revised chart, which identified certain incomplete LPTs as out-of-scope.<sup>116</sup>

In a letter to Commerce after the response to the First Sales Supplemental Questionnaire, and during the sales verification initially, Hyundai stated that the certain parts and components should be treated as being out-of-scope because they are neither attached to, nor physically part of the LPT, and are typically located 50 to 100 meters from the LPT and attached by cables.<sup>117</sup>

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Redetermination Pursuant to Court Remand at 15-16, *Hyundai Heavy Indus. Co. v. United States*, No. 18-00066 (CIT 2019).

<sup>110</sup> See, generally, Initial Questionnaire.

<sup>111</sup> See Initial Questionnaire at Appendix III. (emphasis added).

<sup>112</sup> 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.

<sup>113</sup> *Id.*

<sup>114</sup> See First Sales Supplemental Questionnaire at 6.

<sup>115</sup> *Id.* at 6 and 9.

<sup>116</sup> See *Preliminary Results* PDM at 20; see also Hyundai Korea Sales Verification Report at 11 and 16.

<sup>117</sup> See Hyundai Rebuttal Brief at 9-14; see also Hyundai Korea Sales Verification Report at 11; and 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.

However, during verification, Commerce discovered that there are other parts and components that have exactly these same features – *i.e.*, they are neither attached to, nor physically part of the LPT, and are typically located 50 to 100 meters from the LPT and attached by cables – and yet Hyundai classified them in this review as being in-scope.<sup>118</sup> Thus, Hyundai’s explanation prior to verification, and during verification initially, was inaccurate.

Moreover, Hyundai’s decision to classify these certain parts and components as out-of-scope was incorrect. Based on the evidence on the record, Commerce would include these same types of parts, regardless of use and function, as within scope merchandise because they are attached to, and invoiced with, active parts of the LPT, pursuant to the language in the scope of the order. Had Commerce known this prior to verification, we could have gathered information from Hyundai that could have enabled us to account for the certain parts and components in our dumping calculations. However, due to Hyundai’s inaccurate and incomplete explanation, it was not apparent until verification that necessary information was missing.

At verification, Hyundai attempted to provide a new explanation for why certain parts and components are in-scope and others are out-of-scope: parts monitor only subject merchandise can be in-scope (if they meet certain other criteria), whereas parts that monitor both subject and non-subject merchandise are necessarily out-of-scope. There is no basis in the scope language for this distinction, nor did Hyundai provide any indication that it was applying this distinction prior to verification. The fact that this new explanation emerged during verification only confirms that Hyundai’s prior explanations were inaccurate and indeed misleading.

Contrary to Hyundai’s argument that these parts and components do not constitute a large portion of the gross unit price of LPTs, record evidence demonstrates these items have significantly high values in comparison to complete LPTs.<sup>119</sup> The inclusion or exclusion of these parts would have a dramatic impact on the AD duty margin, as it would significantly increase or decrease normal value (NV) in comparison to U.S. price. Furthermore, it is possible that there are additional parts that Hyundai misclassified as “non-subject merchandise” (*i.e.*, non-foreign like product) in its exhibits, based on a rationale that is similarly opaque to Commerce.<sup>120</sup> Without gross unit prices inclusive of all foreign like product in the home market, Commerce is unable calculate an accurate dumping margin.

Hyundai argues that there is no gap in the record, and that Commerce failed to inform Hyundai of any deficiency in its responses and provide an opportunity to remedy or explain.<sup>121</sup> However, the inaccuracy in Hyundai’s explanation only became apparent during verification, by which time the record had already closed. At that point, the record was missing complete descriptions and designs of these parts and components, and other similar parts and components. Commerce would need this additional information to properly determine what is or is not in scope. And if Commerce determined that some of these parts and components were in-scope, then we would need relevant cost information, which also was missing from the record. Verification is not an

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<sup>118</sup> See Hyundai Korea Sales Verification Report at 16.

<sup>119</sup> See Hyundai’s Letter, “Large Power Transformers from the Republic of Korea: HEES’s Section B Questionnaire Response,” dated March 11, 2019, at Exhibit B-2; *see also* Remaining SQR at Exhibit B-2 (Revised 2).

<sup>120</sup> *See generally*, Initial Questionnaire; *see also* First Sales Supplemental Questionnaire at 6 and 9.

<sup>121</sup> *Id.*

opportunity to remedy or explain deficiencies in prior questionnaire responses. In this case, Commerce had no obligation to inform Hyundai of the deficiency prior to verification.

For the reasons identified above, we determine that Hyundai impeded this review by failing to act to the best of its ability in providing Commerce with complete and accurate information with respect to merchandise under consideration. As a result, the record indicates that Hyundai has systematically understated home market sale prices in its reporting by excluding certain parts and their respective costs, rendering Hyundai's reported home market gross unit prices unreliable.

#### **D) Application of Total AFA**

##### *Hyundai's Comments:*

- The record does not support a conclusion that the requirements under 19 U.S.C. §§ 1677e and 1677m are satisfied justifying facts otherwise available or AFA.<sup>122</sup> The statute requires Commerce to base its decision on a review of the record as a whole, and must be supported by substantial evidence on the record (*i.e.*, more than a mere scintilla of evidence and not mere speculation).<sup>123</sup>
- Hyundai has cooperated completely and openly with Commerce from the outset of this administrative review and has been forthcoming and transparent with respect to its reporting methodology.<sup>124</sup>
- The record does not support a finding that Hyundai willfully or unreasonably failed to act to the best of its ability and failed to cooperate with Commerce that renders Hyundai's submitted information unusable.<sup>125</sup> Hyundai participated in three verifications, had multiple discussions and meetings with Commerce, and sought clarification on Commerce's sales supplemental questionnaire prior to responding.<sup>126</sup>
- Hyundai requested that Commerce issue a post-preliminary supplemental and offered to participate in an additional verification of such information.<sup>127</sup> Commerce did not address this request.<sup>128</sup>
- Commerce identifies three issues, none of which individually nor collectively justifies the use of facts otherwise available, AFA, or total AFA.<sup>129</sup> Applying total AFA to Hyundai in these circumstances is therefore unsupported by substantial evidence and contrary to law.<sup>130</sup>

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<sup>122</sup> *Id.* at 10.

<sup>123</sup> *Id.*; see also *Nucor Corp v. United States*, 594 F. Supp. 2d 1320, 1332, (CIT 2008), *affirmed* 601 F. 3d 1291 (Fed. Cir. 2010); 19 U.S.C. § 1516a(b)(1)(B)(i); *Downhold Pipe & Equip., L.P. v. United States*, 776 F. 3d 1368, 1374 (Fed. Cir. 2015); and *Asociacion Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1117 (CIT 1989), *affirmed* 901 F. 2d 1089 (Fed. Cir. 1990).

<sup>124</sup> See Hyundai Case Brief at 17.

<sup>125</sup> *Id.* at 17-18.

<sup>126</sup> *Id.*

<sup>127</sup> *Id.* at 18.

<sup>128</sup> *Id.*

<sup>129</sup> *Id.*

<sup>130</sup> *Id.*

- At worst, Commerce may use partial AFA in any isolated instances where Commerce maintains its belief that Hyundai failed to cooperate.<sup>131</sup>

*Petitioner's Rebuttal Comments:*

- Commerce should confirm its application of total AFA to Hyundai in the final results for the three reasons identified in the *Preliminary Results*, as well as the reasons provided in the Petitioners' Case Brief.<sup>132</sup>
- Hyundai's failure to provide necessary information means Commerce does not have an accurate U.S. or home market sales database on which to calculate the dumping margin.<sup>133</sup>
- The record demonstrates that Commerce is missing at least one, and likely more, U.S. sales from the database.<sup>134</sup>
- Commerce gave Hyundai multiple opportunities to cure any perceived deficiencies, but Commerce is not obliged, per the CIT to seek further information where a respondent has not provided a sufficient answer that would allow Commerce to discern the type of information the respondent may not have reported.<sup>135</sup>
- There is no basis to apply partial AFA, as an alternative to total AFA, in this segment because Commerce cannot have faith in the full reporting of U.S. sales, service-related revenues and expenses, and subject merchandise in the home market.<sup>136</sup>
- The application of partial AFA would require Commerce to adjust virtually every element of the prices, expenses, and costs that make up the dumping calculation.<sup>137</sup>

*Petitioner's Comments*

- In the *Preliminary Results*, Commerce appropriately applied total AFA to Hyundai because Hyundai impeded the review and failed to act to the best of its ability when responding to Commerce's questionnaires and verification.<sup>138</sup>
- Commerce should also address, in support of the application of AFA, Hyundai's failure to report accurate and reliable LPT project costs, Hyundai's failure to submit an accurate and reliable cost file by control number, and Hyundai's failure to accurately translate multiple verification documents.<sup>139</sup>

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<sup>131</sup> *Id.*

<sup>132</sup> See Petitioners' Hyundai Rebuttal Brief at 28.

<sup>133</sup> *Id.* at 29

<sup>134</sup> *Id.*

<sup>135</sup> *Id.* at 32 (citing *ABB Inc. v. United States*, 355 F. Supp. 3d 1206,1222 (CIT 2018)).

<sup>136</sup> *Id.*

<sup>137</sup> *Id.* at 33.

<sup>138</sup> See Petitioners' Case Brief at 1-3.

<sup>139</sup> *Id.* at 3-5.

