



A-580-867

POR: 08/01/2018-07/31/2019

Public Document

AD/CVD OPS OVI: JKD

June 3, 2021

MEMORANDUM TO: Christian Marsh
Acting 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; 2018-2019

I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, for Hyosung Corporation and Hyosung Heavy Industries Corporation (collectively, Hyosung), we have made changes from the *Preliminary Results*,¹ as discussed below. We recommend that you approve the positions described in the “Discussion of the Issues” section of this Issues and Decision Memorandum. The complete list of the issues in this administrative review for which we received comments from parties is provided below.

A. Hyosung Issues

Comment 1: Sales Outside of the Ordinary Course of Trade

Comment 2: Date of Sale

Comment 3: Ministerial Errors

B. General Issues

Comment 4: Rate for Non-selected Respondents

¹ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review, 2017–2018; Preliminary Determination of No Shipments; and Preliminary Successor-in-Interest Determination*, 85 FR 82439 (December 18, 2020) (*Preliminary Results*), and accompanying Preliminary Decision Memorandum (PDM).



II. BACKGROUND

On December 18, 2020, 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, 2018, through July 31, 2019. The review covers five producers/exporters of the subject merchandise: Hyosung, Hyundai Electric & Energy Systems Co., Ltd. (Hyundai), ILJIN, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co. Ltd. (LSIS). Hyosung was selected as the mandatory respondent. Hyundai, ILJIN, Iljin Electric, and LSIS were not selected for individual examination. Commerce determined in the *Preliminary Results* that LSIS had no shipments during the POR,² and continues to find that LSIS had no shipments for these final results. In addition, Commerce determined in the *Preliminary Results* that LS Electric Co., Ltd. (LS Electric) was the successor-in-interest to LSIS, and continues to find that LS Electric is the successor-in-interest to LSIS.

On January 19, 2021, Hyosung, Hyundai, and Iljin Electric timely submitted case briefs³ commenting on the *Preliminary Results*. ABB Enterprise Software, Inc., and SPX Transformer Solutions, Inc. (collectively, the petitioners) timely filed rebuttal briefs on February 2, 2021.⁴

On March 31, 2021, Commerce extended the deadline for the publication of these final results of review until June 4, 2021.⁵

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.

² See *Preliminary Results*.

³ See Iljin’s Letter, “Large Power Transforms from Korea for the 2018-19 Review Period - Case Brief of Iljin Electric Co., Ltd.,” dated January 19, 2021 (Iljin Case Brief); see also Hyosung’s Letter, “Large Power Transformers from Korea: Affirmative Case Brief,” dated January 19, 2021 (Hyosung Case Brief); and Hyundai’s Letter, “Large Power Transformers from Korea: Hyundai’s Case Brief,” dated January 19, 2021 (Hyundai Case Brief). The petitioners did not file a case brief.

⁴ See Petitioners’ Letter, “Petitioner’s Rebuttal Brief Regarding Iljin Electric Co., Ltd.,” dated February 2, 2021 (Petitioners’ Iljin Rebuttal Brief); see also Petitioners’ Letter, “Petitioner’s Rebuttal Brief Regarding Hyosung Heavy Industries Corporation,” dated February 2, 2021 (Petitioners’ Hyosung Rebuttal Brief).

⁵ See Memorandum, “Large Power Transformers from the Republic of Korea; Antidumping Duty Administrative Review; 2018-2019: Extension of Deadline for Final Results,” dated March 31, 2021.

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. SUCCESSOR-IN-INTEREST

In the *Preliminary Results*, Commerce determined that LS Electric Co., Ltd. (LS Electric) is the successor-in-interest to LSIS. We received no comments from interested parties and have not received any information to contradict our preliminary finding. Therefore, for these final results, Commerce continues to find that LS Electric is the successor-in-interest to LSIS, and that LSIS's current cash deposit rate is the rate for LS Electric.

V. NO SHIPMENTS

In the *Preliminary Results*, Commerce determined that LSIS Co. Ltd. (LSIS) had no shipments of subject merchandise during the POR.⁶ We received no comments from interested parties and have not received any information to contradict our preliminary finding. Therefore, we continue to find that LSIS did not have any shipments of subject merchandise during the POR.

VI. DISCUSSION OF THE ISSUES

A. Hyosung-Specific Issues

Comment 1: Sales Outside of the Ordinary Course of Trade

Hyosung's Comments:

- Commerce should exclude two home-market sales from the calculation of normal value, as these sales were made outside of the ordinary course of trade.⁷
- The customers for these sales requested expedited production, resulting in lead times which were shorter than average, and in abnormally high profits on these sales.⁸
- Hyosung provided information in its August 14, 2020, supplemental questionnaire response and its December 3, 2020 pre-preliminary comments, demonstrating that these sales were outside of the ordinary course of trade.⁹

⁶ See *Preliminary Results*.

⁷ See Hyosung Case Brief at 2.

⁸ *Id.* at 2-3.

⁹ *Id.* at 3.

- Excluding these two sales is consistent with the statute and regulations, which aim to achieve a “fair comparison” between normal value and the U.S. export price.¹⁰
- The “ordinary course of trade” is defined in section 771(15) of the Act, 19 CFR 351.102(b), and the Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Rep. No. 103-316, vol. 1, at 656 (1994), *reprinted in* 1994 U.S.C.C.A.N. 4040, 4171 (SAA),¹¹ which all outline that Commerce must exclude such sales from the comparison market to prevent dumping margins from being based on sales which are not representative of the home market.¹²
- The two home market sales in question were outside of the ordinary course of trade due to aberrational pricing, abnormal profit margins, expedited construction, emergency circumstances, and different terms of sale.¹³
- Determining that these two sales are outside the ordinary course of trade, and excluding them from the calculation of normal value, would be consistent with Commerce’s decision in *Mechanical Tubing from Germany*, which focused in part on the high prices/profits charged for some sales in determining that these sales were outside the ordinary course of trade.¹⁴
- Similarly, the exclusion of these sales from the calculation of normal value would be consistent with determinations by Commerce in other cases.¹⁵

Hyundai’s Comments

- In accordance with Hyosung’s pre-preliminary comments, Commerce should find two sales made by Hyosung in the home market to be outside of the ordinary course of trade.¹⁶

Iljin’s Comments

- Commerce calculated overstated margins for the *Preliminary Results*, relying in part on sales in the home market which were made outside the ordinary course of trade.¹⁷
- Should Commerce continue to assign the rate calculated for Hyosung to Iljin’s sales, Commerce should reduce the rate by removing sales made outside of the ordinary course of trade.¹⁸

Petitioner’s Rebuttal Comments

¹⁰ *Id.* at 3-4.

