

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

ABB INC. v. United States

Court No. 15-00108, Slip Op. 16-95 (CIT, October 7, 2016)

SUMMARY

The Department of Commerce (the Department) has prepared these final results of redetermination pursuant to the opinion and remand order of the U.S. Court of International Trade (CIT or Court) in *ABB INC. v. United States*, Slip Op. 16-95 (CIT, October 7, 2016) (*Remand Order*), in which the Court remanded the Department's final results of the first administrative review of the antidumping order on large power transformers from the Republic of Korea (Korea), for the period of review (POR) February 16, 2012, through July 31, 2013.¹ In particular, the Court ordered the Department on remand to further address a sequencing issue with regard to certain of Hyundai's² U.S. sales documents on the record. The Court also directed

¹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 17034 (March 31, 2015) (*Final Results*) and accompanying Memorandum, entitled "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; 2012-2013" (Issues and Decision Memorandum); see also *Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 26001 (May 6, 2015) (*First Amended Final Results*) and accompanying Memoranda, entitled "Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013: Allegations of Ministerial Errors" (First Amended Final Ministerial Error Memo); "Analysis of Data Submitted by Hyosung Corporation in the Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013" (Hyosung's First Amended Final Analysis Memo); and "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai) in the Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013" (Hyundai's First Amended Final Analysis Memo); see also *Large Power Transformers from the Republic of Korea: Second Amended Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 35628 (June 22, 2015) (*Second Amended Final Results*) and accompanying Memoranda, entitled "Second Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013: Allegation of Ministerial Error" (Second Amended Final Ministerial Error Memo); "Analysis of Data Submitted by Hyosung Corporation (Hyosung) in the Second Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013" (Hyosung's Second Amended Final Analysis Memo); and "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai) in the Second Amended Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013" (Hyundai's Second Amended Final Analysis Memo).

² Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai).

the Department to further explain: (1) its treatment of the U.S. commissions of Hyosung³ and Hyundai (collectively, respondents); (2) the record basis for such treatment; (3) whether such U.S. commissions resulted in the granting of commission offsets, and (4) the legal and factual basis for the granting or denial of the commission offsets.

In accordance with the *Remand Order*, the Department has reconsidered its determination in the *Second Amended Final Results* in these final results of redetermination. As discussed below, pursuant to the *Remand Order* and the clarification provided from Hyundai on remand, the Department finds that the sequencing of certain Hyundai U.S. sales documentation is sufficiently explained and/or clarified. Furthermore, for the reasons explained below, the Department finds that the respondents' U.S. commissions were incurred in the United States on the basis of record evidence, and thus, that the commission offsets should not have been granted to Hyosung and Hyundai.

DISCUSSION

A. Background

On August 29, 2013, ABB Inc. (ABB) requested an administrative review, and on August 30, 2013, Hyosung, Hyundai, and ILJIN Electric Co., Ltd. (Iljin) requested an administrative review of its own sales.⁴ On October 2, 2013, based on these requests, the Department initiated the first administrative review of large power transformers from Korea for

³ Hyosung Corporation and HICO America Sales and Technology (HICO America) (collectively, Hyosung).

⁴ See Letter from ABB to the Department, regarding "Large Power Transformers from the Republic of Korea – Petitioner's Request for Administrative Review," dated August 29, 2013; see also Letter from Hyosung to the Department, regarding "First Administrative Review of Large Power Transformers from the Republic of Korea: Request for Administrative Review," dated August 30, 2013; see also Letter from Hyundai to the Department, regarding "Large Power Transformers from Korea," dated August 30, 2013; see also Letter from Iljin to the Department, regarding "Large Power Transformers from the Republic of Korea: Request for Administrative Review," dated August 30, 2013.

the period February 16, 2012 through July 31, 2013.⁵ The Department selected Hyosung and Hyundai as mandatory respondents.⁶

On September 24, 2014, relying on factual information provided by the respondents, the Department determined preliminary dumping margins of 6.56 percent and 9.34 percent for Hyosung and Hyundai, respectively, in the *Preliminary Results*.⁷ On March 31, 2015, the Department issued the *Final Results*, determining final dumping margins of 6.43 percent and 9.53 percent for Hyosung and Hyundai, respectively.⁸

On April 10, 2015, ABB challenged certain aspects of the *Final Results* before the Court, including the sequencing of certain Hyundai U.S. sales documents and the treatment of both respondents' U.S. commissions.⁹

On May 6, 2015, in response to ministerial error allegations, the Department issued the *First Amended Final Results* and on June 22, 2015, the *Second Amended Final Results*.¹⁰ The *Second Amended Final Results* assigned dumping margins of 8.23 percent and 12.36 percent to Hyosung and Hyundai, respectively.¹¹

B. Court's Holding

On October 7, 2016, with regard to the sequencing of certain Hyundai sales documents, the Court disagreed with the Department's determination that ABB's alleged discrepancies regarding the sequencing of certain documents were not outweighed by the remaining record

⁵ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews and Request for Revocation in Part*, 78 FR 60834 (October 2, 2013) (*Initiation*).

⁶ See Issues and Decision Memorandum at 3; see also *Remand Order*, Slip Op. 16-95 at 6.

⁷ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012-2013*, 79 FR 57046 (September 24, 2014) (*Preliminary Results*).

⁸ See *Final Results*, 80 FR at 17035.

⁹ See *Remand Order*, Slip Op. 16-95 at 7.

¹⁰ See *First Amended Final Results*, 80 FR 26001; see also *Second Amended Final Results*, 80 FR 35628.

¹¹ See *Second Amended Final Results*, 80 FR 35629.

evidence indicating that Hyundai's reported data were reliable.¹² The Court further noted that the Department acknowledged that Hyundai did not address the sequencing of documents, and concluded that this was an issue that normally would have been resolved through supplemental questionnaires, which the Department never issued to Hyundai for the purpose of explaining "these discrepancies."¹³ Similarly, the Court found that the Department "noted that Hyundai did not address the discrepancy" for a certain U.S. sale, but also acknowledged that the Department "did not ask Hyundai to provide further information, even though ABB had raised similar concerns for additional sales observations."¹⁴ The Court further found that the Department's argument that a reasonable finding was made that Hyundai's reported data are reliable, regardless of the discrepancies in sequencing, is "unsupported by the record."¹⁵ The Court directed the Department to further investigate and/or explain its conclusion on remand.¹⁶

In addition, concerning the Department's treatment of the respondents' U.S. commissions, the Court held that the Department's determination to grant home market commission offsets to Hyosung and Hyundai based on its practice (*i.e.*, whereby the Department deducts the commission expenses from the price used to establish constructed export price (CEP) and offsets these deductions in the home market when commissions are incurred outside the United States), is inconsistent with the Department's finding that Hyundai's commission expenses "were incurred in the United States."¹⁷ The Court noted that Hyundai's Preliminary

¹² See *Remand Order*, Slip Op. 16-95 at 38.

¹³ *Id.*

¹⁴ *Id.*, at 38-39.

¹⁵ *Id.*, at 39.

¹⁶ *Id.*, at 39 and 44.

¹⁷ *Id.*, at 41-43; see also Memorandum to the File from David Cordell, International Trade Analyst, regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated September 18, 2014 (Hyundai's Preliminary Analysis Memo) at 10 and 13.

Analysis Memo “is devoid of any reference to a commission offset, whether it was being granted or denied,” and addresses instead the calculation of the CEP offset, a distinct adjustment, without any reference to commissions.¹⁸ The Court further noted that the Department also stated that it did not include “commission ... and other related expenses as ‘CEP’ ‘Other’ Expenses.”¹⁹ In addition, the Court found that, in the margin calculation program accompanying the *Second Amended Final Results*, the Department indicates that the field “CEPOTHER” would normally include “{a}ny other CEP (incurred in the U.S.) commissions,” but “appears to have excluded U.S. commissions from this field,” suggesting that the Department “treated them as if they were incurred outside of the United States.”²⁰ Similarly, the Court further found that the Department appears to treat the commissions as having been incurred outside of the United States, by looking at the above margin calculation program in which the U.S. commissions field is set to equal the reported commissions (“USCOMM = COMMU”), with the description for this field specifically indicating that “All commissions on EP sales, and those on CEP sales incurred outside of the U.S. ... Do Not include commissions on CEP sales incurred in the U.S. here, instead include these in CEPSELL.”²¹ The Court held that the Department’s treatment of U.S. commissions in the margin calculation program is inconsistent with the Department’s characterization of those commissions in the *Second Amended Final Results*.²² The Court held that the Department failed to adequately discuss its different treatment of U.S. commissions from its normal practice and

¹⁸ See *Remand Order*, Slip Op. 16-95 at 42; see also Hyundai’s Preliminary Analysis Memo at 10 and 13.

¹⁹ See *Remand Order*, Slip Op. 16-95 at 42.