### *Hyundai's Rebuttal Comments:*

- The petitioners' allegation that Hyundai failed to provide reliable information regarding service-related revenues and expenses is incorrect and does not justify the application of total AFA.<sup>140</sup>
- With respect Hyundai's alleged failure to completely and accurately report its U.S. sales, the petitioners incorrectly assert that because of this alleged failure, Hyundai's cost reporting is incomplete.<sup>141</sup>
- The record does not have any documentation or evidence demonstrating importation of an LPT because the transformer was not imported.<sup>142</sup>
- The petitioners use a non-credible public data source to assert that Hyundai understated its U.S. sales.<sup>143</sup> Commerce verified the quantity and value of Hyundai's U.S. sales during the home market sales verification.<sup>144</sup>
- The petitioner incorrectly asserts that Hyundai failed to provide complete and consistent information with respect to merchandise under consideration in the home market.<sup>145</sup> The CIT held that inconsistent reporting of the same part justifies the application of AFA, but the issue in the instant case involves two distinct panels.<sup>146</sup>

### **Commerce's Position**

We agree with the petitioner and continue to apply an adverse inference in selecting from the facts available for Hyundai in these final results. In the *Preliminary Results*, Commerce applied total AFA to Hyundai because Hyundai failed to provide documentation with necessary service-related revenue, failed a completeness test at verification, and inconsistently reported certain parts for home market sales.<sup>147</sup> We continue to find these issues above, and the basis for our preliminary determination, sufficiently warrant the application of an adverse inference in selecting from the facts available.

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.<sup>148</sup> In so doing, and under the Trade Preferences Extension Act of 2015

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<sup>140</sup> See Hyundai's Rebuttal Brief at 11-12.

<sup>141</sup> *Id.* at 12.

<sup>142</sup> *Id.* at 13.

<sup>143</sup> *Id.* at 14.

<sup>144</sup> *Id.*

<sup>145</sup> *Id.* at 15.

<sup>146</sup> *Id.*

<sup>147</sup> See *Preliminary Results* PDM at 17.

<sup>148</sup> 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).

(TPEA),<sup>149</sup> 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.<sup>150</sup> 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.”<sup>151</sup> Further, affirmative evidence of bad faith on the part of a respondent is not required before Commerce may make an adverse inference.<sup>152</sup> 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.<sup>153</sup>

As outlined above, we continue to find the application of total AFA to Hyundai is warranted. As Hyundai states in its case brief, total AFA is justified only in a situation that “involves a deficiency pertaining to ‘core, not tangential’ information,” whereas partial AFA “may be required when the deficiency is only ‘with respect to a discrete category of information.’”<sup>154</sup> Moreover, “isolated” instances of misreporting do not justify the application of total AFA.<sup>155</sup> In the instant case, as explained above, the deficiencies pertain to core information: service-related revenues and sales documentation associated with U.S. sales (relevant to export price), reporting of home market sales (relevant to NV), and reporting of U.S. sales (relevant to export price). Thus, the deficiencies touch all aspects of the dumping calculation.

Further, Commerce considers that partial facts available is not appropriate in this particular case. To apply partial facts available, Commerce would have to make certain assumptions without evidentiary support, contrary to the Act. With respect to sales documents with service-related revenues, these documents are not on the record, and thus we are not able to take them into account in calculating export price. Regarding Hyundai’s reporting of its gross unit prices inclusive of all in-scope merchandise, Commerce would also have to determine which parts are in-scope and out-of-scope, based on the record, when Hyundai has not been completely forthcoming with its description of parts and components invoiced with, imported with, and

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<sup>149</sup> 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 Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46794, 46795 (August 6, 2015). Therefore, the amendments apply to this investigation.

<sup>150</sup> *See* section 776(b)(1)(B) of the Act.

<sup>151</sup> *See* Statement of Administrative Action accompanying the Uruguay Round Agreements Act, H.R. Doc. 103-316, Vol. 1 (1994) (SAA) 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).

<sup>152</sup> *See, e.g., Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1382-83 (Fed. Cir. 2003); *see also 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 27340 (May 19, 1997).

<sup>153</sup> *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 PDM 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).

<sup>154</sup> *See* Hyundai Case Brief at 14-15.

<sup>155</sup> *Id.*

attached to active parts of LPTs. Further, we do not have complete information about these parts, including costs and other attachments to these parts. Finally, with respect to the quantity of U.S. sales, Commerce would have to select a number for the total of imports into the United States that would not be based on record evidence. However, as noted above, while the record shows that there is at least one LPT missing from Hyundai's U.S. sales database, there is no basis for Commerce to rule out the existence of other missing U.S. sales. Hyundai failed a completeness test with respect to its reporting of U.S. sales, but the failure of such a test does not reveal the true number of omitted U.S. sales.

The missing and unverifiable data is critical to the dumping calculation. During administrative reviews, Commerce typically requires that respondents report all U.S. sales made during the POR and all home market sales that could be used for comparison.<sup>156</sup> Without a complete, verifiable reporting of home market and U.S. sales, Commerce cannot calculate complete and accurate dumping calculations. The record established that Hyundai had all of the information in its books and records, and thus could have provided such information to Commerce in its questionnaire responses. Hyundai could have corrected these deficiencies – but rather than correct them, Hyundai attempted to defend them. Hyundai's defenses, however, fail to withstand scrutiny.

Therefore, we continue to find that Hyundai has failed to cooperate by not acting to the best of its ability to comply with a request for sales documentation, which include service-related revenues and expenses. The missing information is necessary for Commerce to offset the service-related revenues by the associated service-related expenses, and additionally, to understand a respondent's sales process. Hyundai also impeded the proceeding by providing shifting and opaque explanations for its classification of certain parts and components as out-of-scope. Further, Hyundai failed to demonstrate that it reported all required sales in its U.S. sales database and therefore that its reporting of all U.S. sales of subject merchandise during the POR was complete. Accordingly, we conclude that Hyundai failed to cooperate to the best of its ability to comply with a request for information by Commerce. Based on the above, in accordance with section 776(b) of the Act and 19 CFR 351.308(a), we determine that the use of an adverse inference is warranted when selecting from among the facts otherwise available.<sup>157</sup>

#### *Selection and Corroboration of the AFA 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

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<sup>156</sup> See generally section 751 of the Act and 19 CFR 351.414.

<sup>157</sup> 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 PDM 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 42985, 42986 (July 12, 2000) (where Commerce applied total AFA when the respondent failed to respond to the antidumping questionnaire).

record.<sup>158</sup> In selecting a rate based on the use of an adverse inference, Commerce selects information 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.<sup>159</sup>

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 that information, to the extent practicable, using 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.<sup>160</sup> The SAA clarifies that “corroborate” means that Commerce will satisfy itself that the secondary information to be used has probative value.<sup>161</sup> To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.<sup>162</sup>

Finally, under 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.<sup>163</sup> 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.<sup>164</sup>

We are assigning Hyundai a dumping margin of 60.81 percent, which is an AFA rate used in previous reviews.<sup>165</sup> 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 has not cooperated to the best of its ability, as Hyundai in this review, Commerce has the discretion to presume that the highest prior dumping margin is the most

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<sup>158</sup> See 19 CFR 351.308(c).

<sup>159</sup> See SAA at 870.

<sup>160</sup> *Id.*

<sup>161</sup> *Id.*; see also 19 CFR 351.308(d).

<sup>162</sup> 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).

<sup>163</sup> See section 776(d)(1)-(2) of the Act.

<sup>164</sup> See sections 776(d)(3)(A) and (B) of the Act.

<sup>165</sup> See, e.g., *LPTs 14-15 Final*, 82 FR at 13432.

probative evidence of the current weighted-average dumping margin.<sup>166</sup> If this were not the case, the party would have produced current information showing its rate to be less.<sup>167</sup> Accordingly, consistent with our *Preliminary Results*, we have continued to apply the total AFA rate of 60.81 percent to Hyundai for purposes of these final results.

## **Comment 2: Selection of AFA Rate**

### *Petitioner's Comments:*

- Commerce should assign Hyundai a rate that is higher than the 60.81 percent total AFA rate it assigned preliminarily given that this is the fourth straight review Hyundai has been found to be uncooperative.<sup>168</sup>
- Commerce needs to calculate a margin that will encourage cooperation from Hyundai and account for unreported U.S. sales that Hyundai paid no AD duties on.<sup>169</sup>
- The petitioners suggest Commerce rely on the single highest calculate rate for any respondent in any segment of this proceeding.<sup>170</sup>
- Commerce needs to determine the potentially uncollected dumping duties on all U.S. sales, including those Korean LPTs reported and unreported by Hyundai.<sup>171</sup>

### *Hyundai's Rebuttal Comments:*

- Commerce should not increase the total AFA margin if it erroneously determines to apply total AFA to Hyundai in its final results.<sup>172</sup> Commerce has rejected such arguments in past proceedings and it should do so again.<sup>173</sup>
- The petitioners rely on one court decision; however, that decision was not an increase in the AFA rate from the previous review because Commerce did not apply total AFA to that respondent in the previous review.<sup>174</sup> In that case, Commerce was determining a total AFA rate for a respondent that had submitted no information for the first time.<sup>175</sup>
- There is no basis on the record to collect potentially uncollected dumping duties.<sup>176</sup>

## **Commerce's Position**

Section 776(b)(2) of the Act states that Commerce, when applying an adverse inference, may rely upon information derived from the petition, the final determination from the LTFV

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<sup>166</sup> 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*)).

<sup>167</sup> See *Rhone Poulenc*, 899 F. 2d at 1190.

<sup>168</sup> See Petitioners' Case Brief at 39-40.

<sup>169</sup> *Id.* at 41-43.

<sup>170</sup> *Id.* at 43.

<sup>171</sup> *Id.* at 44.

<sup>172</sup> See Hyundai's Rebuttal Brief at 40.

<sup>173</sup> *Id.* at 41.

<sup>174</sup> *Id.* at 41-42.

<sup>175</sup> *Id.* at 42-43.