¹¹ As cited in *Koenig & Bauer-Albert AG v. United States*, 259 F.3d 1341, 1345 (CAFC 2001) (*Koenig & Bauer-Albert AG*). CAFC stands for Court of Appeals for the Federal Circuit.

¹² *Id.* at 4-6.

¹³ *Id.* at 6-10.

¹⁴ *Id.* at 11-14 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from the Federal Republic of Germany: Final Affirmative Determination of Sales at Less Than Fair Value*, 83 FR 16326 (April 16, 2018) (*Mechanical Tubing from Germany*), and Issues and Decisions Memorandum at Comment 3).

¹⁵ *Id.* at 11 (citing *Certain Cold-Drawn Mechanical Tubing of Carbon and Alloy Steel from Switzerland*, 83 FR 16293 (April 16, 2018) (*Mechanical Tubing Switzerland*); and *Gray Portland Cement and Clinker from Mexico: Notice of Final Results of Antidumping Duty Administrative Review*, 71 FR 2909 (January 18, 2006)).

¹⁶ See Hyundai Case Brief at 1-2.

¹⁷ See Iljin Case Brief at 3-4.

¹⁸ *Id.*

- The totality of the evidence on the record of this proceeding does not support Hyosung's argument that the two home market sales in question were made outside the ordinary course of trade.¹⁹
- When undertaking an analysis of whether sales were made in the ordinary course of trade, under 19 CFR 351.102(35), Commerce considers all of the circumstances particular to the sales in question and whether such sales have characteristics that are extraordinary for the comparison market.²⁰
- Hyosung bears the burden of establishing that the circumstances of these sales are outside of the ordinary course of trade, and record evidence does not support Hyosung's arguments.²¹
- Expedited production and delivery of an LPT is a normal part of the conditions and practices for supplying LPTs.²²
- While Commerce may, under 19 CFR 351.102(35), consider a number of factors in its analysis of whether certain sales are outside the ordinary course of trade, the existence of one or more of these conditions does not mean that Commerce will automatically exclude such sales from the calculation of normal value.²³
- The sales process for these sales was not different from the sales process for other sales in the home market.²⁴
- The lead times for the production of the sales in question falls within the lead times for other LPTs sold during the POR.²⁵
- The sale prices for the sales in question were similar to the sales prices for similar-sized LPTs.²⁶
- The claimed higher profits may be attributed to an understated cost of production.²⁷
- All other aspects of the sales in question are ordinary in the Korean market.²⁸
- Excluding higher-priced sales from the AD calculation can lead to a results-oriented outcome and should not be undertaken unless the totality of the circumstances support such an exclusion.²⁹

Commerce's Position

We find that Hyosung's two sales in question, based on the totality of the circumstances, are not outside the ordinary course of trade.³⁰

¹⁹ See Petitioners' Hyosung Rebuttal Brief at 1, 5, and 8.

²⁰ *Id.* at 1-3, 5-7.

²¹ *Id.* at 2, 5.

²² *Id.* at 3.

²³ *Id.* at 6-7.

²⁴ *Id.* at 9-11.

²⁵ *Id.* at 11-14.

²⁶ *Id.* at 14-17.

²⁷ *Id.* at 17-19.

²⁸ *Id.* at 20-21.

²⁹ *Id.* at 21-23.

³⁰ Due to the propriety nature of many of the facts of this case, *see* Memorandum, "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the 2018/2019 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea" (Final Analysis Memorandum) for further discussion.

In determining whether subject merchandise is being, or is likely to be, sold at less than fair value in an AD determination, a comparison is made between the price of the merchandise in the United States (“export price” or “constructed export price”) and its price in a foreign market (“normal value”).³¹ The “normal value” is the price at which the foreign like product is first “sold” for consumption in the exporting country “in the usual commercial quantities and in the ordinary course of trade.”³² Thus, the price of the merchandise is included in the margin calculation if, among other things, the merchandise is “sold” in the “ordinary course of trade.” If it is not “sold” or not sold in the “ordinary course of trade,” the merchandise is excluded from the normal value calculation.

The phrase “ordinary course of trade” is defined by the Act as “the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind.”³³ What is to be considered “outside the ordinary course of trade” includes, “among others, . . . (A) Sales disregarded under section 773(b)(1), below cost sales of this title; (B) transactions disregarded under section 773(f)(2), transactions between affiliated parties, of this title.”³⁴

Whether a sale or transaction is outside the ordinary course of trade is a question of fact. In making this determination, Commerce considers not just “one factor taken in isolation but rather . . . all the circumstances particular to the sale or sales in question.”³⁵ The “ordinary course of trade is determined on a case-by-case basis by examining all of the relevant facts and circumstances.”³⁶ Commerce’s methodology for making this determination is reflected in 19 CFR 351.102(b).³⁷ As stated in part in 19 CFR 351.102(b)(35), “{t}he Secretary may consider sales or transactions to be outside the ordinary course of trade if the Secretary determines, based on an evaluation of all of the circumstances particular to the sales in question, that such sales or transactions have characteristics that are extraordinary for the market in question.” Examples that might be considered outside the ordinary course of trade include: (1) off-quality merchandise; (2) merchandise produced according to unusual product specifications; (3) merchandise sold at aberrational prices or with abnormally high profits; (4) merchandise sold pursuant to unusual terms of sale; or (5) merchandise sold to an affiliated party not at an arm’s length transaction.³⁸ The SAA contains similar language and identifies similar types of transactions Commerce may consider to be outside the ordinary course of trade, including (1) sales disregarded as being below-cost; and (2) transactions between affiliated persons.³⁹

To begin our analysis, we are guided by the purpose of the ordinary course of trade provision, which is to prevent dumping margins from being based on sales which are not representative of

³¹ See *Huffy Corp. v. United States*, 632 F. Supp. 50, 52 (CIT 1986).

³² See section 773(a)(1)(B)(i) of the Tariff Act of 1930 (the Act).

³³ See section 771(15) of the Act; see also 19 CFR 351.102(b).

³⁴ *Id.*

³⁵ See *Murata Manufacturing, Co., v. United States*, 820 F. Supp. 603, 607 (CIT 1993) (*Murata Manufacturing*).

³⁶ See *Cemex, S. A. v. United States*, 19 CIT 587, 593 (April 24, 1995).