²⁰ *Id.* In the memo, we stated that “{w}e first moved U.S. commission expenses (field COMMU) from field “CEPOTHR” back to field “USCOMM” in the U.S. Margin Program.” See Hyosung’s Second Amended Final Analysis Memo at 2; see also Hyundai’s Second Amended Final Analysis Memo at 2.

²¹ See *Remand Order*, Slip Op. 16-95 at 42.

²² *Id.*, at 42-43.

directed the Department to further clarify/explain its treatment of the respondents' U.S. commissions, the record basis for such treatment, and the legal and factual basis for granting or denial of the commission offsets on remand.²³

C. Draft Results of Redetermination Pursuant to Remand

The Department released its Draft Remand Redetermination on December 8, 2016, and invited comments from interested parties.²⁴ ABB, Hyosung, and Hyundai submitted comments on December 19, 2016.²⁵

D. Analysis

In its *Remand Order*, concerning the sequencing of Hyundai sales documentation for certain U.S. sales, the Court ordered the Department to further address the sequencing issues in question, given that the Department never issued a supplemental questionnaire to Hyundai for further explanation.²⁶ In accordance with the Court's order to further clarify this issue, we issued a supplemental questionnaire to Hyundai on November 1, 2016.²⁷ On November 10, 2016, Hyundai responded to the questionnaire, and on November 21, 2016, ABB filed comments on Hyundai's response.²⁸ On November 28, 2016, Hyundai filed comments in

²³ *Id.*, at 44-45.

²⁴ See Draft Results of Remand Determination: ABB INC. United States. Consol. Ct. No. 15-00108; Slip Op. 16-95 (December 8, 2016) (Draft Remand Redetermination).

²⁵ See Letter from ABB to the Department, regarding "Large Power Transformers from the Republic of Korea – Petitioner ABB Inc.'s Comments on the Draft Remand Results (CIT 15-00108)," dated December 19, 2016 (ABB's December 19, 2016, Comments); see also Letter from Hyosung to the Department, regarding "Large Power Transformers from the Republic of Korea: Comments on Draft Remand," dated December 19, 2016 (Hyosung's December 19, 2016, Comments); see also Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Remand," dated December 19, 2016 (Hyundai's December 19, 2016, Comments).

²⁶ See *Remand Order*, Slip Op. 16-95 at 44.

²⁷ See Letter from the Department to Hyundai, regarding "Remand of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013: Supplemental Questionnaire," dated November 1, 2016 (November 1, 2016, Supplemental Questionnaire).

²⁸ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Supplemental Questionnaire Response," dated November 10, 2016 (Hyundai's November 10, 2016, Supplemental Questionnaire Response); see also Letter from ABB to the Department, regarding "CIT 15-00108 Remand in

response to ABB’s November 21, 2016, Comments.²⁹ On December 19, 2016, ABB submitted comments on our Draft Remand Redetermination.³⁰ Based on the comments received on remand, we have examined the sequencing issue and find that Hyundai offered sufficient explanation/clarification for the discrepancies in sequencing, as discussed below. As we stated in our Draft Remand Redetermination, our analysis is limited solely to the clarification of the sequencing of Hyundai’s documents concerning certain U.S. sales.³¹

With respect to the treatment of the respondents’ U.S. commissions, the Court also stated that, upon remand, the Department must “explain its treatment of the respondents’ U.S. commissions, the record basis for such treatment, whether such U.S. commissions result in the granting of commission offsets, and the legal and factual basis for the granting or denial of the commission offsets.”³² We have reviewed the record evidence and analyzed the legal and factual basis concerning the Department’s practice regarding whether to grant or deny commission offsets. For the reasons explained below, pursuant to section 772(d)(1)(A) and (3) of the Tariff Act of 1930, as amended (the Act),³³ section 773(a) of the Act,³⁴ section B.2.b.(2)

Appeal of First Administrative Review of Large Power Transformers from Korea – Petitioner’s Comments on HHI’s Supplemental Questionnaire Response,” dated November 21, 2016 (ABB’s November 21, 2016, Comments).

²⁹ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Response to Petitioner’s November 21, 2016, Comments,” dated November 28, 2016 (Hyundai’s November 28, 2016, Comments).

³⁰ See ABB’s December 19, 2016, Comments.

³¹ See Draft Remand Redetermination at 7.

³² See *Remand Order*, Slip Op. 16-95 at 44-45.

³³ Section 772(d)(1)(A) and (3) of the Act states that “... the price used to establish constructed export price shall also be reduced by ... the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise ... commissions for selling the subject merchandise in the United States ... the profit allocated to the expenses described ...” See section 772(d)(1)(A) and (3) of the Act.

³⁴ Section 773(a) of the Act states that “...a fair comparison shall be made between...constructed export price and normal value...” See section 773(a) of the Act.

of the Statements of Administrative Action (the SAA),³⁵ and 19 CFR 351.410(e),³⁶ we find that the respondents' U.S. commission expenses were incurred outside of the United States and that we should not have granted home market commission offsets to Hyosung and Hyundai.

DISCUSSION OF COMMENTS

Issue: Document Sequencing

Summary of Issue

ABB argues that there were inconsistencies in Hyundai's reporting, specifically, the sequencing of documents provided by Hyundai to another agency (*i.e.*, [

] related to a certain U.S. sale.³⁷ ABB alleges that, for certain of Hyundai's documents for a specific U.S. sale, the sales contract is dated after the date of the commercial invoice and the date of entry to the United States, and that the same/similar document sequencing problem also applies to certain other U.S. sales.³⁸

Comments Submitted Prior to the Draft Remand Redetermination

On November 21 and 28, 2016, ABB and Hyundai submitted comments prior to our issuance of the Draft Remand Redetermination, which we have summarized below. We have reviewed those comments and incorporated them into these final results of redetermination.

³⁵ Section B.2.b.(2) of the SAA states that "under new section 772(d) {of the Act}, constructed export price will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activities occurring in the United States ... any commissions paid in selling the subject merchandise." See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823. The SAA further states that the Department is directed by section 772(d)(1)(A) of the Act to deduct commissions from CEP, but only to the extent that they are incurred in the United States on sales of the subject merchandise. *Id.*, at 823.

³⁶ 19 CFR 351.410(e) states that "the Secretary normally will make a reasonable allowance for other selling expenses if the Secretary makes a reasonable allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less." See 19 CFR 351.410(e).

³⁷ See *Remand Order*, Slip Op. 16-95 at 37.

³⁸ *Id.*, at 37-38.

a. *ABB's November 21, 2016, Comments*

ABB questions the reliability of Hyundai's U.S. sales reporting and claims that the application of partial adverse facts available is warranted given certain discrepancies in record evidence and Hyundai's disclosure of certain of new factual information.³⁹ ABB argues that the change in Hyundai's U.S. sales process likely occurred [] in [], but that Hyundai did not report the change until the Court forced it to address the document sequencing issue. ABB contends that Hyundai would have known that the original questionnaire response regarding its sales channels was inaccurate.⁴⁰

Further, ABB argues that in Hyundai's attempt to resolve the document sequencing discrepancies, its description regarding the changed function of Hyundai Corporation Korea (HDCP) in its sales process⁴¹ is contradicted by record evidence. According to ABB, during the administrative review, Hyundai reported that HDCP was part of the sales process; however, Hyundai has now reversed its position, stating that HDCP was removed from the sales process.⁴² In addition, ABB claims that Hyundai's explanation regarding streamlining its sales process appeared to be applicable to all U.S. sales and that Hyundai has not explained the reason for streamlining the sales process for only certain U.S. sales.⁴³ ABB adds that Hyundai

³⁹ See ABB's November 21, 2016, Comments at 1-2 and 5-6.

⁴⁰ *Id.*, at 2-3.

⁴¹ Hyundai stated that "Hyundai initially structured all but one of the sales as back-to-back sales from (1) HHI to Hyundai Corporation (Korea) (HDCP) or; (2) HDCP to Hyundai USA; and (3) Hyundai USA to the US customer." Hyundai further stated that "{d}uring the period of review ("POR"), Hyundai decided to streamline its sales process for US sales by structuring the sales as sales from HHI to Hyundai USA to the U.S. customer, removing HDCP...from the sales process. Hyundai streamlined the sales structure in this way for all but one sale during the POR." See Hyundai's November 10, 2016, Supplemental Questionnaire Response at 1-2.

⁴² See ABB's November 21, 2016, Comments at 3.