<sup>176</sup> *Id.* at 43-44.

investigation, a previous administrative review, or other information placed on the record.<sup>177</sup> In selecting a rate based on AFA, Commerce selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.<sup>178</sup>

In the *Preliminary Results*, we assigned Hyundai, based on total AFA, a rate of 60.81 percent. The petitioner has argued that Commerce should assign Hyundai a total AFA rate higher than the 60.81 percent rate assigned in the *Preliminary Results*. The petitioner cites to *Nan Ya Plastics* to support its claim that the higher AFA rate is necessary to encourage future cooperation by Hyundai.<sup>179</sup> In *Nan Ya Plastics*, with regard to the total AFA assigned to a respondent, the Court of Appeals for the Federal Circuit (CAFC) concluded that Commerce's selection of 74.34 percent (*i.e.*, the highest transaction-specific margin calculated for the other respondent), as total AFA, rather than a much lower 18.3 percent in a previous segment of the proceeding, was reasonable.<sup>180</sup> In this case, Commerce finds the 60.81 percent is sufficient to induce future cooperation in this proceeding, as discussed below.

In *F.lli de Cecco Di Filippo Fara S. Martino*, the CAFC indicated that the adverse inference should provide respondents with an incentive to cooperate, but it should not result in imposition of punitive, aberrational, or uncorroborated margins.<sup>181</sup> Commerce corroborated the current AFA rate of 60.81 percent in the previous segments of this proceeding, most recently in the *LPT 2016-2017 Review*.<sup>182</sup> As a result, according to 776(c)(2) of the Act, this rate does not require corroboration for this review. Further, we find that, while not being punitive and aberrational, the current AFA rate of 60.81 percent achieves the purpose of applying an adverse inference, *i.e.*, it is sufficiently adverse to ensure that the uncooperative party (*i.e.*, Hyundai) does not obtain a more favorable result by failing to cooperate than if it had fully cooperated, as consistent with the previous review.<sup>183</sup> Thus, for these final results, we find that the imposition of an AFA rate higher than the current AFA rate is not warranted.

### **Comment 3: Reliability of Hyundai's Cost Data**

In the *Preliminary Results*, Commerce applied total AFA to Hyundai. Commerce preliminarily based this determination on Hyundai's failure to (1) provide reliable information regarding service-related revenues and expenses, (2) pass a completeness check at the CEP verification when it could not provide information necessary to demonstrate that a U.S. sale was properly

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<sup>177</sup> See 19 CFR 351.308(c).

<sup>178</sup> See SAA at 870; *see also* TPEA, Pub. L. No. 114-27, 129 Stat. 362 (2015).

<sup>179</sup> See Petitioners' Case Brief at 4 (citing *Nan Ya Plastics Corp.*, 810 F. Supp 3d. 1333 (Fed. Cir. 2016) (*Nan Ya Plastics*)).

<sup>180</sup> *Id.*; *see also* *Polyethylene Terephthalate Film, Sheet, and Strip from Taiwan: Final Results of Antidumping Duty Administrative Review*, 76 FR 76941 (December 9, 2011), and accompanying IDM.

<sup>181</sup> See *F.lli de Cecco Di Filippo Fara S. Martino*, 216 F. Supp 3d. 1027, 1032 (Fed Cir. 2000).

<sup>182</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019) (*LPT 2016-2017 Review*), and accompanying IDM at Comment 3.

<sup>183</sup> See *Gallant Ocean (Thailand) Co. v. United States*, 602 F. 3d 1319 (Fed. Cir. 2010); *see also* *2014-2015 LPT Korea Final*.

excluded from its database, and (3) provide complete information with regard to merchandise under consideration in the home market.<sup>184</sup> For the final results, the petitioners argues that additional problems with Hyundai's cost response should be considered as additional reasons to apply AFA.

*Petitioner's Comments:*

- The petitioners agrees with Commerce's preliminary findings with regard to Hyundai's sales reporting, but argues that Commerce should address the fact that Hyundai has also continued to engage in the type of cost shifting that was the basis for total AFA in the 2016-2017 review.<sup>185</sup> Therefore, the petitioners requests that Commerce consider the following additional points as justification for its decision to apply total AFA for the final results.
- First, the petitioners contend that Hyundai's normal books and records are not kept in accordance with Korean generally accepted accounting principles (GAAP) and therefore the reported costs, which are based on these records, do not "reasonably reflect the costs associated with the production and sale of the merchandise."<sup>186</sup>
  - The petitioners argue that Hyundai wrongly delays the recognition of expenses related to closed projects and inappropriately shifts these closed project variances (CPVs) or "off-book" expenses into other projects and other accounting periods. According to the petitioners, this practice violates the accrual basis of accounting which is required by Korean GAAP.<sup>187</sup>
    - The petitioners cite specific examples where Hyundai shipped and closed LPT projects in one fiscal year (*i.e.*, recognized sales revenue and cost of goods sold (COGS)), but chose to recognize certain project expenses in the next fiscal year and to different projects rather than properly accrue the expenses as required by GAAP and job order cost accounting.<sup>188</sup>
    - The petitioners further allege that there is no means of determining the total universe of CPVs or off-book expenses because Hyundai acknowledges that there are "no fixed rules or guidelines that dictate when Hyundai allocates or transfers the variances."<sup>189</sup>
  - The petitioners argue that in addition to the CPVs, Hyundai shifts steel plate (*i.e.*, tank steel) and common part costs from projects that incurred the costs to other projects that did not, thus, intentionally misstating the project-specific bills of materials (BOMs) in Hyundai's job order cost accounting system.<sup>190</sup>
  - The petitioners claim that at verification Commerce found that Hyundai charged the wrong project for an LPT part but did not correct the misclassification in either its accounting records or in the reported sales database. Further, there is no means to determine how many other unidentified misclassifications exist.<sup>191</sup>

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<sup>184</sup> See *Preliminary Results* PDM at 14.

<sup>185</sup> See Petitioner's Hyundai Case Brief at 6-7 and 27-33.

<sup>186</sup> *Id.* at 6 (citing section 773(f)(1)(A) of the Act).

<sup>187</sup> *Id.* at 7-11 and 14-15.

<sup>188</sup> *Id.* at 10-15.

<sup>189</sup> *Id.* at 9-10 (citing Hyundai June 4, 2019 SDQR at 6).

<sup>190</sup> *Id.* at 11-12, 15-17, and 31-32.

<sup>191</sup> *Id.* at 17-18 and 32-33.

- Second, the petitioners argue that Hyundai's cost file is inaccurate, unreliable, and unverifiable since it fails to include all costs for all projects and demonstrates Hyundai's purposeful and systemic shifting of costs.<sup>192</sup>
  - The petitioners contend that Hyundai failed to properly report costs for the undisclosed U.S. LPT sales and the misclassified LPT parts discovered at the sales verification.<sup>193</sup>
  - The petitioners argue that Hyundai failed to demonstrate that it reported all CPVs and that the CPVs reported were properly reversed.<sup>194</sup>
  - The petitioners claim that Hyundai has manipulated the silicon steel costs in its job order costing system and has failed to correct these cost shifts in the cost database. Thus, the petitioners allege that Hyundai is using the same silicon steel reporting methodology that was rejected in the 2016/2017 review.<sup>195</sup>
  - The petitioners contend that in addition to silicon steel costs, Hyundai, by its own admission, is now manipulating the costs of steel plate (*i.e.*, tank steel), common parts, and certain LPT parts.<sup>196</sup>

*Hyundai's Rebuttal Comments:*

- Hyundai argues that Commerce must reject the petitioners' additional justifications for total AFA as they are based on inaccurate descriptions, misunderstandings, and ignorance of record evidence.<sup>197</sup>
- Hyundai counters that its normal books and records and the resulting cost reporting are reliable and have been verified by Commerce.
  - Hyundai contends that it has provided clear explanations and ample support to demonstrate that Hyundai did not engage in the cost shifting practices that were at issue in the prior review.<sup>198</sup>
  - Hyundai argues that its CPVs are neither "cost shifting" nor "off book expenses" but rather a valid accounting methodology used to identify project costs incurred and charged to another project after the first project has closed.<sup>199</sup>
  - Hyundai rebuts that its CPVs do not violate GAAP as evidenced by the unqualified opinion received on Hyundai's financial statements, its CPVs represent a tiny percentage of the total COGS, and moreover all CPVs were unraveled for reporting purposes and accounted for under the closed projects for which they were originally incurred.<sup>200</sup>
  - Hyundai argues that contrary to the petitioners' contentions there are no unknown off-book expenses, rather Hyundai has demonstrated that all CPVs were identified and appropriately accounted for in the reported costs.<sup>201</sup>

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<sup>192</sup> *Id.* at 18-19.

<sup>193</sup> *Id.* at 19-22.

<sup>194</sup> *Id.* at 13 and 22-16.

<sup>195</sup> *Id.* at 27-31.

<sup>196</sup> *Id.* at 27-28 and 31-33.

<sup>197</sup> *See* Hyundai's Rebuttal Brief at 16.

<sup>198</sup> *Id.* at 17-19.

<sup>199</sup> *Id.* at 19-21.

<sup>200</sup> *Id.* at 21-23.

<sup>201</sup> *Id.* at 23-25.

- Hyundai contends that its tank steel and common part costs have not been shifted among projects. Further, according to Hyundai these inputs are so insignificant to overall LPT production costs that any issue with the company's normal methodology for the assignment of these costs to projects cannot be considered the basis for total AFA.<sup>202</sup>
- Hyundai argues that the petitioners' arguments regarding silicon steel costs are baseless as they conflate silicon steel with tank steel, incorrectly assert that the current silicon steel reporting methodology (use of BOM quantities and values) was already rejected in the prior review (use of silicon steel cutting reports and recalculated values), and fail to recognize that Hyundai provided Commerce with extensive support for the reliability of the revised silicon steel reporting methodology in the current review.<sup>203</sup>
- Hyundai contends that the petitioners' argument regarding the misclassified LPT part is based on a typographical error in Commerce's Korean sales verification report and therefore neither reflects an error in the referenced transactions nor provides evidence of systemic errors in Hyundai's sales or cost reporting.<sup>204</sup>

### Commerce's Position

While we continue to find that total AFA is warranted for Hyundai in these final results, we disagree that Commerce should adopt the additional cost-related rationales posited by the petitioners, except where these arguments correspond directly to the sales findings underpinning the total AFA determination at Comment 1. That is, where we have found that the submitted sales databases may be misstated or incomplete due to the omission of sales or the misclassification of LPT parts, as described in Comment 1, the cost database would likewise be misstated or incomplete. However, we disagree with the petitioners that Hyundai's normal books and records are not in accordance with Korean GAAP, that the job order production costs cannot be used as a reliable source, and that those books and records, along with the per-unit costs reported for the LPT sales in the submitted sales databases, are unreliable.