³⁷ See, e.g., *Antifriction Bearings (Other Than Tapered Roller Bearings) and Parts Thereof from France, Germany, Italy, Japan, Romania, Sweden, and the United Kingdom; Final Results of Antidumping Duty Administrative Reviews*, 64 FR 35590, 35620 (July 1, 1999).

³⁸ See 19 CFR 351.102(b).

³⁹ See SAA at 656.

the home market. Therefore, it is important to understand the nature of LPTs, how they are constructed, and how they are sold, in order to understand what is the ordinary course of trade in the home market.⁴⁰

Record evidence indicates that the production, sale, transportation, and installation of LPTs in Korea is a complex process, which is tailored to each customer's needs and specifications. An LPT is a highly complex, expensive item, with an average sales value of approximately \$1,100,000, with approximately 100 sales during a POR.⁴¹ Purchase orders/contracts contain the details of the LPTs, the sales price, and identify the numerous services provided by Hyosung in support of the sale.⁴² With respect to the production and sale, "LPTs are custom-made machinery built to customer's precise specifications."⁴³ Record evidence demonstrates high levels of customization for the majority of sales. For example, for the Korean market, Hyosung designed a type of LPT to transport through urban areas and over bridges with weight limits.⁴⁴ Additionally, during the POR, Hyosung produced transformers which are special or rarely produced due to their unusual physical characteristics.⁴⁵

After receiving a request for a quote, for most customers Hyosung will develop an initial product design and subsequently work with the customer to reach a final design, agree to the specifications of the LPT, and agree to the price and delivery terms.⁴⁶ After the design and specifications are approved, Hyosung orders raw materials and LPT components.⁴⁷ "The time it takes to deliver the materials and components to the Changwon plant determines a large portion of the manufacturing schedule and, hence, lead time."⁴⁸ "The nature of LPTs "require significant resources for completion."⁴⁹ "The nature of the production process is assembly, beginning with building various subcomponents, progressing to subassemblies, such as main body, core staking or tank, and ultimately ending with the final assembly of these subassemblies into a finished LPT unit."⁵⁰

⁴⁰ For a more detailed discussion of this issue, including business proprietary information, *see* Final Analysis Memorandum.

⁴¹ *See* Hyosung's Letter, "Large Power Transformers from Korea: Section A Questionnaire Response," dated February 18, 2020, (AQR) at Exhibit A-1 (Public Version). The actual value of each LPT can vary substantially from this estimated average. *See* Final Analysis Memorandum at Part IV for more information.

⁴² *See* Hyosung's Letter, "Large Power Transformers from Korea: Hyosung's Supplemental Sections B-C Response," dated August 14, 2020 (SBCQR) at Exhibit SBC-Q3.

⁴³ *See* Hyosung's Letter, "Administrative Review of Large Power Transformers from the Republic of Korea: Hyosung Heavy Industries Corporation's Section D Questionnaire Response," dated March 20, 2020 (DQR), at D-31; *see also* Hyosung's Letter "Seventh Administrative Review of Large Power Transformers from the Republic of Korea: Hyosung Heavy Industries Corporation's Section B Questionnaire Response," dated March 20, 2020 (BQR) at B-22.

⁴⁴ *See* SBCQR at 11-13. Hyosung states that the design and sale of these units is within the ordinary course of trade. *Id.* at 15.

⁴⁵ *Id.* at 16-17.

⁴⁶ *See* AQR at A-16 – A-17.

⁴⁷ *Id.* at A-18

⁴⁸ *Id.*

⁴⁹ *See* Hyosung's Letter, "Large Power Transformers from Korea: Hyosung's Second Supplemental Section A Questionnaire Response," dated July 8, 2020 (SAQR) at 25.

⁵⁰ *See* DQR at D-18, D-33.

Once the LPT is completed, Hyosung provides a number of support services to the customer. “For home market sales, HHIC arranges for transport of LPTs to its customer when required by the agreed upon delivery terms of sale.”⁵¹ “Therefore, the delivery and transportation of LPT vary by customer based on the agreed upon delivery terms of sale.”⁵² While the terms of sale for some customers do not include delivery and installation, “{f}or sales to other home market customers, HHIC is responsible for delivery, and for many sales HHIC is responsible for delivery and installation of the LPT at the customer’s site.”⁵³ Hyosung will “{a}rrange for delivery of the unit to the appropriate site separately from the sales transaction. For these sales, HHIC negotiates and charges {some home market customer(s)} separately for these delivery services from the LPT sale transaction.”⁵⁴ “In these circumstances . . . , if {a customer} approves the inspection and issues a ‘delivery confirmation,’ the LPT is no longer Hyosung’s property, but is {a customer’s} property, even if it remains for a period of time in Hyosung’s Changwon Plant.”⁵⁵ “In rare instances, {a customer} may request a later delivery due to substation conditions, which would cause a significant time difference between the acceptance/inventory receipt date and the actual shipment date.”⁵⁶ There may be changes in the material terms of sale after shipment,⁵⁷ including changes in the scope of work related to installation.⁵⁸

In summary, the sale of an LPT in the Korean market involves the production of highly customized units, consisting of a main body and various components, which meets individual customers’ precise specifications and needs. Furthermore, the services provided by Hyosung from the date of the purchase order to the final completion/delivery/installation of the LPT can vary considerably, may be substantial, and are tailored to the needs and requests of the customer for each LPT purchased. Hyosung works closely with each customer and tailors the sales and production process to meet the customer’s needs.

Hyosung states that two home market sales were outside of the ordinary course of trade due to unique circumstances.⁵⁹ Hyosung stated that the customers for these two sales requested expedited production, due to unusual and emergency circumstances, which led to abnormally high sales prices and corresponding abnormally high profits.⁶⁰ Hyosung provided an analysis of the profit rates for all sales, as well as the two sales at issue, and claims that the profit rates for the two sales in question are significantly higher than the average for all other profitable sales.⁶¹ The profit differences, according to Hyosung, are due to the unique circumstances of the two

⁵¹ See SAQR at 60.

⁵² *Id.*

⁵³ *Id.* at 41.

⁵⁴ *Id.* at 40.

⁵⁵ See SBCQR at 20.

⁵⁶ *Id.* at 21.

⁵⁷ *Id.* at 22, 24, 28-29.

⁵⁸ See BQR at B-37; see also Hyosung’s Letter, “Large Power Transformers from Korea: Hyosung’s Third Sales Supplemental Questionnaire Response (Sections A-C),” dated November 19, 2020 (SABCQR) at 6.

⁵⁹ See Hyosung Case Brief at 2.