⁴³ ABB states that although [

had initially, in the underlying administrative review, used its explanation regarding HDCP to justify its claim for a CEP offset based on home market sales being sold at a more advanced level.⁴⁴

Moreover, ABB argues that Hyundai did not explain why the new contract between HHI and Hyundai USA for U.S. sequence number (SEQU) [] is dated [] after the commercial invoice and the date of entry of subject merchandise.⁴⁵ ABB contends that Hyundai's explanation regarding this issue⁴⁶ does not make sense because: (1) []; (2) HHI was already []; and (3) the corresponding contract for this sale was dated [].⁴⁷ ABB adds that the original agreements between HHI and HDCP for this sale were not provided for the record.⁴⁸

b. Hyundai's November 28, 2016, Comments

Regarding ABB's allegation of the discrepancies in Hyundai's responses concerning the U.S. sales channels, Hyundai argues that ABB selectively quotes Hyundai's questionnaire response while ignoring Hyundai's clear description of the two U.S. sales channels.⁴⁹ Hyundai

[]. ABB further states that that Hyundai did not explain why only certain U.S. sales were streamlined to remove HDCP. *Id.*, at 4.

⁴⁴ *Id.*, at 3-4.

⁴⁵ ABB states that the new contract between HHI and Hyundai USA for U.S. sequence number (SEQU) [] is dated [] after the commercial invoice and [] after the date of entry of subject merchandise. Also, ABB adds that the contract was dated [] after the []. *Id.*, at 5.

⁴⁶ Hyundai explains that “{b}ecause the contracts between HHI and Hyundai USA also reflect the division of the scope of work for transportation, supervision, and installation in addition to the transformer, the contracts are not finalized until the division of the scope of work between them has been agreed (e.g., which company handles supervision or installation).” Hyundai further explains that “there were some instances where the preparation of the contract memorializing the agreement in principle between HHI and {Hyundai USA} was delayed.” Hyundai adds that “there also are instances where HHI and Hyundai USA prepare revised contracts to reflect change orders from the ultimate US customers.” *See* Hyundai's November 10, 2016, Supplemental Questionnaire Response at 2.

⁴⁷ *See* ABB's November 21, 2016, Comments at 5.

⁴⁸ *Id.*

⁴⁹ Hyundai cites its questionnaire response as follows:

argues that Hyundai’s description of the sales channels was correct and covered the sales during the POR.⁵⁰ Moreover, Hyundai argues that the structure of its invoicing and payment was provided for both U.S. sales channels (*i.e.*, sales made through/involving HDCP and sales not involving HDCP) in its responses,⁵¹ but ABB only quotes Hyundai’s explanation regarding “sales made through HDCP” and ignores Hyundai’s explanation regarding “sales not involving HDCP.”⁵² While ABB asserts that “HDCP had a function in each of the sales – a function that

...HHI had two US sales channels during the POR which can be summarized as follows:

- (1) HHI shipped the transformers directly from its factories to unaffiliated customers in the United States. The transactions were structured as a sale from HHI to its affiliate Hyundai Corporation, which, in turn, resold the merchandise to its US affiliate, Hyundai Corporation USA, and finally, Hyundai Corporation USA resold the transformers to unaffiliated U.S. customers.
- (2) HHI shipped the transformers directly from its factories to unaffiliated customers in the United States. The transformers were structured as a sale from HHI to Hyundai Corporation USA, and Hyundai Corporation USA resold the transformers to unaffiliated U.S. customers.

See Letter from Hyundai to the Department, regarding “Antidumping Administrative Review of Large Power Transformers from Korea – Section A Questionnaire Response,” dated December 18, 2013 (Hyundai’s December 18, 2013, Section A Questionnaire Response) at A-17; see also Hyundai’s November 28, 2016, Comments at 5-6.

⁵⁰ See Hyundai’s November 28, 2016, Comments at 6.

⁵¹ Hyundai cites its questionnaire response as follows:

Contracts Between the Affiliated Parties: In the US market, after HHI receives a contract or purchase order, HHI enters into a contract with either HDCP or HDCP USA *{(i.e., Hyundai USA)}* for sale of the LPT...

Invoicing: HHI invoices customers for home-market sales and Hyundai Corporation USA invoices customers for US sales. For sales made through HHI, HHI invoices HDCP at approximately the time the bill of lading is issued. For sales not involving HDCP, HHI invoices Hyundai Corporation USA, usually at the time of shipment. Finally, Hyundai Corporation USA invoices the unaffiliated US customer in accordance with the contractual terms of delivery, normally the date of delivery. If there are milestone payments, Hyundai Corporation USA invoices the customer each time a milestone is reached...

Invoicing/Payment: ... For sales not involving Hyundai Corporation *{(i.e., HDCP)}*, HHI issues a commercial invoice to, and receives payment from, Hyundai Corporation USA. For the remaining sales *{(i.e., sales involving HDCP)}*, Hyundai Corporation *{(i.e., HDCP)}* issues a commercial invoice to, and receives payment from, Hyundai Corporation USA *{(i.e., Hyundai USA)}* and HHI issues a tax invoice to, and receives payment from, Hyundai Corporation *{(i.e., HDCP)}*.

See Letter from Hyundai to the Department, regarding “Antidumping Administrative Review of Large Power Transformers from Korea – Supplemental Section A Questionnaire Response,” dated February 24, 2014 (Hyundai’s February 24, 2014, Supplemental Section A Questionnaire Response) at A-12 and A-14-A-16; see also Hyundai’s November 28, 2016, Comments at 6.

⁵² See Hyundai’s November 28, 2016, Comments at 6-7.

Hyundai now claims did not exist,” according to Hyundai, ABB ignored Hyundai’s explanation regarding “sales not involving HDCP.”⁵³

As for SEQU [], despite ABB’s claim that Hyundai did not provide the original agreements between HHI and HDCP for this sale, Hyundai argues that it did, in fact, provide a copy of the original agreement between HHI and HDCP in its November 10, 2016, Supplemental Questionnaire Response and also provided a copy of the final agreement between HHI and Hyundai USA during the review.⁵⁴ In spite of ABB’s claim that there were no changes in the scope of work initially agreed upon by HHI and HDCP and the final scope of work agreed upon by HHI and Hyundai USA, Hyundai argues that the change in the scope of work is confirmed by comparing the initial agreement and the final agreement since the initial agreement did not contain HHI’s scope of work, but the final agreement indicated that HHI would assist with [].⁵⁵ Based on this difference in the scope of work between the corresponding agreements, Hyundai further argues that the contract between HHI and Hyundai USA for this sale was not finalized until HHI’s responsibility for [] was decided, which is consistent with Hyundai’s explanation regarding discrepancies in document sequencing.⁵⁶ Hyundai also argues that ABB’s claim that the “contract in this instance is dated [] after...[] is

⁵³ *Id.*, at 7.

⁵⁴ See Hyundai’s November 10, 2016, Supplemental Questionnaire Response at Attachment RS-2; see also Hyundai’s November 28, 2016, Comments at 2; see also Letter from Hyundai to the Department, regarding “Antidumping Administrative Review of Large Power Transformers from Korea – Response to Question 1 of the Fifth Sales Supplemental Questionnaire and Fourth Cost Supplemental Questionnaire Response,” dated November 12, 2014 (Hyundai’s November 12, 2014, Supplemental Questionnaire Response) at Exhibit 7 of Attachment 1.

⁵⁵ See Hyundai’s November 28, 2016, Comments at 3.

⁵⁶ Hyundai cites its questionnaire response as “{b}ecause the contracts between HHI and Hyundai USA also reflect the division of the scope of work for transportation, supervision, and installation in addition to the transformer, the contracts are not finalized until the division of the scope of work between them has been agreed (*e.g.*, which company handles supervision or installation).” See *Id.*, at 4; see also Hyundai’s November 10, 2016, Supplemental Questionnaire Response at 2.

without merit because the customer made [] for SEQU [], the last of which was made nearly four months after the final contract between HHI and Hyundai USA.⁵⁷ In light of the date for the last payment, Hyundai adds that the timing of the payment by the customer is consistent with the date of the contract between HHI and Hyundai USA.⁵⁸

Furthermore, Hyundai claims that it provided documentation and an explanation for the sales that were identified by the Department in its November 1, 2016, Supplemental Questionnaire.⁵⁹ Hyundai argues that ABB's assumption that Hyundai's explanation that the decision to streamline the sales process appears to be applied to all U.S. sales is false.⁶⁰ Hyundai adds that Hyundai's response regarding those sales should not be extrapolated to sales that were not included by the Department's November 1, 2016, Supplemental Questionnaire.⁶¹

Comments on Draft Remand Redetermination

a. ABB's December 19, 2016, Comments

ABB argues that Hyundai failed to cooperate to the best of its ability because it failed to report the changed sales process in a timely manner, thereby not meeting the statutory obligation to provide complete and accurate responses.⁶² ABB argues that Hyundai failed to be forthcoming because: (1) despite Hyundai's claim that HDCP was removed from its sales process, HDCP [

⁵⁷ Hyundai states that the date for the last payment for this sale was dated [] and the final contract between HHI and Hyundai USA was dated []. Hyundai further states that “{t}hus, the final contract between HHI and Hyundai USA...was nearly four months before” the last payment date. *See* Hyundai's November 28, 2016, Comments at 4-5; *see also* Letter from Hyundai to the Department, regarding “Antidumping Administrative Review of Large Power Transformers from Korea,” dated December 12, 2014 (Hyundai's December 12, 2014, U.S. Sales Data Resubmission) at Attachment 1.