As an initial point, we disagree with petitioners that the record demonstrates Hyundai has continued to engage in precisely the type of cost shifting that Commerce found as a basis for total AFA in the *LPT 2016-2017 Review*. The items they identify in the current review are minor and revolve around disputes over acceptable accounting practices. The central issue in the prior review was the fact that "Hyundai failed to provide all requested explanations and reconciliations associated with the cost differences arising from its admitted manipulation of LPT project costs."<sup>205</sup> Furthermore, Commerce stated that Hyundai "failed to demonstrate how the manipulation of its normal books and records was reversed, such that the reported costs at the individual LPT project-level are actual, verifiable, and reliable."<sup>206</sup> Thus, Commerce reached its AFA determination based on Hyundai's failure to cooperate to the best of its ability and in particular its failure to demonstrate how its normal books and records were admittedly distorted, but its reported costs were not. By contrast, in the current review Hyundai has been fully

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<sup>202</sup> *Id.* at 25-27.

<sup>203</sup> *Id.* at 27-30.

<sup>204</sup> *Id.* at 30-33.

<sup>205</sup> *See, supra*, Comment 1.

<sup>206</sup> *See, supra*, Comment 1.

cooperative with regard to Commerce's inquiries on this issue. Additionally, in the prior review, Hyundai admitted to manipulating LPT project costs to achieve profitability on each sale in its normal books and records.<sup>207</sup> Hyundai contends that prior to the spinoff, Hyundai Heavy Industries (Hyundai's predecessor-in-interest), abandoned this practice by the end of the *LPT 2016-2017 Review*, and claims that no project costs in the current review were affected by the practice of shifting costs between projects in order to show a profit.<sup>208</sup> To confirm Hyundai's assertions, we issued multiple questionnaires soliciting narrative explanations, cost reconciliation worksheets, project weights, shipping weights and quantities, cost comparisons, supporting documentation, *etc.*, in addition to conducting a cost verification.<sup>209</sup> We uncovered no evidence to suggest that Hyundai continued to engage in cost shifting or the deliberate manipulation of project costs in its normal books and records. While we discuss separately, below, the specific examples of cost shifting proffered by the petitioners in the current review, *i.e.*, CPVs, silicon steel, steel plate, common parts, and the misclassified LPT part, we disagree these demonstrate that Hyundai continued to manipulate the costs among projects or that they continued to withhold requested information from Commerce in the current review.

Section 773(f)(1)(A) of the Act directs Commerce to rely on a company's normal books and records where they are kept in accordance with home country GAAP and they reasonably reflect the cost of producing the merchandise under consideration. The petitioners first argue that Hyundai's normal books and records do not meet the initial requirement, *i.e.*, they are not in accordance with Korean GAAP.<sup>210</sup> At the crux of this argument is the petitioners' contention that Hyundai's treatment of CPVs violates the accrual basis of accounting which is required by Korean GAAP. Accrual accounting is guided by the principal that revenues and their related expenses should be recognized in the same accounting period to avoid misstating earnings (*i.e.*, the matching principle).<sup>211</sup> Thus, under the accrual basis of accounting, revenues and expenses are to be recorded when they are earned or incurred, regardless of whether cash has changed hands.<sup>212</sup> That is, as expenses are incurred to build an LPT, the company "inventories" the costs until the LPT is completed, tested, and leaves the factory for delivery to the customer, which signals that revenue is earned for Korean GAAP purposes.<sup>213</sup> At this point the factory's production activities are complete and the job order is closed at the end of the corresponding fiscal year.<sup>214</sup> Because the destinations are customer specific, the shipping arrangements will be unique to each sale. Further, the site prep, installation terms, and peripheral equipment installed alongside the LPT will vary by LPT, including whether to use subcontractors or the customer's

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<sup>207</sup> See, *supra*, Comment 1.

<sup>208</sup> See, *e.g.*, Hyundai May 28, 2019 SDQR at 4.

<sup>209</sup> See, *e.g.*, Hyundai May 28, 2019 SDQR 4-14 and Exhibits 2-6; Hyundai June 4, 2019 SDQR 24-45; *see also* Hyundai June 11, 2019 SDQR at 1-9, 17-28, Exhibit 41, and Exhibits 47-52.

<sup>210</sup> The home country GAAP in Korea is International Finance Reporting Standards (K-IFRS).

<sup>211</sup> See, *e.g.*, Petitioner's Letter, "6<sup>th</sup> Administrative Review of Large Power Transformers from South Korea – Petitioners' Comments on the Second Supplemental Section D Questionnaire Response of Hyundai Electric & Energy Systems (HYUNDAI)," dated September 17, 2019 (Petitioner 2SDQR Comments), at Attachment 1.

<sup>212</sup> *Id.*

<sup>213</sup> See, *e.g.*, Hyundai Cost Verification Report at 8.

<sup>214</sup> See, *e.g.*, Hyundai Cost Verification Report at 9.

own teams for each activity.<sup>215</sup> Thus, it is normal in the industry to incur certain expenses and earn certain revenues after the LPT is completed and leaves the factory.

According to the petitioners, Hyundai failed to properly accrue the expenses incurred subsequent to the LPTs leaving the factory and the closing of the projects. As noted, in Hyundai's books and records, when an LPT is shipped, the total accumulated cost of the project up to testing is recorded as COGS, and the project is then "closed" at the end of the corresponding fiscal year.<sup>216</sup> Yet, Hyundai may incur additional costs on projects after they are closed (*e.g.*, movement, installation, and supervision activities, *etc.*), most noticeably for projects that are shipped near the end of the fiscal year.<sup>217</sup> The petitioners claim that Hyundai chose not to accrue these additional post-closure project expenses in the period the project was shipped and closed, but instead delayed their recognition to a subsequent accounting period. Further, citing specific examples, the petitioners argue that Hyundai shifted the CPVs to other open projects in the subsequent period rather than to the actual closed project that incurred the cost. Hence, the petitioners conclude that Hyundai manipulated its accounting records and violated Korean GAAP by delaying the recognition of expenses and shifting those costs into other projects and subsequent accounting periods. Further, the petitioners contend that because Hyundai has "no fixed rules or guidelines that dictate when Hyundai allocates or transfers the variances," Commerce cannot determine if the total population of "off-book" expenses were recorded and therefore cannot rely on Hyundai's reported costs.<sup>218</sup>

We disagree with the petitioners that Hyundai's normal books and records are not being kept in accordance with Korean GAAP. Rather, Hyundai's fiscal year 2018 financial statements were given an unqualified (*i.e.*, clean) opinion by its independent auditors.<sup>219</sup> In the audit letter, the auditors state "{i}n our opinion, the accompanying separate financial statements present fairly, in all material respects, the separate financial position of the Company as of December 31, 2018 and 2017, and its separate financial performance and its cash flows for the year ended December 31, 2018 and 9-month period ended December 31, 2017 in accordance with Korean International Finance Reporting Standards."<sup>220</sup> As this statement alludes, it is not the intention nor the job of the auditors to confirm that audited financial statements are free from all misstatements or that every transaction is correct, but rather to provide assurance that there are no "material" (*i.e.*, meaningful to a user of the statements) misstatements that would render the financial statements misleading. Thus, financial statements may comply with home country GAAP, yet still have immaterial or insignificant departures within those same accounting standards. A proper reading of section 773(f)(1)(A) of the Act, directing Commerce to rely on a company's normal books and records where they are kept in accordance with home country GAAP, does not mean Commerce must reject a company's responses because of minor immaterial inconsistencies. Further, the courts have noted that it is not Commerce's mandate to police financial statements, but rather to calculate costs that reasonably relate to the cost of production during the POR.<sup>221</sup> Accordingly,

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<sup>215</sup> See, *e.g.*, Hyundai February 19, 2019 SAQR at 42-43.

<sup>216</sup> See Hyundai March 11, 2019 SDQR at 26.

<sup>217</sup> See, *e.g.*, Hyundai August 29, 2019 SDQR at 9, where Hyundai states that the longer the time period between shipment and the end of the year, the smaller the number of CPVs.

<sup>218</sup> See Petitioner's Hyundai Case Brief at 13 (citing Hyundai 1SDQR at 1SD-6).

<sup>219</sup> See Hyundai August 22, 2019 SDQR at Exhibit 2SD-1.

<sup>220</sup> *Id.*

<sup>221</sup> See, *e.g.*, *Nucor Corp. v. U.S.*, 371 Fed. Appx. 83 (2010).

based on the opinion of Hyundai's auditors, and the record evidence, we find that Hyundai's normal books and records are "in all material respects" maintained in compliance with Korean GAAP.

Still, section 773(f)(1)(A) of the Act contemplates that on an overall basis a company's books and records may be in accordance with home country GAAP, but on a product-specific level may not "reasonably reflect the costs associated with producing the merchandise under consideration," and therefore may compel Commerce to insist on adjustments to a respondent's normal books and records. That is, Commerce may find that individual product costs are distorted and therefore reject or adjust the reported costs under the second part of section 773(f)(1)(A) of the Act. In the instant case, the petitioners argue that Hyundai's treatment of CPVs failed to timely accrue all expenses as required by accrual accounting, consequently, Commerce "cannot accept Hyundai's books and records or the reported costs calculated from those books and records."<sup>222</sup> We disagree that Hyundai's use and reporting of CPVs compels Commerce to reject Hyundai's books and records outright along with the reported product costs that were calculated from those records.