⁶⁰ *Id.* at 2-3, 6; see also Hyosung’s Letter, “Large Power Transformers from Korea: Pre-preliminary Comments and Rebuttal to Petitioners’ October 13th and October 26th Letters Regarding Hyosung’s Sections A-C Supplemental Responses,” dated December 3, 2020 (Hyosung Preliminary Results Comments) at 3.

⁶¹ See Hyosung Case Brief at 7, and Attachments 1 and 2; see also Hyosung Preliminary Results Comments at 7-8 and Attachments 1 and 2.

sales in question.⁶² In particular, Hyosung states that the expedited lead times requested for the two sales in question resulted in an ability to negotiate and receive higher profits.⁶³ Hyosung cites to *Mechanical Tubing Switzerland* and *Mechanical Tubing Germany*, where Commerce found certain home market sales to be outside the ordinary course of trade due to high prices and abnormally high profit.⁶⁴ Hyosung argues that in *Mechanical Tubing Germany*, Commerce excluded one home market sale after finding that the price for that sale was aberrational when compared to the average price for the product and that the gross profit for the sale was abnormally high when compared to average profit.⁶⁵ Hyosung states that it has performed a comparative analysis between the two sales in question and other home market sales with respect to average price and average profit, and thus has provided the quantitative analysis necessary for Commerce to conclude that the two sales in question were made outside the ordinary course of trade.⁶⁶

As we noted above, some examples of sales of merchandise that might be considered outside of the ordinary course of trade include: (1) off-quality merchandise; (2) merchandise produced according to unusual product specifications; (3) merchandise sold at aberrational prices or with abnormally high profits; (4) merchandise sold pursuant to unusual terms of sale; or (5) merchandise sold to an affiliated party not at an arm's length transaction. Hyosung states that it does not produce off-quality or non-prime merchandise.⁶⁷ The control number (CONNUM) characteristics of the two sales in question do not differ from sales of other LPTs during the POR.⁶⁸ There is no evidence on the record to suggest that the sales in question were produced according to unusual product specifications. Hyosung states that it did not make any sales to an affiliated party in the home market.⁶⁹

With respect to whether the two sales in question were sold pursuant to unusual terms of sale, the record evidence demonstrates that these sales were made according to the usual terms of sale. Hyosung's reported sale and payment terms for both sales are the same as many other home market sales.⁷⁰ In addition, record evidence shows that the prices paid for these two sales are not aberrational.⁷¹

Hyosung states that the lead times for the two sales in question are less than the average lead times for other sales of LPTs in the Korean market, resulting in abnormal circumstances of sale, abnormally high sales prices, and abnormally high profits.⁷² As noted above, record evidence

⁶² See Hyosung Case Brief at 7-10; see also Hyosung Preliminary Results Comments at 8-11. Due to the proprietary nature of the fact pattern presented by Hyosung in its brief, see Final Analysis Memorandum for further discussion.

⁶³ *Id.*

⁶⁴ See Hyosung Case Brief at 11-14; see also Hyosung Preliminary Results Comments at 12-16.

⁶⁵ See Hyosung Case Brief at 11-12; see also Hyosung Preliminary Results Comments at 13.

⁶⁶ See Hyosung Case Brief at 13; see also Hyosung Preliminary Results Comments at 14-15.

⁶⁷ See DQR at D-31.

⁶⁸ See Hyosung Case Brief at Attachment 2. The CONNUM characteristics listed for the two sales in question are identical to those of other sales.

⁶⁹ See BQR at B-8.

⁷⁰ See BQR at B-28 through B-29; see also SBCQR at Attachment I, which details the accompanying home market sales database (HYOHM02); see also Final Analysis Memorandum at Part IV.

⁷¹ See SBCQR at Attachment I, which details the accompanying home market sales database (HYOHM02). See also Final Analysis Memorandum at Part IV, which contains a comparison of home market prices for LPTs.

⁷² See Hyosung Case Brief at 2-3, 8-10.

does not indicate that either the sales or production process was abnormal.⁷³ Additionally, as noted above, Hyosung has stated that “{t}he time it takes to deliver the materials and components to the Changwon plant determines a large portion of the manufacturing schedule and, hence, lead time.”⁷⁴ Record evidence thus indicates that the time necessary to deliver materials and components determines the manufacturing schedule and lead times, rather than an expedited production schedule. Also, an analysis of the lead times for all sales in the home market for which Commerce has complete information indicates that the lead times for these two sales are not unusual or abnormal but instead fall within or near the range of lead times of other home market sales for which Commerce has information.⁷⁵ Thus, we find that the lead times for the two sales in question are within or close to the normal lead times for other sales of LPTs in the home market, and do not provide the evidence, as Hyosung argues, that these sales were made outside the ordinary course of trade.

With respect to profit rates, Hyosung calculated profit rates for the two sales in question and compared those calculated profit rates to an average profit rate for all sales.⁷⁶ Hyosung compared a calculated net price to the purported total cost of production to derive the profit rates for the two sales in question.⁷⁷ Commerce calculated the profit rates for all reported home market sales, using the net price calculated by Commerce in the *Preliminary Results* and comparing it to both the reported total cost of production⁷⁸ and to the average cost. We found that the range of profits, excluding the two sales in question, was much higher than the average profit calculated by Hyosung.⁷⁹ Nevertheless, the two sales in question have profit rates higher than the range of profit rates for the other home market sales.⁸⁰ However, given that LPTs are highly specialized, custom-made products, where higher profits would be expected under certain circumstances, it is not surprising that certain sales have higher profit rates. The higher profit rates are not themselves dispositive of sales outside the ordinary course of trade.

However, while the profit rates for these two sales are higher than the range of profit rates for the other home market sales, our analysis of these sales must examine the totality of the circumstances when determining whether these sales are outside of the ordinary course of trade. Hyosung has stated that Commerce has ample and detailed information necessary to undertake

⁷³ See Final Analysis Memorandum at Part IV.

⁷⁴ See AQR at A-18.

⁷⁵ Hyosung provided detailed sales documentation for one sale in its AQR. See AQR at Exhibit A-14. In addition, Hyosung provided sales documentation on a number of other sales in its SBCQR. See SBCQR at Exhibits SBC-Q3, SBC-Q7(1) and SBC-Q7(2). We have summarized this information in the Final Analysis Memorandum, as much of the information is proprietary in nature. See Final Analysis Memorandum at Part IV. We note that Hyosung’s claimed average lead times, as reflected in the Hyosung Case Brief at 2-3, are higher than all but one of the sales for which Commerce has the sales information necessary to calculate individual lead times.

⁷⁶ See Hyosung Case Brief at 7.