⁵⁸ *See* Hyundai's November 28, 2016, Comments at 4-5.

⁵⁹ *Id.*, at 7.

⁶⁰ *Id.*

⁶¹ *Id.*

⁶² *See* ABB's December 19, 2016, Comments at 13-15.

]; (2) the decision to streamline the sales process appears to be applicable to all U.S. sales, not just certain sales identified by the Department in its November 1, 2016, Supplemental Questionnaire; and (3) Hyundai has not explained why the sales process for only certain U.S. sales needed to be streamlined.⁶³ Thus, ABB reiterates that the Department should apply partial or total adverse facts available to Hyundai.⁶⁴

ABB contends that Hyundai presented new factual information regarding its allegedly changed sales process, which is not supported by the record and is contradicted by the submitted description of its sales [] structure for the sale of subject merchandise.⁶⁵ In particular, ABB claims that Hyundai's explanation regarding the removal of HDCP from its sales process is contradicted by record evidence because HDCP [], based on record evidence.⁶⁶

ABB adds that HDCP was not removed from the sales process if [], as record evidence indicates.⁶⁷

Moreover, ABB asserts that, as a result of restructuring its sales process, if the sales of subject merchandise were made from [], the corresponding [] transactions would have occurred between [], based on generally accepted accounting principles, which was not the case here.⁶⁸ ABB adds that even though expenses would have been incurred if [], Hyundai has neither reported expenses associated with [], nor explained this significant discrepancy between

⁶³ ABB refers to SEQUs []. *See Id.*, at 5 and 14-15.

⁶⁴ *Id.*, at 16.

⁶⁵ *Id.*, at 4.

⁶⁶ *Id.*, at 5.

⁶⁷ *Id.*

⁶⁸ *Id.*, at 5-6.

its [].⁶⁹ ABB reiterates that Hyundai's explanation is unsupported by record evidence, which renders its responses unreliable.⁷⁰

In addition, ABB claims that Hyundai never disclosed the changed sales process until it responded to the Department's November 1, 2016, Supplemental Questionnaire, which undermines the reliability of its questionnaire responses.⁷¹ ABB adds that Hyundai does not explain why or when the decision to change the sales structure was made during the POR.⁷² Specifically, ABB argues that, despite Hyundai's claim that it removed HDCP from its sales process, record evidence indicates otherwise.⁷³ Furthermore, ABB contends that the record now contains two conflicting descriptions of the sales process for certain U.S. sales,⁷⁴ thereby rendering Hyundai's responses unreliable and impairing the accuracy of the calculation of U.S. price.⁷⁵ In addition, ABB argues that for SEQU [], the scope of work on this sale was completed [] before the contract was issued and that Hyundai did not address the dating discrepancies regarding the commercial invoice, entry of subject merchandise, and [].⁷⁶ Finally, ABB reiterates that Hyundai's description regarding its sales process was used to justify its claim for a CEP offset based on home market sales being sold at a more

⁶⁹ *Id.*, at 6.

⁷⁰ *Id.*

⁷¹ *Id.*, at 7.

⁷² *Id.*, at 7-8.

⁷³ See ABB's December 19, 2016, Comments at 7-8; see also Hyundai's December 18, 2013, Section A Questionnaire Response at A-20 through A-26.

⁷⁴ ABB refers to SEQUs [

]. See *Id.*, at 9.

⁷⁵ ABB argues that Hyundai's originally reported sales process including HDCP or [] served as the basis for the CEP offset given to Hyundai, which is not applicable anymore because of its changed description of its sales process (*i.e.*, the removal of HDCP from the sales process). ABB also argues that Hyundai's changed sales process by removing HDCP calls into question the adjustments that the Department made based on Hyundai's originally reported expenses associated with each party's involvement in the sales process. See *Id.*, at 11-12.

⁷⁶ ABB argues that Hyundai only stated that customer made [] for SEQU []. See *Id.*, at 12-13.

advance level and that Hyundai reported various expenses based on a description of the sales process which included HDCP, questioning the reliability of the CEP offset and the relevant expenses reported by Hyundai.⁷⁷ As a result, ABB argues that the Department does not have the necessary information to calculate accurately a margin for certain U.S. sales, which, thus, supports the application of facts available.⁷⁸

The Department’s Position:

As discussed below, in accordance with the *Remand Order* and the clarification provided from Hyundai on remand, the Department finds that the sequencing of certain Hyundai sales documents is sufficiently explained and/or clarified.

In its response to the Department’s November 1, 2016, Supplemental Questionnaire, Hyundai stated that it initially structured all but one of the sales as back-to-back sales from:

- (1) HHI to HDCP;
- (2) HDCP to Hyundai USA; and
- (3) Hyundai USA to the U.S. customer.⁷⁹

Hyundai further stated that it initially structured one of the requested/identified sales by the Department as a back-to-back sale from HHI to [] and from [] to the U.S. customer.⁸⁰ Hyundai adds that, during the POR, Hyundai decided to streamline its sales process for U.S. sales by structuring the sales from HHI to Hyundai USA to

⁷⁷ See ABB’s December 19, 2016, Comments at 8-9.

⁷⁸ *Id.*, at 13.

⁷⁹ See Hyundai’s November 10, 2016, Supplemental Questionnaire Response at 1.

⁸⁰ *Id.*

the U.S. customer, removing HDCP and/or [] from the sales process.⁸¹ Hyundai further adds that it streamlined the sales structure in this way for all but one sale during the POR.⁸²

Hyundai claims that, because of the back-to-back sales processes structured initially between HHI and HDCP or [], HHI concluded the initial contracts well before the shipment of the transformers to the United States.⁸³ Hyundai further claims that, because HHI had reached agreement in principle with HDCP, [], and Hyundai USA regarding restructuring the sales channels, HHI issued invoices directly to Hyundai USA and later formalized the agreement in *pro forma* contracts.⁸⁴ Hyundai adds that, at the time of shipment, it was only necessary for Hyundai to prepare a commercial invoice, which reflected the agreement in principle between HHI and Hyundai USA regarding the transfer price for the transformer.⁸⁵

Moreover, Hyundai states that, because the contracts between HHI and Hyundai USA also reflect the division of the scope of work for transportation, supervision, and installation, in addition to the transformer itself, the contracts are not finalized until the division of the scope of work between the two entities has been agreed upon.⁸⁶ Hyundai further states that there were some instances where the preparation of the contract memorializing the agreement in principle was delayed, which HHI and Hyundai USA did not view as problematic given their close corporate relationship, their agreement in principle, and the confirmation of the transfer price in the commercial invoices.⁸⁷ Hyundai adds that there are also instances where HHI and Hyundai USA prepare revised contracts to reflect change orders from the ultimate U.S. customers.⁸⁸

⁸¹ *Id.*, at 1-2.

⁸² *Id.*, at 2.

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

⁸⁶ *Id.*

⁸⁷ *Id.*

⁸⁸ Hyundai notes that the contract dates for the CEP sales between HHI and Hyundai are not used in the margin

To support its claim, Hyundai submitted copies of the initial contracts, contracts between HHI and Hyundai USA (including revised contracts), commercial invoices, and customs entry documents, along with the worksheet that shows the initial contract dates between HHI and HDCP or [] for the U.S. sales identified/requested by the Department.⁸⁹ The initial contracts between HHI and HDCP or [] for the U.S. sales pointed to by ABB clearly indicate that the [] between HHI and HDCP or [] is dated before the [] and the []

[]. For instance, with regard to SEQU [], ABB questioned why the [], which is after [] and the []

[]. We note that the [], which is well before []

and the []

[].⁹⁰ We thus find that, for SEQU [], the []

had occurred *before* the []

[] although the [] is

dated after []. We find that this is reasonable given HHI's close relationship with HDCP and the agreement in principle regarding subject merchandise, as Hyundai stated above.

Therefore, based on record evidence, we find that the []

had occurred prior to the []

calculation. *See Id.*, at 2.

⁸⁹ *Id.*, at Attachment RS-1 and RS-2.

⁹⁰ *Id.*

] for the sales requested by the Department, and that Hyundai sufficiently addressed the discrepancies in sequencing of certain of its documents for certain U.S. sales. Therefore, pursuant to the *Remand Order*, by issuing the supplemental questionnaire for certain sales identified by ABB and the Court and by analyzing the questionnaire response from Hyundai, the Department has addressed the sequencing issue of certain of Hyundai's documents and finds that Hyundai offered a sufficient explanation/clarification for the discrepancies identified by ABB.