When Hyundai records costs in its accounting system throughout a given month, Hyundai also charges the individual projects that incurred the costs, even if a project has been closed.<sup>223</sup> However, at the end of the month, Hyundai's accounting system will not allow new costs to be assigned to the job order cost reports for projects that have been closed.<sup>224</sup> Therefore, Hyundai uses special account codes to offset the new costs that were assigned to closed projects and transfer them to other open projects, thereby leaving a trail that can identify the original closed project that actually incurred the expense and all open projects to which the CPVs were transferred.<sup>225</sup> Throughout this review, Hyundai has been clear in how it records its CPVs and has explained that for reporting purposes it adjusted the project costs from its normal books and records to reassign the CPVs to the closed projects that actually incurred the costs.<sup>226</sup> At verification, we observed how Hyundai's accounting system separately tracks the CPVs incurred by each closed project ("sending" CPVs) and enables company officials to identify the open projects ("receiving" CPVs) to which they were ultimately transferred.<sup>227</sup> In this way, Hyundai was able to unravel the CPVs and for reporting purposes assign the CPVs to the closed projects that actually incurred the expenses. Our test work at verification uncovered no evidence of unreported or misclassified CPVs in Hyundai's calculation of the reported per-unit costs.<sup>228</sup>

With regard to the specific CPVs identified by the petitioners, we find them unsupportive of the petitioners' contention that the reported costs are distorted. For example, the first CPV noted by the petitioners was incurred on a project that was examined in detail at the cost verification.<sup>229</sup> We found that the project was both shipped and closed in December 2017. In January 2018,

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<sup>222</sup> See Petitioner's Hyundai Case Brief at 13.

<sup>223</sup> See Hyundai June 4, 2019 SDQR at 6.

<sup>224</sup> *Id.*

<sup>225</sup> *Id.*

<sup>226</sup> See, e.g., Hyundai March 11, 2019 SDQR at 7, 28-30, Exhibits D-18 to D-21; see also Hyundai June 4, 2019 SDQR at 12-13; and Hyundai August 29, 2019 SDQR at 11-13.

<sup>227</sup> See Hyundai Cost Verification Report at 9, 15, and 19-20.

<sup>228</sup> *Id.*

<sup>229</sup> See Hyundai Cost Verification Report at 19-20.

Hyundai incurred additional expenses to the closed project that were then transferred as CPVs to an open project code under the same sales order. We examined the underlying documentation finding the amounts were for ocean freight and other associated expenses that were invoiced and recorded in January 2018. While the petitioners contend that the ocean freight expense should have been “accrued” in December 2017, since Hyundai contracts for shipment well in advance of actual shipment, we find this point extraneous. Rather, the more pertinent consideration is that for reporting purposes Hyundai incorporated the January 2018 ocean freight and other expenses in the manufacturing or selling expenses, as applicable, of the project that incurred the costs. Thus, while the petitioners take issue with this practice in Hyundai’s normal books and records, we find that the auditors accepted the accounting practice and that Hyundai reassigned the amounts to the appropriate projects for reporting purposes.

The petitioners also contend that Hyundai’s CPV’s are essentially “off-book” expenses and that there is no way to determine the full population of off-book expenses that are still waiting to be recognized. As proof of this contention, the petitioners point to Hyundai’s statement that it has “no fixed rules or guidelines that dictate when Hyundai allocates or transfers the variances” and to the fact that Hyundai only reported CPVs through December 2018, thus, according to the petitioners, the CPVs shifted to 2019 and beyond were not captured in the reported costs.<sup>230</sup> We disagree with the characterization of the CPVs as “off-book” expenses. In accounting, an off-book expense is one that is not “on” the books, *i.e.*, not recorded in a company’s financial records, which, since we are discussing the CPV transactions recorded in Hyundai’s financial records, they clearly cannot be off-book. In fact, Hyundai uses the CPVs because the activities that fall within a project contract have their own associated revenues and expenses that cannot be recorded until the activity takes place.<sup>231</sup> That is, the individual activities are subject in their own right to the matching principle.

The petitioners’ legitimate concern, perhaps, is that the recording of these transactions may have been unnecessarily delayed to accounting periods outside of our POR, *i.e.*, a timing difference, and therefore the reported project costs are understated. However, based on Hyundai’s reporting methodology, our examination of the detailed cost buildups, and our cut-off test work performed at verification, we find no evidence to suggest that CPV-type expenses have been omitted from the reportable projects’ costs.<sup>232</sup> First, in its cost database, Hyundai reported all project costs, including CPVs, recorded in its books and records through December 2018, *i.e.*, five months after the POR ended.<sup>233</sup> Where expenses were not yet incurred (*i.e.*, the activity had not yet taken place), Hyundai included estimates in the reported costs.<sup>234</sup> Thus, Hyundai’s reporting methodology, in theory, reasonably captures reportable project costs whether or not they were recorded by December 2018. Further, of the U.S. LPT sales that were reported as entered during

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<sup>230</sup> See Petitioner’s Hyundai Case Brief at 24 (citing Hyundai June 4, 2019 SDQR).

<sup>231</sup> See, *e.g.*, Hyundai’s February 19, 2019, SAQR at 43, where Hyundai explains that customers make milestone payments at different stages of the process. “Some common payment milestones were (i) issuance of the purchase order, (ii) drawing submittal, (iii) receipt of material at the factory, (iv) assembly or testing at the factory, (v) shipment, (vi) delivery, (vii) installation, and (viii) customer acceptance of the LPT after installation.”

<sup>232</sup> See Hyundai Cost Verification Report at 19.

<sup>233</sup> See, *e.g.*, Hyundai March 11, 2019 SDQR at 5; and Hyundai June 4, 2019 SDQR at 13.

<sup>234</sup> See, *e.g.*, Hyundai March 11, 2019 SDQR at 5, 55, and Exhibits D-18 and D-21.

the POR, we found that the last sale date was February 2018.<sup>235</sup> Consequently, it is likely that most post-shipment expenses had been incurred and recorded by December 2018. Second, we examined the detailed cost buildup worksheets to confirm that the major categories of expenses that are typically incurred after a project leaves the facility (*e.g.*, movement, installation, supervision, *etc.*) had been accounted for in the reported project costs as either manufacturing or selling expenses.<sup>236</sup> Third, at verification, we examined Hyundai's 2019 cost accounting records for undisclosed CPVs related to the reportable projects (*i.e.*, any CPVs recorded after December 2018 up to the September 2019 cost verification).<sup>237</sup> Based on our test work, we found no evidence that Hyundai omitted any CPVs from its reported costs. Finally, Hyundai's statement that it has "no guidelines" for when it allocates or transfers CPVs prefaces a description of when CPVs are generally allocated to multiple open projects and when they are directly transferred to a single project.<sup>238</sup> Thus, while one can draw disparate assumptions from the unclearly-written statement (*i.e.*, no guidelines for when CPVs are recorded or no guidelines for when CPVs are allocated versus when they are directly transferred), we find the prevailing record evidence overrules any conjectures built around a single phrase taken out of context.

Regarding steel plate (*i.e.*, tank steel) and common parts (*e.g.*, bolts and minor sundry items), as documented in our cost verification report, we explained that Hyundai withdraws from inventory bulk quantities of common parts and tank steel quantities for access and use on the factory floor.<sup>239</sup> We also stated that at the time of the withdrawals from inventory, the common parts and tank steel are assigned to the project currently in production, however, the inputs may actually be consumed on multiple projects until the withdrawn quantities are depleted and another withdrawal request from inventory is made.<sup>240</sup> For example, excess steel plates may be used in the next project, but not recorded as a cost to that project. While this practice may over- or understate costs on an individual project level, for reporting purposes, we found that the total POR tank steel and common part costs were an insignificant percentage of the total POR LPT manufacturing costs. Thus, the variation between the assignment of these costs to individual projects, as they move through the line, is likewise insignificant.<sup>241</sup> Consequently, these findings are the types that Commerce frequently adjusts for in its preliminary and final cost calculations and do not call into question a respondent's entire reporting methodology.<sup>242</sup>

The petitioners argue that the individual LPT costs in Hyundai's revised cost file cannot be relied upon since the costs are not actual, verifiable, or reliable. In support, the petitioners point to the

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<sup>235</sup> See Hyundai February 19, 2019 SAQR at 3, identifying April 2018 as "two months after the latest month of U.S. sales."

<sup>236</sup> See, *e.g.*, Hyundai March 11, 2019 SDQR at Exhibits D-18 and D-21; and Hyundai Cost Verification Report at Exhibits 8-10.

<sup>237</sup> See Hyundai Cost Verification Report at 19.

<sup>238</sup> See Hyundai June 4, 2019 SDQR at 6-7.

<sup>239</sup> See Hyundai Cost Verification Report at 2.

<sup>240</sup> *Id.*

<sup>241</sup> *Id.*

<sup>242</sup> See, *e.g.*, *Circular Welded Non-Alloy Steel Pipe from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 79 FR 37284 (July 1, 2014) (*CWP from Korea*), and accompanying IDM at Comment 1; see also *Stainless Steel Bar from the United Kingdom: Final Results of Antidumping Duty Administrative Review*, 72 FR 43598 (August 6, 2007) (*UK Bar*), and accompanying IDM at Comment 1; and *Certain Steel Nails from the United Arab Emirates: Final Determination of Sales at Less Than Fair Value*, 77 FR 17029 (March 23, 2012) (*Nails from the UAE*), and accompanying IDM at Comment 9.

apparent undisclosed U.S. LPT sales, the misclassified LPT part sales, the CPVs, silicon steel costs, tank steel costs, other part costs, and the misclassified LPT part costs. The first two points raised by the petitioners, the undisclosed U.S. LPT sales and the misclassified LPT part sales, are linked to the sales findings that underlie our assignment of total AFA to Hyundai. Thus, we agree that to the extent the U.S. sales database may have been misstated through the omission of sales or the misclassification of the LPT parts identified by Commerce, the per-unit costs reported in the cost database would likewise be incomplete.