⁷⁷ We are unable to determine the basis for the TOTCOP figures used by Hyosung, as these figures do not comport to the those reported in the most recent cost database. We have recalculated the profit rates using the reported total cost of production figures. See Final Analysis Memorandum at Part IV for further discussion.

⁷⁸ See Hyosung’s Letter, “Large Power Transformers from Korea: Hyosung’s Supplemental Section D Questionnaire Response,” dated June 29, 2020 (SDQR) at Exhibit SD-Q1, which details the accompanying home market sales database (HYOCP02).

⁷⁹ See Final Analysis Memorandum at Part IV.

⁸⁰ *Id.*

this analysis.⁸¹ As we stated above, there is no evidence on the record to suggest that the sales in question were produced according to unusual product specifications. In addition, Hyosung stated that it did not make any sales to an affiliated party in the home market. With respect to whether the LPTs in question were sold pursuant to unusual terms of sale, the record demonstrates that the sales process was not unusual for the two sales in question. The pre-sale process was the same as for other sales of LPTs in the home market, as were the terms of sale. The lead times for the production of the two LPTs in question were within or very near the lead times for other sales for which Commerce has record evidence. The sales prices for the two sales in question are within the range of sale prices for LPTs sold in the home market during the POR.

We have examined other factors identified in *Mechanical Tubing Switzerland* and other decisions and find that there are no factors which would indicate that Hyosung's sales process for these two sales is otherwise outside of the ordinary course of trade. In *PTFE Resin from Japan*,⁸² Commerce excluded certain sales made by respondent Daikin Industries (Daikin). Commerce noted that the excluded sales by Daikin "involved extremely small quantities of merchandise at prices substantially higher than the prices of the vast majority of sales reported" but also stated that "{s}atisfaction of these factors alone does not warrant excluding the sales from our home market database."⁸³ Commerce excluded the sales in *PTFE Resin from Japan* because, in addition to the small quantities and substantially higher prices, the sales in question by Daikin were not for consumption but for evaluation purposes.⁸⁴ There is no evidence on the record to suggest that the two Hyosung sales in the home market are "extremely small quantities" or "not for consumption." In *TRBs from Japan*,⁸⁵ Commerce excluded certain sales from respondent Koyo Seiko, K.K. (Koyo) as these were sample sales which "were negotiated separately from the standard price agreements."⁸⁶ Record evidence shows that Hyosung negotiated the terms of sale for the two home market sales in a normal fashion for the LPT market.

Thus, the only factor remaining concerns whether the profit margins for the two home market sales in question provide a sufficient basis to determine that the sales in question are outside of the ordinary course of trade. Given the totality of the circumstances, we do not find that the profit margins in question are sufficiently high to remove these sales from the home market database. In *Koenig & Bauer-Albert AG*, the CAFC noted that the SAA cited "sales with abnormally high profits" as sales which may, or could, be considered outside of the ordinary course of trade.⁸⁷ The CAFC further stated that "{t}he use of "may" and "could" indicates that high profits alone are not enough to establish that the sales are outside the ordinary course of trade."⁸⁸ The CAFC also noted that the respondent in the case had five sales with profit margins of 0.59 percent, 2.53 percent, 5.05 percent, 13.00 percent, and 58.39 percent, and upheld

⁸¹ See Hyosung Case Brief at 1, 3.

⁸² See *Granular Polytetrafluoroethylene Resin from Japan; Final Results of Antidumping Duty Administrative Review*, 58 FR 50343 (September 27, 1993) (*PTFE Resin from Japan*) at Comment 4.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ See *Tapered Roller Bearings, Finished and Unfinished, and Parts Thereof, from Japan; Final Results of Antidumping Duty Administrative Review*, 57 FR 4951 (February 11, 1992) (*TRBs from Japan*) at Comment 43.

⁸⁶ *Id.* 4958-4959.

⁸⁷ See *Koenig & Bauer-Albert AG* at 1345.

⁸⁸ *Id.*

Commerce's decision to find the sale with a profit margin of over 58 percent to be within the ordinary course of trade despite the fact that this sale had a profit margin over four times greater than the next most profitable sale.⁸⁹

Furthermore, the Court of International Trade (CIT or the Court) has held in numerous cases that high or low profit margins alone are insufficient to find that sales are outside the ordinary course of trade. In *Appvion, Inc.*, the CIT defined when sales are made within the ordinary course of trade under section 771(15) of the Act and also cited to *U.S. Steel Corp. v. United States*, 37 CIT ___, 953 F.Supp.2d 1332, 1341 (2013) (*U.S. Steel*) as well as *Cemex, S.A. v. United States*, 133 F. 3d 897, 900 (CAFC 1998) (*Cemex S.A.*) to emphasize that Commerce must evaluate all case-specific criteria and the totality of the circumstances when making its determination.⁹⁰ With respect to prices and profits, the Court stated that “{v}ery low prices or profits may be indicative of sales outside the ordinary course of trade; however, the mere fact of such low prices or profits does not necessarily mean that such sales are outside the ordinary course of trade, as Commerce must evaluate all the circumstances particular to the sales in question.”⁹¹ In *Murata Manufacturing*, the Court noted that the respondent bears the burden of proving whether sales are outside of the ordinary course of trade.⁹² The Court held that the respondent's arguments that the sales in question were in smaller quantities and at higher prices were insufficient to establish that the sales were outside the ordinary course of trade, citing to Commerce's practice to consider all of the circumstances surrounding such sales rather than one factor taken in isolation.⁹³ In *NTN Bearing*, the Court noted that the presence of profits for some sales that are higher than those of other sales (*i.e.*, unusual profits) is “merely an element which does not necessarily place the sales outside the ordinary course of trade under Commerce's requirement for additional evidence.”⁹⁴ Thus, the presence of higher profits for Hyosung's two home market sales, even abnormally higher profits, is not, alone, sufficient to find the sales outside of the ordinary course of trade.

Hyosung cites to *Mechanical Tubing from Germany*, where Commerce found one sale outside of the ordinary course of trade because the sales price was aberrational and the profit was abnormally high.⁹⁵ With respect to the sale in *Mechanical Tubing from Germany*, we do not have the proprietary evidence of that record on the record of this proceeding. However, as we have noted, in *Koenig & Bauer-Albert AG*, the Court upheld Commerce's determination that a sale was made in the ordinary course of trade when the profit margin was more than four times higher than the next most profitable sale.⁹⁶ As the Hyosung sale with the highest profit margin is substantially less than four times higher than the profit margin of sales which Hyosung does not

⁸⁹ *Id.* Hyosung's highest profit margin, for one of the two home market sales in question, is substantially less than four times the highest profit margin of sales which Hyosung does not contest are within the ordinary course of trade. See Final Analysis Memorandum at Part IV.