As for ABB's allegation that Hyundai's claim that HDCP was removed from the sales process is contradicted by record evidence, we note that Hyundai, in fact, provided descriptions of both U.S. sales channels (*i.e.*, sales made through/involving HDCP and sales not involving HDCP) in its responses during the administrative review.⁹¹ Because Hyundai already provided a description for a sales channel not involving HDCP, we find that the explanation from Hyundai's November 10, 2016, Supplemental Questionnaire Response, with regard to the removal of HDCP from its sales process, does not conflict with record evidence. In addition, we note that ABB did not point to record evidence which indicates that Hyundai's explanation regarding streamlining its sales process by removing HDCP from its sales process for certain U.S. sales is applicable to all U.S. sales; rather, ABB's claim is based on speculation. Moreover, we note that ABB's argument regarding Hyundai's CEP offset and various expenses based on Hyundai's description of its sales channel is no longer relevant because, based on our analysis of Hyundai's response to our November 1, 2016, Supplemental Questionnaire, we find that Hyundai did, in fact, adequately address our questions regarding the document sequencing issue at hand, and therefore, we have no remaining questions as to the reliability of Hyundai's

⁹¹ See Hyundai's December 18, 2013, Section A Questionnaire Response at A-17; see also Hyundai's February 24, 2014, Supplemental Section A Questionnaire Response at A-12 and A-14-A-16.

reporting of U.S. sales. Specifically, as we find that Hyundai did, in fact, accurately describe its sales channels, Hyundai's reporting of various expenses and our granting of a CEP offset are not brought into question.

Furthermore, regarding ABB's claim that Hyundai's explanation regarding the removal of HDCP from its sales process is contradicted by record evidence because HDCP [

] based on the record, we note that ABB only cites a chart from Hyundai's December 12, 2014, U.S. Sales Data Resubmission, which states that "[

]."⁹² ABB did not point to any record evidence with regard to HDCP's involvement in [

], which indicates that HDCP was [for certain U.S. sales identified by the

Department, nor were we able to find any evidence to this effect on the record upon conducting our own review of the record. Thus, we find that ABB's claim pertaining to HDCP's

involvement in the [] for certain of Hyundai's U.S. sales identified by the Department to be without merit.

As for ABB's allegation that Hyundai never disclosed the changed sales process during the POR, we note that, as ABB pointed out, [] identified by the Department in our November 1, 2016, Supplemental Questionnaire were [

].⁹³ Also, we note that [] identified by the Department's November 1, 2016, Supplemental Questionnaire was [

⁹² See Hyundai's December 12, 2014, U.S. Sales Data Resubmission at Exhibit 5 of Attachment 2.

⁹³ See ABB's November 21, 2016, Comments at 4; see also Hyundai's December 12, 2014, U.S. Sales Data Resubmission at Attachment 1.

].⁹⁴ Therefore, Hyundai did, in fact, already describe all sales channels with and without the involvement of HDCP and did report the requested/identified U.S. sales by the Department in a correct manner during the POR. Thus, we find that Hyundai did not fail to disclose this change of the sales process.

ABB made several specific arguments with respect to SEQU []. Concerning SEQU [], we disagree with ABB that the scope of work on this sale was completed [] before the contract was issued. We note that Hyundai provided an explanation as to how the scope of work for this sale (*i.e.*, []) had changed since the initial agreement by submitting the initial agreement and the final agreement and providing the comparison between these two agreements.⁹⁵ We further note that an explanation from Hyundai's November 10, 2016, Supplemental Questionnaire Response states that “{b}ecause the contracts between HHI and Hyundai USA also reflect the division of the scope of work for...[]...the contracts are not finalized until the division of the scope of work between them has been agreed ...)” and that this explanation is consistent with the circumstance of SEQU [] where the [] is dated/delayed []. We find that the [] can be delayed to a [] given the close corporate relationship and their agreement in principle between HHI and Hyundai USA, as Hyundai stated above. Further, ABB's allegation that Hyundai did not address the dating discrepancies regarding the commercial invoice, entry of subject merchandise, and [], we note that Hyundai

⁹⁴ See Hyundai's November 10, 2016, Supplemental Questionnaire Response at Attachment RS-1; *see also* Hyundai's December 12, 2014, U.S. Sales Data Resubmission at Attachment 1.

⁹⁵ See Hyundai's November 28, 2016, Comments at 3.

already provided the [], whose date is [], and that the final contract is dated nearly four months before the [] even though the [] is dated after the [].⁹⁶ We find that given the date of the initial contract, the close corporate relationship, the agreement in principle and the confirmation of the transfer price in the commercial invoice between HHI and Hyundai USA, the [] could be dated [] since it is a *pro forma* contact, as Hyundai explained above. Thus, we determine that Hyundai persuasively addressed the dating discrepancies for this sale.

As a result, we find that ABB's allegations are without merit and we disagree with ABB that the application of partial or total adverse facts available is warranted.

Issue: U.S. Commission Expenses

Hyosung's December 19, 2016, Comments

Hyosung argues that the Department should confirm its prior finding that Hyosung's commissions for U.S. sales were not incurred in the United States and that a commission offset is warranted regardless of where the commission expenses were incurred.⁹⁷ Concerning its U.S. commissions, Hyosung argues that the Department's initial determination that Hyosung's commissions were incurred in Korea because respondents receive their purchase orders generally many months or years before delivery of subject merchandise was reasonable and

⁹⁶ See Hyundai's November 10, 2016, Supplemental Questionnaire Response at Attachment RS-1; see also Hyundai's December 12, 2014, U.S. Sales Data Resubmission at Attachment 1. We note that, for this sale, [

] We also note that the [] is dated [

].

⁹⁷ See Hyosung's December 19, 2016, Comments at 1-2.

supported by record evidence.⁹⁸ Hyosung contends that because the commissions are established well before production and importation of subject merchandise based on orders secured in connection with the commission agents' efforts, the corresponding commission expenses should be treated as expenses incurred outside the United States, regardless of the fact that its commission payments were made to commission agents in the United States.⁹⁹ Hyosung adds that the Court merely instructed the Department on remand to explain discrepancies between the Department's argument before the Court,¹⁰⁰ the Department's margin program,¹⁰¹ and certain language in Hyundai's Preliminary Analysis Memorandum,¹⁰² but the Department instead expanded its evaluation of the methodology in determining when commissions are incurred and reversed its reasonable and supported determination regarding Hyosung's commissions.¹⁰³

Moreover, Hyosung argues that the Department's new "scope of economic activities" test¹⁰⁴ defies the previous, reasonable interpretation of facts and the commercial reality regarding subject merchandise because: (1) the Department previously explained before the

⁹⁸ *Id.*, at 2-3.

⁹⁹ *Id.*, at 3.

¹⁰⁰ The Department argued that it determined that "Hyosung and Hyundai incurred their commissions outside of the United States and, therefore, that a commission offset was warranted." *See Remand Order*, Slip Op. 16-95 at 41; *see also* Defendant's Response to Plaintiff's Rule 56.2 Motion for Judgement upon the Agency Record at 27.

¹⁰¹ The Department's margin program indicated that "CEPOTHER" would include "{a}ny other CEP (incurred in the U.S.) commissions..." and "USCOMM" would include "{a}ll commissions...on CEP sales incurred outside of the U.S." However, the Department appeared to have excluded the reported U.S. commissions from "CEPOTHER" and placed it in the field "USCOMM," suggesting that the Department treated them as if they were incurred outside of the United States. *See Remand Order*, Slip Op. 16-95 at 42; *see also* Hyundai's Second Amended Final Analysis Memo at 2 and attachment III (*i.e.*, U.S. Margin Program Log).

¹⁰² Hyundai's Preliminary Analysis Memo stated that U.S. commission expenses were incurred in the United States. *See Remand Order*, Slip Op. 16-95 at 42; *see also* Hyundai's Preliminary Analysis Memo at 10.

¹⁰³ *See* Hyosung's December 19, 2016, Comments at 4.

¹⁰⁴ Hyosung states that the Department test is to examine (1) where sales agents are located at the time of the commission agreement; (2) where and by what entity the corresponding commission payments were booked or made; (3) when the commission payments were made during the normal course of business. *See* Draft Remand Redetermination at 16; *see also* Hyosung's December 19, 2016, Comments at 4.

Court that Hyosung and Hyundai incur their commission expenses when they receive their purchase orders, which, in some cases, is years before delivery of subject merchandise and, thus, occurs outside of the United States; and (2) the new test appears to be a result-first test built around the facts of this case designed to achieve the Department's desired result.¹⁰⁵

Hyosung contends that, being consistent with record evidence, the Department should confirm its prior position that Hyosung's commissions are incurred outside the United States.¹⁰⁶

Concerning the commission offset, Hyosung argues that, even if the Department determines that Hyosung's commissions were paid in the United States, these commissions still qualify for commission offsets since there is nothing in the statutes, regulations, legislative history or other policy materials which distinguish between commissions incurred in the United States and those incurred outside the United States, other than the instructions regarding U.S. commissions in the Department's margin program.¹⁰⁷ Further, Hyosung argues that the statute and the SAA pertaining to CEP expenses does not refer to a commission offset, and that the regulation pertaining to a commission offset (*i.e.*, 19 CFR 351.410(e)) clearly provides that the Department will allow for a commission offset where commissions are paid in one market, but not the other, regardless of where the commission expense is incurred.¹⁰⁸ Hyosung adds that the cases¹⁰⁹ that the Department cited in its Draft Remand Redetermination only pertain to CEP

¹⁰⁵ See Hyosung's December 19, 2016, Comments at 4.