With regard to CPVs, we do not find that Hyundai's treatment of these post-closure project costs in its normal books and records requires the application of total AFA. In fact, Commerce's standard section D questionnaire for this review contemplates the existence of such post-closure costs that may not be allocated or assigned to the respective LPT when its instructions direct respondents to identify "closed project variances" and "not distributed or not included/allocated expenses."<sup>243</sup> Furthermore, we verified that any distortion of individual project costs caused by Hyundai's treatment of CPVs in its normal books and records was reversed for reporting purposes.

We also disagree with the petitioners that in this review Hyundai continued to employ a methodology whereby the company normally shifts costs from the projects that incurred the costs to other projects that did not. In the prior review Hyundai admitted to manipulating LPT project costs, including silicon steel costs, to achieve profitability on each sale in its normal books and records.<sup>244</sup> As such, in the *LPT 2016-2017 Review*, Hyundai chose not to rely on the project-specific silicon steel costs from its cost accounting records for reporting purposes, but rather estimated the reported silicon steel costs based on other informal records.<sup>245</sup> Ultimately, Commerce applied total AFA, in part, because "Hyundai failed to reconcile or itemize these {silicon steel} 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."<sup>246</sup> Such is not the case in the current review. Throughout this review, Hyundai asserted that it no longer misclassifies project costs and that no project costs in the current review were affected by the previous practice of shifting costs between projects in order to show a profit.<sup>247</sup> To confirm Hyundai's assertions, we issued multiple questionnaires requesting narrative explanations, cost reconciliation worksheets, project weights, shipping weights and quantities, cost comparisons, supporting documentation, *etc.*, in addition to conducting a cost verification.<sup>248</sup> Hyundai has been fully responsive and we uncovered no evidence to suggest that Hyundai continued to engage in cost shifting or the deliberate manipulation of project costs in its normal books and records. Rather, in the current review, we found that both Hyundai's normal books and records (*e.g.*, project-specific inventory withdrawals, BOMs, job order costing reports, *etc.*) and the reported costs now reflect the CAD-designed yielded silicon steel quantities plus

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<sup>243</sup> See Hyundai March 11, 2019 SDQR at 53.

<sup>244</sup> See, *supra*, Comment 1.

<sup>245</sup> See Hyundai Cost Verification Report at 24.

<sup>246</sup> See, *supra*, Comment 1.

<sup>247</sup> See, *e.g.*, Hyundai May 28, 2019 SDQR at 4.

<sup>248</sup> See, *e.g.*, Hyundai May 28, 2019 SDQR 4-14 and Exhibits 2-6; see also Hyundai June 4, 2019 SDQR at 24-45; and Hyundai June 11, 2019 SDQR at 1-9, 17-28, and Exhibits 41 and 47-52.

any additional silicon steel withdrawals that are unexpectedly needed on each project.<sup>249</sup> At verification, we compared the reported silicon steel consumption quantities, which are based on the BOMs from the cost accounting system, to information reported on key design documents (inform sheets and core data sheets showing steel grade and no load loss which directly impact steel quantities needed), inventory records (withdrawals), main body weight calculation worksheets (showing the weights for each significant part, including silicon steel, copper wire, *etc.*), main body total estimated shipping weights provided to third parties, and silicon steel processing reports.<sup>250</sup> We uncovered no evidence to suggest that Hyundai continued to engage in a deliberate manipulation of silicon steel costs nor any evidence to suggest that Hyundai's reported silicon steel costs are unreasonable. Therefore, we find no merit to the petitioners' claim that Hyundai manipulated its silicon steel costs in the current review.

We also find that while Hyundai's normal accounting treatment of steel plate and common part consumption may not be a precise distribution of such costs to LPT projects, a review of these inputs as a percentage of total LPT production costs suggests that Hyundai's internal practice here reflects a streamlined approach to accounting for insignificant inputs, rather than a willful manipulation of costs to bolster the bottom line of current projects.<sup>251</sup> To the contrary, these are the typical types of verification findings that Commerce would adjust for in its preliminary and final cost calculations rather than findings that serve as rationale for total AFA.<sup>252</sup> Thus, if not for our application of total AFA in these final results for Hyundai's failures in its sales reporting, we would likely adjust Hyundai's reported costs for our findings with regard to steel plate and common parts. Finally, the last item, the LPT part misclassification, was found to be a reporting error that was corrected prior to the sales verification and is not evidence of a systemic shifting of costs. Again, in each of these instances, Hyundai has fully cooperated in responding to all requests for additional information, documentation, and reconciliations. We have found no gap in the record that would require a consideration of total AFA with regard to silicon steel, CPVs, steel plate costs, common part costs, or the allegedly misclassified LPT part. As such, with regard to Hyundai's cost responses, we cannot equate the failure of Hyundai to cooperate to the best of its ability in the prior review to its responsiveness in the current review.

#### **Comment 4: Moot Issue**

##### *Petitioner's Comments:*

- The petitioner raised an issue that Hyundai failed to accurately translate documents at verification.<sup>253</sup>

*No other party commented on this issue.*

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<sup>249</sup> See Hyundai Cost Verification Report at 16.

<sup>250</sup> See, e.g., Hyundai Cost Verification Report at 5, 16-17, and 21-22.

<sup>251</sup> See Hyundai Cost Verification Report at 2.

<sup>252</sup> See, e.g., CWP from Korea IDM at Comment 1; see also UK Bar IDM at Comment 1; and Nails from the UAE IDM at Comment 9.

<sup>253</sup> See Petitioners' Case Brief at 36-37.

## Commerce's Position

Because we continue to apply AFA to Hyundai based on the aforementioned issues described in Comment 1, above, this issue presented by the petitioners is moot.

### Hyosung-Specific Issues

#### Comment 5: Ministerial Errors/Programming Changes

##### A) Revenue Capping in the Home Market – Indirect Selling Expenses

###### *Hyosung's Comments:*

- Commerce did not properly cap revenues reported in the home market in the field REV\_OTHCOMR, which Hyosung further states is associated with other common revenues and related indirect selling expenses.<sup>254</sup>
- The revenues in the field REV\_OTHCOMR should not be used in the calculation of total revenue.<sup>255</sup>
- Hyosung suggests programming language which it claims would render Commerce's treatment of the other common revenues in the home market consistent with the treatment of other paired revenue items.<sup>256</sup>

###### *Petitioner's Rebuttal Comments*

- Commerce should reject Hyosung's suggested proposal to exclude other common revenue from the total revenue calculation of home market price.<sup>257</sup>
- Hyosung's suggested programming change amounts to "an attempted end-run around Commerce's preliminary denial of a constructed export price (CEP) offset."<sup>258</sup>
- In instances where Commerce grants a CEP offset due to different levels of trade, the offset is calculated by subtracting the reported indirect selling expenses from NV.<sup>259</sup> The proposal to cap other revenues with indirect selling expenses is an attempt to achieve the same result.<sup>260</sup>
- Commerce correctly denied Hyosung a CEP offset in the *Preliminary Results* based on substantial evidence on the record of the review, and Hyosung has not challenged this finding.<sup>261</sup>

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<sup>254</sup> See Hyosung Case Brief at 8.

<sup>255</sup> *Id.* at 9

<sup>256</sup> *Id.*

<sup>257</sup> See Petitioners' Hyosung Rebuttal Brief at 11.

<sup>258</sup> *Id.*

<sup>259</sup> *Id.* at 12.

<sup>260</sup> *Id.*

<sup>261</sup> *Id.* at 12-13.

- Commerce should not cap other revenue with unrelated indirect selling expenses, as this would negate Commerce’s preliminary denial of a CEP offset.<sup>262</sup>

## Commerce’s Position

We have considered interested party comments and examined record evidence, and are not making the suggested programming changes to cap other home market revenues with indirect selling expenses. Our reasoning is set forth below.

In its response to section B of Commerce’s Initial Questionnaire, Hyosung identifies field REV\_OTHCOMR as being associated with indirect selling expenses.<sup>263</sup> Hyosung further states that “sales that include in the gross unit price other revenue associated with common overhead expenses and general & administrative expenses are identified in Hyosung’s home market sales database in the field OTHCOMR. Additionally, the allocated amount of other common expense per transaction is reflected in the home market sales database field ‘REV\_OTHCOMR’.”<sup>264</sup> Fields for revenues associated with specific services, such as inland freight, ocean freight, storage, oil, and installation, are listed on page B-3 and described on page B-31.<sup>265</sup> In describing the reported gross unit price, concerning the reported variable GRSUPRH,<sup>266</sup> Hyosung states that the variable contains the following types of revenue: (1) revenue from parts; (2) revenue from inland freight; (3) revenue from installation services, and; (4) other common revenue associated with overhead expenses and general and administrative expenses incurred for the sale.<sup>267</sup>

Commerce has previously addressed the issue of service-related revenues capped by associated expenses.<sup>268</sup> In the *LPT 2016-2017 Review*, Commerce noted that both the statute and the regulations require Commerce to remove revenues related to the provision of services that are in excess of the related expenses.<sup>269</sup> Specifically, Commerce noted that section 772(c)(1) of the Act provides that Commerce shall increase the price used to establish 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.<sup>270</sup> Furthermore, Commerce noted that section 773(a)(6) of the Act

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<sup>262</sup> *Id.* at 13.

<sup>263</sup> See Hyosung’s Letter, “Large Power Transformers from Korea: Sections B-D Questionnaire Responses,” dated March 11, 2019 (Section BCD Responses), at B-3.