⁹⁰ See *Appvion, Inc. v. United States*, 100 F.Supp. 3d 1374, 1378-80 (Ct.Int'l Trade, September 17, 2015)(*Appvion, Inc.*). *Cemex S.A.* cites *Murata Manufacturing*.

⁹¹ See *Appvion, Inc.* at 1379.

⁹² See *Murata Manufacturing* at 606.

⁹³ *Id.* at 606-607.

⁹⁴ See *NTN Bearing Corp of America v. United States*, 186 F. Supp. 2d 1257 at 1293(Ct. Int'l Trade, January 24, 2002)(*NTN Bearing*), citing *Torrington Co. v. United States*, 146 F. Supp. 2d 845, 863 (CIT 2001) (“*Torrington*”).

⁹⁵ See *Mechanical Tubing from Germany* Issues and Decision Memorandum at Comment 3.

⁹⁶ See *Koenig & Bauer-Albert AG* at 1345.

contend are outside of the ordinary course of trade, we find that record evidence does not support a finding that the profits for the two home market sales in question are sufficiently abnormal to justify alone that the sales in question are outside the ordinary course of trade.⁹⁷

The petitioners speculate that the higher profits claimed by Hyosung may be due to an understatement of the cost of production.⁹⁸ The petitioners compared the two sales in question to other home market sales with certain similar physical characteristics.⁹⁹ These characteristics include, according to the petitioners, three-phase transformers with similar MVAs, core transformer technology, and high line voltage.¹⁰⁰ The petitioner groups three cost of production models to compare to each of the two home market sales which Hyosung claims are outside the ordinary course of trade, and states that Hyosung reported a lower cost of manufacture for each of the two sales in question in comparison to LPTs which the petitioners claim have similar sizes and physical characteristics.¹⁰¹ We have examined this information, and do not find it persuasive. For one sale, the cost of manufacture is nearly the same as the average cost for the other models listed by the petitioners.¹⁰² For the other sale, the other supposedly similar models contain numerous differences in reported product characteristics.¹⁰³ The petitioners have not explained why these differences in product characteristics are unimportant in this analysis. Thus, we do not find that the reported cost of production or cost of manufacture for either of the sales in question is unreasonably low.

In summary, we have considered the totality of the circumstances for the two home market sales that Hyosung contends are outside of the ordinary course of trade. We find that these sales have non-aberrational prices and were made using Hyosung's normal sales process. While the profit margins for the two sales in question are higher than the profit margins for the other home market sales, we do not find them to be sufficiently abnormal as to justify their exclusion from the home market sales database. As there are no other factors which would indicate that these sales are outside of the ordinary course of trade, we have continued to include these sales in our calculation of normal value.

Comment 2: Date of Sale

Hyosung's Comments

- Commerce should use the date on which the last shipment of a sale was completed as the date of sale for certain U.S. sales, rather than the shipment date of the first portion of a sale.¹⁰⁴

⁹⁷ See Final Analysis Memorandum at Part IV for further discussion.

⁹⁸ See Petitioners' Hyosung Rebuttal Brief at 17.

⁹⁹ *Id.* at 18.

¹⁰⁰ *Id.*

¹⁰¹ *Id.*

¹⁰² See Final Analysis Memorandum at Part IV for further discussion.

¹⁰³ *Id.*

¹⁰⁴ See Hyosung Case Brief at 15.

- Hyosung reported the date that all shipments from the Changwon plant were completed in instances where different portions of the LPT were shipped on different days; in some cases, the main body was shipped after associated parts.¹⁰⁵
- The reported shipment date is consistent with reporting in prior segments of the proceeding.¹⁰⁶
- Commerce's determination of the date of sale should reflect when shipment for the entire order has been completed, not when it is initiated.¹⁰⁷
- Commerce's section C questionnaire asks respondents to report the date of shipment from the last facility under the respondent's control, indicating that Commerce is requesting information regarding the shipment date of an entire unit and not a single component.¹⁰⁸
- Hyosung reported the date of shipment and the date of sale as the same, and Commerce did not change or question the reported shipment date.¹⁰⁹
- The reported date of sale is the date that the main body of the LPT was shipped to the United States, which is at times after the subject components were shipped.¹¹⁰
- While the main body sometimes ships after certain components, it often enters U.S. customs territory before the parts.¹¹¹
- Commerce should find that the shipment dates and entry dates of the main body are controlling.¹¹²

Petitioner's Rebuttal Comments:

- Commerce's preliminary adjustments to the date of sale for the U.S. sales in question are both consistent with Commerce's normal practice and supported by substantial evidence.¹¹³
- Commerce has relied on Hyosung's reported shipment date as the date of sale, rather than the purchase order date, for a number of previous reviews, because the date of shipment best reflects the date on which the material terms of sale are determined.¹¹⁴
- There is no record evidence to suggest that the material terms of sale were altered subsequent to the first shipment.¹¹⁵
- Hyosung is aware of Commerce's evolving date of sale methodology for this proceeding and its failure to report the first date of shipment as the date of sale for these sales is indicative of Hyosung's continued refusal to cooperate to the best of its ability.¹¹⁶

¹⁰⁵ *Id.*

¹⁰⁶ *Id.*

¹⁰⁷ *Id.* at 16.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*

¹¹⁰ *Id.*

¹¹¹ *Id.* at 17.

¹¹² *Id.*

¹¹³ See Petitioners' Hyosung Rebuttal Brief at 24.

¹¹⁴ *Id.* at 24-25.

¹¹⁵ *Id.* at 25.

¹¹⁶ *Id.*

- Using the first date of shipment for a multiple shipment sale as the date of sale is consistent with Hyosung’s practices in the comparison market.¹¹⁷

Commerce’s Position

We continue to use the first date of shipment as the date of sale for certain of Hyosung’s U.S. sales.