¹⁰⁶ *Id.*, at 5.

¹⁰⁷ *Id.*

¹⁰⁸ *Id.*, at 6.

¹⁰⁹ In our Draft Remand Redetermination, we cited two cases regarding two types of commissions on U.S. sales. See Draft Remand Redetermination at 2; see also *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604 (February 18, 2015) (*Certain Pasta from Italy*) and accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Issues and Decision Memorandum for the Final Results of the 17th Antidumping Duty Administrative Review: Certain Pasta from Italy; 2012-2013," dated February 10, 2015 (Issues and Decision Memorandum for *Certain Pasta from Italy*) at 8-9 and *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review;*

expense and CEP profit as for commissions paid in the United States, and did not state or articulate a practice or rationale to include a commission offset in the margin calculation, based on where the commission was paid.¹¹⁰

In addition, Hyosung argues that, with regard to the Department's internal programming notes in the margin program, the program must be consistent with the regulations (*i.e.*, 19 CFR 351.410(e)), which provide for a commission offset where commissions are paid in one market and not the other, regardless of where the commission is incurred.¹¹¹ Further, Hyosung argues that the Department's logic regarding relevant economic activities is unpersuasive and inconsistent with its regulations, which do not draw a distinction as to where U.S. commissions are incurred.¹¹² Hyosung adds that there are economic activities in the home market which the commission offset is intended to account for since, on home market sales, Hyosung engages in many types of selling functions performed by its commission agents in the United States and incur direct and indirect selling expenses to sell to the home market.¹¹³ Hyosung contends that the corresponding indirect selling expenses in the home market are not deducted from home market price when calculating normal value, while the commission expenses for U.S. sales are

2011-2013, 79 FR 78396 (December 30, 2014) (*Certain Steel Nails from the United Arab Emirates*) and accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled "Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2011-2013," dated December 22, 2014 (Issues and Decision Memorandum for *Certain Steel Nails from the United Arab Emirates*) at 16.

¹¹⁰ See Hyosung's December 19, 2016, Comments at 7.

¹¹¹ *Id.*, at 7-8.

¹¹² Hyosung cites Draft Remand Redetermination as follows:

It is because, with regard to U.S. commission expense incurred in the United States, there are no relevant economic activities in the home market which are entitled to a home market commission offset to reduce the home market indirect selling expenses, as explained above.

See Draft Remand Redetermination at 13; see also Hyosung's December 19, 2016, Comments at 8.

¹¹³ See Hyosung's December 19, 2016, Comments at 8.

deducted from U.S. price, thereby resulting in an inequitable comparison between normal value and U.S. price, which the commission offset is intended to counterbalance.¹¹⁴

Hyundai's December 19, 2016, Comments

Hyundai argues that deducting all commissions incurred from U.S. price, regardless of where they were incurred, but making a commission offset to normal value only if the commissions deducted from U.S. price were incurred outside the United States, does not result in an “apples-to-apples” comparison.¹¹⁵ Further, Hyundai argues that, under the criteria announced in the Draft Remand Redetermination to determine where commissions are incurred, it is hard to imagine that a commission offset would ever be made to normal value.¹¹⁶ Moreover, Hyundai argues that the geographic distinction made by the Department in deciding whether to grant a commission offset is not supported by the statute or regulations.¹¹⁷ In particular, Hyundai contends that section 772(d)(1)(A) of the Act is related to the calculation of CEP, not normal value, and does not stipulate the imposition of a geographic distinction.¹¹⁸ Hyundai further contends that this statute clearly relates to “the party incurring the expense, not to where that party incurs the expense” and merely requires that the commissions be incurred “for selling the subject merchandise in the United States,” regardless of whether the commission is incurred inside or outside the United States.¹¹⁹ Also, Hyundai argues that the SAA’s language regarding section 772(d)(1) is only related to the calculation of CEP, not normal value, and does not support imposing a geographic distinction with regard to a commission offset.¹²⁰

¹¹⁴ *Id.*

¹¹⁵ *See* Hyundai’s December 19, 2016, Comments at 2.

¹¹⁶ *Id.*

¹¹⁷ *Id.*

¹¹⁸ *Id.*, at 3.

¹¹⁹ *Id.*

¹²⁰ Citing to SAA, H.R. Rep. No. 103-316, Vol. 1 (1994), at 823, Hyundai states that the SAA language concerning deductions should be made on the basis of “any commissions paid in selling the subject merchandise.” *See Id.*, at

Hyundai adds that the fact that the statute requires CEP to be adjusted for all commissions “incurred,” regardless of where they are incurred, supports the conclusion that a commission offset should be granted, regardless of where commissions on U.S. sales are incurred.¹²¹

Regarding section 773(a)(6)(C)(iii) of the Act, Hyundai argues that the statute also does not support imposing a geographic distinction based on where commissions are incurred.¹²²

Hyundai further argues that the language of the Act does not state/suggest that “an adjustment for other differences in circumstances of sale” under section 773(a)(6)(C)(iii) should be conditioned on where the expenses are incurred.¹²³ Similarly, Hyundai argues that 19 CFR 351.410(e) does not predicate making a reasonable allowance for commissions on where the commissions are incurred, but rather predicates granting an offset solely on whether the commissions are paid in one market but not the other.¹²⁴ Hyundai adds that this regulation defines the limitation on the amount of the offset, not with reference to where the commissions are incurred, but with respect to the full amount of the “commissions allowed” as an adjustment to Hyundai’s U.S. price and, as a result, the offset for Hyundai’s other selling expenses incurred on home market sales should not be less than the full amount of commissions allowed as an adjustment on U.S. sales.¹²⁵

In addition, Hyundai argues that the Department’s margin program language has no bearing on the legality of the programming language and is not supported by the statute or

4.

¹²¹ *Id.*

¹²² Citing section 773(a), Hyundai states that “{s}ection 773(a) requires the Department, in relevant part, to make a “fair comparison...between...constructed export price and normal value.”” Hyundai further states that “{t}o do so, the Department is directed to make adjustments “due to...(iii) other differences in circumstances of sale.”” *See Id.*

¹²³ *Id.*

¹²⁴ *Id.*, at 5.

¹²⁵ Citing 19 CFR 351.410(e), Hyundai states that “the amount of “the allowance for other selling expenses” should be limited to the lesser of “the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market.” *See Id.*

regulations.¹²⁶ Regarding the Department’s criteria to determine whether commissions by Hyundai on U.S. sales were incurred in the United States, Hyundai argues that the Department did not discuss the origin of these factors or why its previous determination that Hyundai’s commissions for U.S. sales were incurred outside the United States is no longer valid.¹²⁷ Hyundai further argues that the Department’s criteria are inconsistent with the statute and the regulations, since neither of them supports a geographic distinction based on where a commission is incurred as a condition for making a commission offset.¹²⁸ Hyundai adds that the criteria will likely lead to the conclusion that all commissions are incurred in the United States, thereby negating the requirement for the Department to grant a commission offset with respect to commissions paid on U.S. sales under 19 CFR 351.410(e).¹²⁹

The Department’s Position:

A. Legal and Factual Basis for the Department’s Treatment of U.S. Commissions, and the Granting or Denial of a Commission Offset

In accordance with section 772(d)(1)(A) and (3) of the Act, the Department deducts from the price used to establish CEP, the amount of commissions generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, as well as the profit allocated to such commissions, for selling the subject merchandise in the United States. Furthermore, 19 CFR 351.410(e) goes on to state that “the Secretary normally will make a reasonable allowance for other selling expenses¹³⁰ if the Secretary makes a reasonable

¹²⁶ *Id.*, at 6.

¹²⁷ *Id.*, at 6-7.

¹²⁸ *Id.*, at 7.

¹²⁹ *Id.*

¹³⁰ 19 CFR 351.410(b), (c), and (d) indicate that other selling expenses are indirect selling expenses excluding direct selling expenses and assumed expenses (*e.g.*, advertising expenses).

allowance for commissions in one of the markets under considerations, and no commission is paid in the other market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.”¹³¹ The SAA further clarifies the basis of the treatment of U.S. commissions. It states that CEP “will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following *expenses (and profit) associated with economic activities occurring in the United States: (1) any commissions paid in selling the subject merchandise... (6) an allowance, as explained below, for profit allocable to the selling, distribution, and further manufacturing expenses incurred in the United States*”¹³² (emphasis added). It further states that the Department “is directed by section 772(d)(1)(A) to deduct commissions from constructed export price, but only to the extent that *they are incurred in the United States on sales of the subject merchandise*”¹³³ (emphasis added).