<sup>264</sup> *Id.* at B-30.

<sup>265</sup> *Id.* at B-3 and B-31.

<sup>266</sup> Commerce did not use the variable GRSUPRH in the calculation of NV, as the variable contains all of the service-related revenues which cannot be capped. Commerce instead used the variable NET\_GRSUPRH, and added the various service-related revenues to the gross unit price after capping them by the associated expenses.

<sup>267</sup> See Section BCD Responses at B-30.

<sup>268</sup> See *LPT 2016-2017 Review* IDM at Comment 6.

<sup>269</sup> *Id.*

<sup>270</sup> *Id.*

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.<sup>271</sup>

The revenues in question, which are contained in the field REV\_OTHCOMR, are not service-related revenues. Rather, these revenues are included in the price. The reporting of the field REV\_OTHCOMR is an attempt to subdivide revenues which are included in the price but are not related to services. Thus, such revenues should not be capped but should be included in the calculation of NV. For further information, *see* the Hyosung Final Analysis Memorandum.<sup>272</sup>

## **B) Installation Revenue**

### *Hyosung's Comments:*

- Hyosung states that Commerce's SAS programming language in the *Preliminary Results* created a new variable name to cap installation revenue, but did not use this new variable name when calculating the CEP expenses in the CEPOTHER field.<sup>273</sup>
- Hyosung argues that Commerce should use the calculated and capped variable for installation revenue in the calculation of the CEPOTHER variable.<sup>274</sup>

### *Petitioner's Rebuttal Comments*

- Petitioners did not comment on this issue.

## **Commerce's Position**

We agree with Hyosung and have made the appropriate changes to the CEPOTHER variable. *See* the Hyosung Final Analysis Memorandum for further information.

## **C) Revenue Capping in the U.S. Market – Storage Revenue**

### *Hyosung's Comments:*

- Commerce, in the *Preliminary Results*, capped U.S. storage revenue by the sum of U.S. warehousing expenses and inventory carrying costs, and that the total of these expenses was deducted from the U.S. price.<sup>275</sup>

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<sup>271</sup> *Id.*

<sup>272</sup> *See* Memorandum, "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the 2016/2018 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated concurrently with this memorandum (Hyosung Final Analysis Memorandum).

<sup>273</sup> *See* Hyosung Case Brief at 9-10.

<sup>274</sup> *Id.* at 10.

<sup>275</sup> *See* Hyosung Case Brief at 10.

- Commerce also included U.S. inventory expenses in the CEP inventory carrying cost, resulting in a double-counting of the expense.<sup>276</sup>
- Commerce should change its SAS programming language and set the CEP inventory carrying costs (denoted by the variable DINVCARU) to zero.

*Petitioner's Rebuttal Comments*

- Commerce should not cap U.S. storage revenue by the sum of U.S. warehousing expense and inventory carrying costs (denoted by the variable INVCARU), but only by the reported U.S. warehousing expense.<sup>277</sup>

**Commerce's Position**

We agree with Petitioners and have made the appropriate changes to the margin calculation program. *See* the Hyosung Final Analysis Memorandum for further information.

**D) Other Expenses in the U.S. Market**

*Hyosung's Comments:*

- Commerce capped performance bond revenue by the associated expenses in the field OTHEXPU, but categorized the expense as a discount in the *Preliminary Results*.<sup>278</sup>
- The expense in the OTHEXPU field should be included in the CEP selling expenses.<sup>279</sup>

*Petitioner's Rebuttal Comments*

- Petitioners did not comment on this issue.

**Commerce's Position**

We agree with Hyosung and have made the appropriate changes to the margin calculation program. For further information, *see* the Hyosung Final Analysis Memorandum.

**Comment 6: Warranty Expenses**

*Hyosung's Comments*

- Commerce should use transaction-specific warranty expenses for U.S. sales, rather than three-year average warranty expenses.<sup>280</sup>

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<sup>276</sup> *Id.*

<sup>277</sup> *See* Petitioners' Hyosung Rebuttal Brief at 18.

<sup>278</sup> *See* Hyosung Case Brief at 11.

<sup>279</sup> *Id.*

<sup>280</sup> *Id.* at 4.

- In support of its contention, Hyosung states that distortions present in the fifth administrative review involving warranty expenses with the return of an LPT are not present in the current review.<sup>281</sup>
- In the alternative, Commerce should remove ship-back warranty expenses from the three-year calculation, as these are distortive and not representative of typical warranty expenses.<sup>282</sup>
- Hyosung incurred expenses in the fifth administrative review concerning the shipment of an LPT back to Korea, and that expenses associated with this sale continued in the current administrative review period.<sup>283</sup>
- However, according to Hyosung, it did not incur any expenses associated with the shipment of LPTs to Korea for sales made during the current administrative review period.<sup>284</sup>
- Expenses associated with the shipment of LPTs back to Korea is a rare occurrence.<sup>285</sup>
- The inclusion of the rare expenses associated with the shipment of an LPT to Korea for repairs was proper in the previous administrative review, as those expenses occurred with an LPT entered into the United States and returned to Korea during that review period.<sup>286</sup>
- Citing *Solar Cells*,<sup>287</sup> Hyosung states that the fact pattern regarding warranty expenses incurred by Hyosung for this administrative review is the same as the warranty expenses incurred in *Solar Cells*.<sup>288</sup>
- Therefore, Commerce should follow the same practice that it exercised in *Solar Cells* and use transaction-specific warranty expenses for this administrative review.<sup>289</sup>
- In the alternative, Commerce should remove the expenses associated with the shipment of an LPT unit back to Korea when using the three-year average warranty expenses.<sup>290</sup>

*Petitioner's Rebuttal Comments:*

- Moving to a transaction-specific warranty expense for Hyosung in this administrative review would understate Hyosung's warranty expenses.<sup>291</sup>
- The total warranty expenses incurred by Hyosung during the previous three years must be fully attributed to sales of LPTs during the same period.<sup>292</sup>

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<sup>281</sup> *Id.* at 5.

<sup>282</sup> *Id.*

<sup>283</sup> *Id.* at 4-5.

<sup>284</sup> *Id.* at 6.

<sup>285</sup> *Id.*

<sup>286</sup> *Id.*

<sup>287</sup> 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 IDM at Comment 19.

<sup>288</sup> See Hyosung Case Brief at 6-7.

<sup>289</sup> *Id.* at 7-8.

<sup>290</sup> *Id.* at 8.

<sup>291</sup> See Petitioner's Hyosung Rebuttal Brief at 8, 9.

<sup>292</sup> *Id.* at 9.

- In a previous administrative review, Hyosung stated that it is unable to trace warranty expenses directly to sales through the accounting system.<sup>293</sup>
- Again citing *LPT 2016-2017 Review*, the petitioners further note that Hyosung argued for a three-year average warranty expense because LPTs have long lifespans and that reliance on transaction-specific warranty expenses would not be reflective of Hyosung's historical experience.<sup>294</sup>
- In the *LPT 2016-2017 Review*, Commerce used a three-year average warranty adjustment because Hyosung's warranty expenses are infrequent but may be significant due to the specialized nature of LPTs.<sup>295</sup>
- There is no compelling reason for Commerce to deviate from its past practice and that Hyosung has provided no convincing argument to make such a deviation.<sup>296</sup>
- Concerning Hyosung's arguments regarding *Solar Cells*, the petitioners state that there were "aberrational" expenses in the previous administrative review that require Commerce to continue using the three-year average warranty expenses.<sup>297</sup>
- Finally, the petitioners argue that Commerce's reasoning in the *LPT 2016-2017 Review* for the adoption of the three-year average warranty expenses continues to apply in this review.<sup>298</sup>

### Commerce's Position

We agree with the petitioners and continue to apply a three-year average warranty expense to Hyosung's U.S. sales.

With respect to Hyosung's argument that Commerce remove certain expenses from the three-year warranty calculation, section 772(d)(1)(B) of the Act states that Commerce will reduce the CEP by expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties. Hyosung has not argued that the expenses in question, which relate to the shipment of merchandise back to Korea for warranty claims resolution, are not warranty expenses. As the statute is clear that such expenses must be deducted from U.S. price, we are not removing such expenses from the warranty expense calculation.

In the *LPT 2016-2017 Review*,<sup>299</sup> with respect to warranty expenses, we stated that Commerce requires that respondents report all warranty expenses incurred during the POR. Where possible, Commerce also requires respondents to divide the warranty 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

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<sup>293</sup> *Id.* (citing *LPT 2016-2017 Review* IDM at Comment 16).

<sup>294</sup> *Id.*

<sup>295</sup> *Id.* at 10.

<sup>296</sup> *Id.*

<sup>297</sup> *Id.* at 10-11.

<sup>298</sup> *Id.* at 11.