Commerce’s regulations at 19 CFR 351.401(i) state that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” The regulation provides further that Commerce may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹¹⁸ As the SAA accompanying the statute explains, the date of sale is the “date when the material terms of sale are established.”¹¹⁹ Commerce has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹²⁰ Commerce’s interpretation of the material terms of sale has evolved over time, and can include (but is not limited to) price, quantity, delivery terms, and payment terms.¹²¹ Indeed, “{i}n choosing a date of sale, Commerce weighs the evidence presented and determines the significance of any changes to the terms of sale involved.”¹²² Additionally, Commerce has explained that, “in situations involving large custom-made merchandise in which the parties engage in formal negotiation and contracting procedures, Commerce usually will use a date other than the date of invoice.”¹²³ In discussing why Commerce did not adopt a uniform date of sale, such as the date of invoice, under 19 CFR 351.401(i), Commerce stated that the invoice date “is not necessarily the date on which price and quantity are established, and, thus is not the date on which the domestic industry lost the ability to make a sale to a U.S. customer.”¹²⁴

The CIT has stated that “a party seeking to establish a date of sale other than invoice date bears the burden of producing sufficient evidence to ‘satisfy’ Commerce that a different date better

¹¹⁷ *Id.* at 26.

¹¹⁸ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

¹¹⁹ See SAA at 4153.

¹²⁰ See, e.g., *Stainless Steel Butt-Weld Pipe Fittings from Italy: Preliminary Results of Antidumping Duty Administrative Review and Preliminary No Shipment Determination*, 76 FR 79651 (December 22, 2011) at 79653, unchanged in *Stainless Steel Butt-Weld Pipe Fittings from Italy: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 24459 (April 24, 2012); and *53-Foot Domestic Dry Containers from the People’s Republic of China: Preliminary Determination of Sales at Less Than Fair Value; Preliminary Negative Determination of Critical Circumstances; and Postponement of Final Determination and Extension of Provisional Measures*, 79 FR 70501 (November 26, 2014), and accompanying Preliminary Decision Memorandum at 17, unchanged in *53-Foot Domestic Dry Containers from the People’s Republic of China: Final Determination of Sales at Less Than Fair Value; Final Negative Determination of Critical Circumstances*, 80 FR 21203 (April 17, 2015).

¹²¹ See *Sahaviriya Steel Industries Public Company Limited v. United States*, Court No. 09-00229, Slip-Op 10-68 (CIT 2010) (SSI) at 34.

¹²² *Id.*

¹²³ See *Antidumping Duties; Countervailing Duties, Final Rule*, 62 FR 27296, 27348 (May 19, 1997) (*Preamble*).

¹²⁴ *Id.* at 27348.

reflects the date on which the exporter or producer establishes the material terms of sale.”¹²⁵ Alternatively, Commerce may exercise its discretion to rely on a date other than invoice date if Commerce “provides a rational explanation as to why the alternative date ‘better reflects’ the date when ‘material terms’ are established.”¹²⁶ The date of sale is the date on which the parties establish the material terms of the sale. This normally includes the price, quantity, delivery terms and payment terms.¹²⁷

In a previous segment of this proceeding, Commerce moved from purchase order date to shipment date to determine the date of sale.¹²⁸ Commerce has continued to use shipment date as the date of sale in subsequent segments of the proceeding.¹²⁹ Hyosung has acknowledged this movement to the date of shipment as date of sale and stated that it has reported the date of sale accordingly.¹³⁰ Nevertheless, Commerce determines the date of sale based upon the facts specific to each review.¹³¹

As the Court noted in *SSI*,

{t}he antidumping statute on its face does not specify the manner in which Commerce is to determine the date of sale methodology. The legislative history, however, provides some insight into what Congress intended. As the Statement of Administrative Action accompanying the statute explains, the date of sale is the “date when the material terms of sale are established.”¹³²

The Court also noted that “{i}n its interpretation of material terms of sale, Commerce’s practice has evolved to include price, quantity, delivery terms and payment terms.”¹³³ In addition, the *Preamble* states that Commerce retains the preference for using a single date of sale for each respondent, rather than a different date of sale for each sale.¹³⁴ Commerce’s determination of the date of sale thus attempts to capture the overall reality of the market for the merchandise which is being sold.

¹²⁵ See *Allied Tube*, 132 F. Supp. 2d at 1090-1092.

¹²⁶ See *SeAH Steel Corp. v. United States*, 25 C.I.T. 133, 135 (Ct. Int’l Trade 2001).

¹²⁷ See *USEC Inc. v. United States*, 31 CIT 1049, 1055 (CIT 2007).

¹²⁸ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017), and accompanying Issues and Decision Memorandum at Comment 17.

¹²⁹ See, e.g., *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2016-2017*, 83 FR 45415 (September 7, 2018), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019); *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2017-2018*, 84 FR 55559 (October 17, 2019), and accompanying Preliminary Decision Memorandum at 6-7, unchanged in *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2017-2018*, 85 FR 21827 (April 20, 2020).

¹³⁰ See AQR at A-32.

¹³¹ See *SSI* at 39.

¹³² *Id.* at 33-34.

¹³³ *Id.* at 34.

¹³⁴ See *Preamble* at 27348.

As we noted in Comment 1 above, the market for LPTs consists of the production and sale of a single, highly customized unit, which is made of a main body and various integral components, as well as various custom and sometimes extensive services which may include transportation and installation, among others. Such services may occur after shipment, and may change after the date of shipment.¹³⁵ However, there is no record evidence that the quantity of such sales changes (the quantity is always one LPT)¹³⁶ or that the price of the LPT in question changes, once the shipment of the LPT has begun.

As the Court has noted, “flexibility is the cornerstone of Commerce’s date of sale analysis” and “in choosing a date of sale, Commerce weighs the evidence presented and determines the significance of any changes to the terms of sale involved.”¹³⁷ While there may be instances in which changes to the material terms of sale occur after the date of shipment, Commerce must, as the Court has stated, weigh the evidence and determine the significance of any such changes in determining the date of sale.

Hyosung states that it made certain shipments to the United States of sales of LPTs where it divided the shipment into two parts. These parts consist of the main body and various components.¹³⁸ Hyosung further states that the components are shipped first, and the main body later.¹³⁹ Hyosung also states that the components are necessary for the LPT to function.¹⁴⁰ Hyosung further notes that the main body often enters the United States before the components, and states that the entry date of the main body should be controlling.¹⁴¹ Hyosung notes that Commerce, in previous reviews, found the date of sale for U.S. sales which were split to be the date of the second shipment, contrary to the *Preliminary Results*.¹⁴² The petitioners rebut that Commerce found the first date of shipment to be the date of sale because there is no record evidence to suggest that the material terms of sale were altered subsequent to the first shipment.¹⁴³ The petitioners also assert that Hyosung failed to report the first shipment date as date of sale, as required by Commerce.¹⁴⁴ The petitioners also state that using the first date of shipment as date of sale for U.S. sales would be consistent with Hyosung’s treatment of home market sales.¹⁴⁵

We do not find that the entry date of merchandise should be the controlling factor in determining the date of sale, because the entry date is not relevant to whether the material terms of sale are or are not settled. Additionally, as we noted above, the Court has stated that Commerce determines the date of sale based upon the facts specific to each review. With respect to the appropriate date of sale for Hyosung’s U.S. sales which are shipped in two separate shipments, we continue to

¹³⁵ See BQR at 37; *see also* Hyosung’s Letter, “Hyosung Heavy Industries Corporation’s Section C Questionnaire Response,” dated March 20, 2020 (CQR) at C-32.