In light of the statute and regulations, the Department’s practice has been to distinguish two types of commissions paid on U.S. sales: (i) commissions incurred inside the United States, for which the Department treats as CEP expenses and deducts such commission expenses and the related profit from respective U.S. prices used to establish CEP, and (ii) commissions incurred outside the United States, for which the Department adds such commission expenses to normal value and offsets differences in home market commission expenses and such U.S. commission expenses incurred outside the United States, if any.¹³⁴ Because the latter ones are

¹³¹ See 19 CFR 351.410(e).

¹³² See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

¹³³ *Id.*

¹³⁴ See, e.g., Issues and Decision Memorandum for *Certain Pasta from Italy* at 8-9 (where we stated that “{t} here are two types of commissions that are possible for U.S. sales, commissions that are incurred in the United States

not associated with economic activities occurring in the United States, but with economic activities occurring in the home market, the Department does not treat them as CEP selling expenses, which are deducted from the U.S. price used to establish CEP. Instead, the Department first adds U.S. commissions incurred outside the United States to normal value of the respective home market sales and then grants home market commission offsets, if applicable, to normal value of such home market sales.¹³⁵ In granting commission offsets, the Department accounts for home market indirect selling expenses associated with the selling activities for such home market sales as an adjustment to normal value. We note that, as for margin calculations, adding U.S. commissions to normal value has the same effect as deducting them from CEP. We also note that such U.S. commissions incurred outside the United States are still part of the CEP profit ratio calculation, which then becomes part of the CEP profit calculation that gets deducted from CEP when respondents can make a profit from U.S. commissions, regardless of whether they are incurred inside or outside of the United States.¹³⁶ Moreover, we note that commission expenses for those home market sales, when incurred, get deducted from normal value.¹³⁷ By granting home market commission offsets in the form of an

and commissions that are not incurred in the United States.” We further stated that respondent’s commissions, “which are incurred in the United States, are deducted from the respective prices with profit, in accordance with the statute.”) and Issues and Decision Memorandum for *Certain Steel Nails from the United Arab Emirates* at 16 (where we stated that “{p}ursuant to section 772(d)(1)(A) of the Act, our normal practice is to treat commissions incurred in the United States as CEP selling expenses...”); see also the Department’s macro program part 15-B where it demonstrates that for CEP sales, USCOMM (*i.e.*, the commission expenses incurred outside the United States on US sales) becomes added to normal value while COMOFFSET (*i.e.*, home market commission offset) becomes deducted from normal value by stating “NV = FUPDOL - COMOFFSET&SUFFIX + USCOMM&SUFFIX + USDIRSELL&SUFFIX - CEPOFFSET&SUFFIX.”

¹³⁵ See the Department’s macro program part 15-B.

¹³⁶ We note that a profit that respondents make in relation to U.S. commission expenses, if any, should be deducted from CEP, in pursuant to section 772(d)(1)(A) and (3) of the Act, in order to make a fair and equitable comparison between normal value and U.S. price (*i.e.*, CEP). See the Department’s macro program part 5-A.

¹³⁷ See also the Department’s comparison market program part 4-B-ii where it demonstrates that CMCOMM (*i.e.*, comparison market commission expense) gets deducted from CMNETPRI (*i.e.*, comparison market net price), which is part of normal value by stating “CMNETPRI = CMGUP + CMGUPADJ – CMDISREB – CMMOVE – CMDSELL – CMCREB – CMCOMM – CMPACK.”

additional adjustment to normal value when U.S. commission expenses for the respective U.S. sales are incurred outside the United States, a more appropriate *apples-to-apples* comparison between two markets can be achieved because such offsets capture the corresponding economic activities and associated expenses in the home market for the matching home market sales, while the commission expenses for U.S. sales are added to normal value. In this manner, the commission offsets properly account for such economic activities performed by respondents in the home market that Hyosung described above, thereby resulting in an *equitable* comparison between normal value and U.S. price.

When commission expenses are incurred in the United States, however, the Department treats them as CEP expenses and deducts the expenses and allocated profit from the price used to establish CEP without providing home market commission offsets since such commissions are only associated with economic activities in the United States. In sum, the Department's practice is to provide home market commission offsets only against U.S. commission expenses incurred outside of the United States.

In *Certain Pasta from Italy*, we stated that a respondent's commissions, "which are incurred in the United States, are deducted from the respective U.S. prices with profit, in accordance with the statute."¹³⁸ We further stated that "section 772(d)(1)(A) of the Act identifies the adjustments related to commissions for CEP sales, which states...the price used to establish constructed export price shall also be reduced by...commissions for selling the subject merchandise in the United States."¹³⁹ In *Certain Steel Nails from the United Arab Emirates*, we also stated that "{p}ursuant to section 772(d)(1)(A) of the Act, our normal practice is to treat

¹³⁸ See Issues and Decision Memorandum for *Certain Pasta from Italy* at 9.

¹³⁹ *Id.*

commissions incurred in the United States as CEP selling expenses.”¹⁴⁰ In addition, as referenced above, the SAA states that CEP “will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following *expenses (and profit) associated with economic activities occurring in the United States: (1) any commissions paid in selling the subject merchandise...*”¹⁴¹ It further states that the Department “is directed by section 772(d)(1)(A) to deduct commissions from constructed export price, but only to the extent that *they are incurred in the United States on sales of the subject merchandise.*”¹⁴² We, thus, note that the statute and the prior cases treat commissions incurred in the United States as CEP selling expenses, which are only associated with economic activities in the United States and which can only be deducted from CEP to the extent that they are incurred in the United States. Because commissions incurred in the United States are not related to economic activities in the home market, there is no basis for granting a home market commission offset. Therefore, when commissions are incurred in the United States, our normal practice is to treat them as CEP selling expenses and to deduct from the U.S. sales, with profit, while not granting a commission offset to normal value.

Regarding Hyosung’s argument that these cases referenced above did not articulate a practice or rationale regarding a commission offset based on where the commission was paid, this argument is misplaced. As described above, in *Certain Pasta from Italy*, we specifically stated that a respondent’s commissions, “which are incurred in the United States, are deducted from the respective U.S. prices with profit, in accordance with the statute.”¹⁴³ In that case, for

¹⁴⁰ See Issues and Decision Memorandum for *Certain Steel Nails from the United Arab Emirates* at 16.

¹⁴¹ See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

¹⁴² *Id.*

¹⁴³ See Issues and Decision Memorandum for *Certain Pasta from Italy* at Comment 6.

example, the respondent, Rummo, argued that, “the Department inadvertently failed to apply a commission offset on Rummo’s U.S. CEP sales transactions.”¹⁴⁴ Rummo also argued that “the Department’s program should be modified to create a new data variable in its margin program that would consider all U.S. commissions reported on U.S. sales and that this new variable would be used to evaluate and apply the commission offsets...”¹⁴⁵ As noted above, we found that we correctly denied a commission offset on Rummo’s U.S. CEP sales transactions. While *Certain Pasta from Italy* may not have described the specific rationale regarding the offset, that case, along with *Certain Steel Nails from the United Arab Emirates*, demonstrates a practice with respect to this offset. Furthermore, while those cases may not have gone into detail regarding the specifics of a rationale, we have gone to great lengths to provide a sound rationale with respect to the practice in this final remand redetermination.

In light of 19 CFR 351.410(e), which addresses the situation where commissions are incurred in one market but not the other, the Department’s practice concerning the treatment of U.S. commissions, and the granting or denial of a home market commission offset, is further demonstrated in the standard margin calculation program. In the standard margin program, the commission expenses on U.S. sales incurred in the United States are included in field CEPOTHER, whereas the commission expenses on U.S. sales incurred outside the United States are included in field USCOMM. CEPOTHER then becomes part of CEP profit (*i.e.*, field CEPPROFIT) to calculate the profit for the corresponding commission expenses on U.S. sales incurred in the United States.¹⁴⁶ CEPPROFIT and CEPOTHER are deducted from U.S. price

¹⁴⁴ *Id.*

¹⁴⁵ *Id.*

¹⁴⁶ The Department’s standard margin calculation program demonstrates that CEP profit (*i.e.*, field CEPPROFIT) for the corresponding commission expenses incurred in the United States (*i.e.*, field CEPOTHER) are calculated as: CEPPROFIT = (USCREDIT + CEPICC + CEPISSELL + CEPOTHER) * CEPRATIO.

used to establish CEP (*i.e.*, field USNETPRI).¹⁴⁷ We note that the deduction of these expenses and profit in cases where commissions are incurred in the United States is consistent with sections 772(d)(1)(A) and (3) of the Act, which direct the Department to reduce the price used to establish CEP by commissions for selling subject merchandise in the United States, along with the profit allocated to such expenses.