<sup>299</sup> See *LPT 2016-2017 Review* IDM at Comment 16.

expenses incurred during the POR.<sup>300</sup> 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.”<sup>301</sup> In the *LPT 2016-2017 Review*, we noted that 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.”<sup>302</sup>

Hyosung’s statements from the *LPT 2016-2017 Review* regarding warranties are on the record of this segment of the proceeding.<sup>303</sup> For this review period, for sales in Korea, Hyosung stated that its “accounting systems do not separately track ‘warranty expenses’ by product.”<sup>304</sup> Therefore, “the schedule of warranty expenses combines all warranty expenses incurred for sales of subject merchandise and non-subject merchandise” and that “Hyosung has reported average warranty expenses for the Power System Performance Unit (‘PSPU’) based on the total sales revenue of the PSPU.” Hyosung also stated its sales records and accounting system do not allow it to trace warranty expenses directly to an individual transaction.<sup>305</sup> For sales to the United States during the review period, Hyosung states that HICO America Sales and Technology, Inc. (HICO America), Hyosung’s affiliated U.S. distributor, generally incurred warranty expenses.<sup>306</sup> However, in limited instances where an LPT unit must be returned to Korea for inspection and any repairs, Hyosung will incur warranty expenses.<sup>307</sup> Unlike the home market, Hyosung states that it is able to report warranty expenses on a transaction-specific basis for those expenses incurred by HICO America.<sup>308</sup> For U.S. warranty expenses, Hyosung reported transaction specific warranty expenses for HICO America in the field WARRU, while the three-year average expenses for both HICO America and Hyosung (related to U.S. warranty expenses) were reported in the fields WARR3YR1U and WARR3YR2U, respectively.<sup>309</sup>

In previous reviews, Commerce relied on the three-year average.<sup>310</sup> We determined that the warranty expenses for Hyosung were distortive, as they occur infrequently but may be significant due to the specialized nature of LPTs and their expense.<sup>311</sup> For this review period, we continue to find that Hyosung’s warranty expenses are distortive, as they occur infrequently but may be significant due to the specialized nature of LPTs and the expenses associated with warranty

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<sup>300</sup> See *Solar Cells* IDM at Comment 19.

<sup>301</sup> *Id.*

<sup>302</sup> See *LPT 2016-2017 Review* IDM at Comment 16.

<sup>303</sup> See Petitioners’ Letter, “Large Power Transformers from the Republic of Korea - Petitioners’ Placement of Record Documents Regarding Hyosung from the 2016-2017 and 2015-2016 Records on the 2017-2018 Administrative Record,” dated February 19, 2019.

<sup>304</sup> See Section BCD Responses at B-42.

<sup>305</sup> *Id.*

<sup>306</sup> *Id.* at C-45.

<sup>307</sup> *Id.*

<sup>308</sup> *Id.* at C-46.

<sup>309</sup> *Id.* at C-46 through C-47; see also Hyosung’s Letter, “Large Power Transformers from Korea: Hyosung’s Third Supplemental Sales Questionnaire Response,” dated September 24, 2019 (Hyosung Third Supplemental Response), at 2.

<sup>310</sup> See, e.g., *LPTs 14-15 Final* and *LPT 2016-2017 Review*, where Commerce used the three-year average warranty expenses when calculating NV for Hyosung.

<sup>311</sup> *Id.*

claims.<sup>312</sup> Furthermore, Hyosung states that its accounting system does not allow it to trace warranty expenses incurred by Hyosung in Korea directly to an individual transaction.<sup>313</sup> As noted above, section 772(d)(1)(B) of the Act states that Commerce will reduce the CEP by expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties. For U.S. warranty expenses, if Commerce were to change its treatment of warranty expenses, we would have to rely on the transaction-specific warranty expenses of HICO America for this review (contained in the field WARRU) as well as the three-year average warranty expenses incurred by Hyosung in Korea, which are applicable to this review (contained in the field WARR3YR2U). We also find that this proposed mixed-methodology for warranty expenses would be distortive, as it would possibly result in double-counting a portion of the warranty expenses and would also distort the application of warranty expenses to all of the U.S. sales. Finally, we believe that the use of transaction-specific warranty expenses in the U.S. market, and three-year average warranty expenses in the home market, would also be distortive and would not result in an accurate comparison of U.S. prices to home market NV.

Therefore, we determine that the reported three-year warranty expenses for both the home and U.S. markets are appropriate to use for this review with respect to Hyosung.

## **Comment 7: CBP Instructions**

### *Hyosung's Comments*

- Commerce should correct the draft CBP liquidation instructions to include Hyosung Corporation, as well as Hyosung Heavy Industries Corporation.<sup>314</sup>
- Commerce should include a note in the proposed revised liquidation instructions stating that Hyosung Heavy Industries Corporation is the successor-in-interest to Hyosung Corporation.<sup>315</sup>

### *Petitioners' Rebuttal Comments*

- The petitioners agree with Hyosung that Commerce should revise the draft liquidation CBP instructions, and agree that Commerce should make Hyosung's suggested changes to the liquidation instructions.<sup>316</sup>
- The petitioners note that Hyosung did not suggest any changes to the cash deposit instructions, and suggest that Commerce also make changes to the cash deposit instructions, similar to those suggested for the liquidation instructions.<sup>317</sup>

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<sup>312</sup> See Section BCD Responses at B-42, C-45 through C-47; *see also* Hyosung Third Supplemental Response at 2.

<sup>313</sup> See Section BCD Responses at B-42.

<sup>314</sup> See Hyosung Case Brief at 2-4.

<sup>315</sup> *Id.* at 4.

<sup>316</sup> See Petitioner's Hyosung Rebuttal Brief at 3-4.

<sup>317</sup> *Id.* at 4.

- The petitioners aver that certain LPTs manufactured by “Hyosung Corporation” may not have entered into the United States as yet, necessitating a correction to the cash deposit instructions.<sup>318</sup>
- In the alternative, the petitioners suggest that Commerce may strike paragraph 2 of the liquidation instructions as “superfluous.”<sup>319</sup>

## Commerce’s Position

We agree with both Hyosung and the petitioners that the draft CBP instructions should be revised. We have revised both to include both Hyosung Corporation and Hyosung Heavy Industries Corporation, as well as a notation that Hyosung Heavy Industries Corporation is the successor-in-interest to Hyosung Corporation. For further information, *see* the Hyosung Final Analysis Memorandum.

## General Issues

### Comment 8: Rate for Non-selected Respondents

#### *Iljin’s Comments:*

- Commerce preliminarily assigned rates of 60.81 percent and 40.73 percent to Hyundai and Hyosung, respectively, and Commerce also assigned Iljin a rate of 40.73 percent.<sup>320</sup> However, Iljin argues that neither the statute nor the regulations require Commerce to assign Hyosung’s rate to Iljin.<sup>321</sup>
- Iljin asserts that Commerce has never determined Iljin to be dumping, and thus the most accurate margin to assign to Iljin is the third administrative review margin assigned to Hyosung of 2.99 percent.<sup>322</sup>
- Should Commerce continue to assign the rate calculated for Hyosung in the final results, Iljin argues that the margin calculated for Hyosung in the *Preliminary Results* is overstated.<sup>323</sup>

#### *Petitioners’ Rebuttal Comments*

- Commerce should continue to apply the rate calculated for Hyosung to Iljin for the final results.<sup>324</sup>
- Iljin’s proposal to use the third administrative review rate from Hyosung in this segment of the proceeding “is inconsistent with the Department’s practice of applying to a non-

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<sup>318</sup> *Id.* at 4-5.

<sup>319</sup> *Id.* at 7-8.

<sup>320</sup> *See* Iljin Case Brief at 1-2.

<sup>321</sup> *Id.* at 2.

<sup>322</sup> *Id.*

<sup>323</sup> *Id.* at 3.

<sup>324</sup> *See* Petitioners’ Iljin Rebuttal Brief at 2.

mandatory respondent the calculated rate assigned to any mandatory respondent that does not receive a zero, *de minimis*, or total AFA margin.”<sup>325</sup>

- While the petitioners agree with Iljin that the statute and relevant regulations do not directly address the application of a rate to non-selected companies, the petitioners nevertheless state that Commerce has a well-established practice which is derived from the SAA and has been affirmed by the courts.<sup>326</sup>
- Commerce explained its normal practice in the *Preliminary Results*.<sup>327</sup>
- There is no legal basis to divert from Commerce’s normal practice, and the application of a rate from a previous segment of a proceeding only applies when there are no mandatory respondents with a non-zero, non-*de minimis*, or non-AFA rate in the current proceeding.<sup>328</sup>
- Iljin has provided no record evidence to indicate why a rate of 2.99 percent would be more accurate, fair, or equitable to Iljin.<sup>329</sup>
- Commerce applied its normal practice in the third review, and that Iljin thus has no basis for complaint.<sup>330</sup>
- The Hyosung rate assigned to Iljin in the *Preliminary Results* does not punish Iljin, as it is the calculated rate for Hyosung.<sup>331</sup>
- Citing *Albermarle*, the petitioners further argue that the CAFC found that the average rates for examined respondents are reasonably reflective of the margins for non-examined respondents.<sup>332</sup>
- Also citing *Albermarle*, the petitioners state that the CAFC found that underlying facts from a previous review period should not be assumed to carry over to the next review.<sup>333</sup> Thus, the margins from three review periods ago should not be assumed to reflect actual pricing in this administrative review period.<sup>334</sup>

## Commerce’s Position

Since we are applying the AFA rate to only one respondent, Hyundai, the weighted-average dumping margin for the non-selected companies will be the margin assigned to Hyosung in this administrative review, in accordance with the statute and Commerce’s practice. We believe that this is a reasonable method and the expected method of calculating such a margin, as set forth in the SAA.<sup>335</sup> 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.<sup>336</sup> We have no evidence on the record of Iljin’s actual dumping margin, so we find

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<sup>325</sup> *Id.*

<sup>326</sup> *Id.*

<sup>327</sup> *Id.*

<sup>328</sup> *Id.* at 3.

<sup>329</sup> *Id.*

<sup>330</sup> *Id.*

<sup>331</sup> *Id.* at 4.

<sup>332</sup> *Id.* (citing *Albermarle Coiti. v. United States*, 821 F. 3d 1345, 1356 (Fed. Cir. 2016) (*Albermarle*)).

<sup>333</sup> *Id.*

<sup>334</sup> *Id.* at 4-5.

<sup>335</sup> See SAA at 873.

<sup>336</sup> See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1370, 1379 (Fed. Cir. 2013) (*Bestpak*).

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 37.42 percent to Iljin.

## VI. 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 results in the investigation in the *Federal Register*.

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\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

4/14/2020

X 

Signed by: JEFFREY KESSLER

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Jeffrey I. Kessler  
Assistant Secretary  
for Enforcement and Compliance