¹³⁶ See CQR at C-29.

¹³⁷ See SSI at 34.

¹³⁸ See Hyosung Case Brief at 16.

¹³⁹ *Id.*

¹⁴⁰ *Id.*

¹⁴¹ *Id.* at 17.

¹⁴² *Id.* at 15.

¹⁴³ See Petitioners’ Hyosung Rebuttal Brief at 25.

¹⁴⁴ *Id.*

¹⁴⁵ *Id.* at 26.

find that the date of the first shipment is the appropriate date of sale. Hyosung states that cancellations may occur up until the completion of production,¹⁴⁶ and that changes to terms of sale involving product specifications and work scope may occur prior to shipment.¹⁴⁷ Once production is completed, and the unit tested, it is disassembled and prepared for shipment.¹⁴⁸ There is no evidence on the record to indicate that the quantity or price of the LPT unit changes between the shipment dates or after the first shipment date. Once an LPT is shipped, either in part or whole, there has been a meeting of the minds between the customer and the producer of the LPT with respect to completion of the sale. Because the material terms of sale, for the sale as a whole, can change up to the shipment date of an LPT, or up to the date of the first shipment of part of the LPT, we find that the first date of shipment for Hyosung's sales of LPTs to the United States is the appropriate date of sale, consistent with 19 CFR 351.401(i).

Comment 3: Ministerial Errors/Programming Changes

Hyosung's Comments

- Commerce double counted billing adjustments for one U.S. sale, by using the NET_GRSUPRU variable (which was already net of billing adjustments) and subtracting billing adjustments a second time.¹⁴⁹
- Commerce should correct this ministerial error and not subtract the billing adjustment from the NET_GRSUPRU.¹⁵⁰

Petitioners' Rebuttal Comments

- The petitioners concur with Hyosung and state that Commerce should correct the resulting inadvertent clerical error.¹⁵¹

Commerce's Position

We agree with both Hyosung and the petitioners that Commerce made a ministerial error that should be corrected with respect to the treatment of the variable BILLADJU. We have revised the SAS program to remove the variable from the calculations, because the variable NET_GRSUPRU reflects the inclusion of the billing adjustment.¹⁵²

B. General Issues

Comment 4: Rate for Non-selected Respondents

Iljin's Comments:

¹⁴⁶ See AQR at A-21, footnote 11.

¹⁴⁷ *Id.* at A-22.

¹⁴⁸ *Id.*

¹⁴⁹ See Hyosung Case Brief at 14.

¹⁵⁰ *Id.*

¹⁵¹ See Petitioners' Hyosung Rebuttal Brief at 23.

¹⁵² See Final Analysis Memorandum.

- Commerce preliminarily assigned a rate of 52.75 to Hyosung, the only mandatory respondent in this administrative review, and thus also assigned Iljin a rate of 52.75 percent.¹⁵³
- Neither the statute nor the regulations require Commerce to assign Hyosung's rate to Iljin.¹⁵⁴
- Commerce is required to establish dumping margins for each respondent as accurately as possible and in a fair and equitable manner.¹⁵⁵
- 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.¹⁵⁶
- Should Commerce continue to assign the rate calculated for Hyosung in the final results, the margin calculated for Hyosung in the *Preliminary Results* is overstated.¹⁵⁷

Petitioners' Rebuttal Comments

- Commerce applied the rate calculated for Hyosung to Iljin pursuant to section 735(c)(5)(A) of the Act.¹⁵⁸
- Commerce should continue to apply the rate calculated for Hyosung to Iljin for the final results.¹⁵⁹
- Commerce explained that it used 735(c)(5)(A) of the Act, which is normally used to calculate the all-others rate in investigations, for guidance on how to apply the rate to non-selected respondents, according to longstanding administrative practice.¹⁶⁰
- The various court cases to which Iljin cites are not analogous to the present situation and are thus inapplicable.¹⁶¹
- Commerce's practice is clear, consistent with the statute, and fair, and thus Commerce should not deviate from its decision in the *Preliminary Results*.¹⁶²

Commerce's Position

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 guidance provided in the statute and Commerce's practice. We believe that this is a reasonable method and the

¹⁵³ See Iljin Case Brief at 2.

¹⁵⁴ *Id.*

¹⁵⁵ *Id.* Footnote 4 cites to a number of court cases which Iljin argues support its contention, including *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F.3d 1370, 1379 (CAFC); *Shakeproof Assembly Components, Div. of Illinois Tool Works, Inc. v. United States*, 268 F.3d 1376, 1382 (CAFC 2001); *Lasko Metal Products, Inc. v. United States*, 43 F.3d 1442, 1446 (CAFC 1994); *Rhone Poulenc, Inc. v. United States*, 899 F.2d 1185, 1191 (CAFC 1990); *Koyo Seiko Co., Ltd. v. United States*, 36 F.3d 1565, 1573 (CAFC 1994).

¹⁵⁶ *Id.* at 2.

¹⁵⁷ *Id.* at 3.

¹⁵⁸ See Petitioners' Iljin Rebuttal Brief at 1.

¹⁵⁹ *Id.* at 2.

¹⁶⁰ *Id.* at 2-3.

¹⁶¹ *Id.* at 3-4

¹⁶² *Id.* at 4-5.

expected method of calculating such a margin, as set forth in the SAA.¹⁶³ 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 non-selected companies.¹⁶⁴ We find that a mandatory respondent's rate is reflective of dumping found during a segment of a proceeding. Thus, there is neither a need nor a requirement to request additional information regarding Iljin's sales during this administrative review. Therefore, we are assigning the final rate calculated for Hyosung, 52.47 percent, to the non-selected companies, including 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 of review in the *Federal Register*.

☒

☐

Agree

Disagree

6/3/2021

X



Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance

¹⁶³ See the SAA at 873.

¹⁶⁴ See *Yangzhou Bestpak Gifts & Crafts Co., Ltd. v. United States*, 716 F. Supp. 3d 1370, 1379 (Fed. Cir. 2013) (*Bestpak*).