When the commission expenses are incurred outside the United States on U.S. sales (*i.e.*, field USCOMM), the Department's standard margin program has three sequential conditions to determine the granting or denial of the commission offsets. First, when home market commission expenses (*i.e.*, field COMMDOL in the standard macros program¹⁴⁸) are greater than USCOMM, a home market commission offset is granted to increase normal value and is calculated as the minimum of either U.S. indirect selling expenses (*i.e.*, field USINDCOMM in the standard macro program) or the difference in COMMDOL and USCOMM (*i.e.*, home market commission expenses and the commission expenses incurred outside the United States).¹⁴⁹ Second, when USCOMM is greater than the home market commission expenses (*i.e.*, COMMDOL), a home market commission offset is granted to decrease normal value and is calculated as the minimum of either the home market indirect selling expenses (*i.e.*, field ICOMMDOL in the standard macros program) or the difference in USCOMM and COMMDOL

¹⁴⁷ The Department's standard margin calculation program demonstrates that CEP is calculated by deducting CEPPROFIT and CEPOTHER by stating "(USNETPRI = USGUP + USGUPADJ - USDISREB - USDOMMOVE - USINTLMOVE - USCREDIT - CEPICC - CEPISSELL - CEPOTHER - CEPROFIT)."

¹⁴⁸ We note that field COMMDOL represents the U.S. dollar amount converted from the home market commission expenses (*i.e.*, field CMCOMM) which are in Korean Won in this case. The standard macro program states as "COMMDOL = CMCOMM + &XRATE1." We further note that COMMDOL (*i.e.*, the home market commission expenses in U.S. dollars) are compared to USCOMM (*i.e.*, the commission expenses on U.S. sales incurred outside the United States) in the Department's standard margin calculation program.

¹⁴⁹ The Department's standard margin calculation program demonstrates that commission offsets will increase normal value and are the lesser of a) the U.S. market indirect selling expenses or b) the difference between home market commission expenses and U.S. commission expenses incurred outside the United States by stating "IF COMMDOL GT USCOMM THEN DO; COMOFFSET = -1 * MIN (ICOMMDOL, (USCOMM-COMMDOL)."

(*i.e.*, the commission expenses incurred outside the United States on U.S. sales and home market commission expenses).¹⁵⁰ Third, if USCOMM and COMMDOL are the same, there is no commission offset that adjusts normal value.¹⁵¹

If: (1) USCOMM, which represents the commission expenses incurred outside the United States on U.S. sales, is not zero; and (2) there are no home market commissions incurred, then the commission offsets are granted, pursuant to 19 CFR 351.410(e). With regard to U.S. commission expenses incurred outside the United States, there are corresponding economic activities and associated expenses in the home market for the matching home market sales, which are entitled to home market commission offsets to reduce normal value. On the other hand, if: (1) USCOMM is zero; and (2) no home market commissions are incurred, then there are no commission offsets granted. It is because, with regard to U.S. commission expenses incurred in the United States (*i.e.*, CEPOTHER), such commissions are treated as CEP selling expenses and are only related to economic activities that occurred in the United States. Thus, there are no corresponding economic activities in the home market for the matching home market sales which are entitled to home market commission offsets to reduce normal value, as explained above.

Therefore, we find that the Department's standard margin calculation program, discussed above, reflects, and is consistent with, the intent of 19 CFR 351.410(e) to grant a commission offset for sales where commission expenses are incurred in one market but not the

¹⁵⁰ The Department's standard margin calculation program demonstrates that commission offsets will decrease normal value and are the lesser of a) the home market indirect selling expenses or b) the difference between U.S. commission expenses incurred outside the United States and home market commission expenses by stating "ELSE IF USCOMM GT COMMDOL THEN DO; COMOFFSET = MIN (ICOMMDOL, (USCOMM-COMMDOL)."

¹⁵¹ The Department's standard margin calculation program demonstrates that there are no commission offsets when home market indirect selling expenses and U.S. commission expenses are the same by stating "ELES DO; COMOFFSET = 0."

other. Furthermore, the Department's standard margin calculation program is also consistent with the intent of 19 CFR 351.410(e) to limit the amount of the offset to the lesser of: a) the amount of the other selling expenses incurred in the one market; or b) the commissions allowed in the other market when commission expenses are incurred in one market but not the other. We also find that, pursuant to section B.2.b.(2) of the SAA and 19 CFR 351.410(e), under the circumstance where there are no home market commissions incurred, a commission offset is granted only when U.S. commission expenses are incurred outside the United States to offset the expenses related to the selling activities in the home market for the matching home market sales. Thus, we do not agree with Hyosung and Hyundai that our program is inconsistent with and unsupported by the regulations.

Further, while Hyosung argues that: (1) there is nothing in the statute, regulations, legislative history or other policy materials which distinguishes between commissions incurred in the United States and those incurred outside the United States; and (2) the statute and the SAA pertaining to CEP expenses do not refer to commissions offsets, we find that, based on our treatment of CEP expenses (including U.S. commissions incurred in the United States and the corresponding economic activities pursuant to section 772(d) of the Act and the SAA),¹⁵² our interpretation of the statute and the regulations regarding a commission offset is reasonable and sound to achieve a more appropriate *apples-to-apples* comparison between normal value and U.S. price, as discussed above.

In addition, although 19 CFR 351.410(e) does not directly address geographic distinction as Hyosung argued, section 773(a)(6)(C)(iii) of the Act, which is the legal basis for the regulation, requires the Department to make adjustments to normal value based on other

¹⁵² See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

differences in the circumstances of sale. We find that our treatment of U.S. commissions and the granting or denial of commission offsets to normal value properly account for such differences in the circumstances of sale, pursuant to the intent of section 773(a)(6)(C)(iii) of the Act. In this regard, although the language of the Act and 19 CFR 351.410(e) does not explicitly discuss an adjustment regarding a geographic distinction of U.S. commissions as Hyosung and Hyundai argued, we find that our practice with regard to a commission offset is consistent with section 773(a) of the Act. Moreover, we find that our interpretation of the language of the Act is consistent with the intent of section 772(d) and 773(a) of the Act, and the SAA's language regarding section 772(d) of the Act, thereby making a fair and equitable comparison between normal value and U.S. price through the granting of home market commission offsets when commissions on U.S. sales are incurred outside the United States while denying such offsets when commissions on U.S. sales are incurred inside the United States, because such commissions incurred in the United States are treated as CEP selling expenses, pursuant to section 772(d) of the Act.

B. The Department's Treatment of the Respondents' U.S. Commissions, and the Denial of the Commission Offsets on the Basis of the Record Evidence

During the POR, both respondents reported that they incurred commission expenses on U.S. sales and did not incur commission expenses on home market sales.¹⁵³ In the *Preliminary Results*, the Department was not consistent with its determination of the treatment of

¹⁵³ See Letter from Hyosung to the Department, regarding "Large Power Transformers from the Republic of Korea: Section A Questionnaire Response," dated December 24, 2013 (Hyosung's December 24, 2013, Questionnaire Response) at Exhibit A-13; see also Letter from Hyosung to the Department, regarding "Large Power Transformers from the Republic of Korea: Section B-D Questionnaire Response," dated January 14, 2014 (Hyosung's January 14, 2014, Questionnaire Response) at B-32 and C-32; see also Letter from Hyundai to the Department, regarding "Antidumping Administrative Review of Large Power Transformers from Korea – Section B and C Questionnaire Responses," dated January 7, 2014 (Hyundai's January 7, 2014, Questionnaire Response) at B-35 and C-38.

respondents' U.S. commissions. While the Department determined that respondents' U.S. commission expenses were incurred in the United States,¹⁵⁴ we placed those commission expenses in field USCOMM of the standard margin calculation program. However, this field in the standard margin calculation program contains a description indicating that "{commissions} on CEP sales incurred *outside* of the U.S" should be placed there. By placing those commission expenses in field USCOMM of the standard margin calculation program, we granted home market commission offsets to both respondents.¹⁵⁵ In the *Final Results*, the Department continued to find that respondents' U.S. commission expenses were incurred outside of the United States and made no programming changes, thereby continuing to grant home market commission offsets to both respondents.¹⁵⁶ In the *First Amended Final Results*, the Department reconsidered its treatment of respondents' U.S. commission expenses and found that those expenses were incurred in the United States, thereby denying home market commission offsets to both respondents.¹⁵⁷ In the *Second Amended Final Results*, however, the Department

¹⁵⁴ See Memorandum to the File from Brian Davis, International Trade Analyst, regarding "Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2012-2013 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated September 18, 2014 (Hyosung's Preliminary Analysis Memo) at 13; see also Hyundai's Preliminary Analysis Memo at 10.

¹⁵⁵ The U.S. margin program log states that "USCOMM = COMMU" with the description for this field indicating that "All commissions on EP sales and those on CEP sales incurred *outside* of the US." See Hyosung's Preliminary Analysis Memo at Attachment 3; see also Hyundai's Preliminary Analysis Memo at Attachment 3.

¹⁵⁶ The U.S. margin program log states that "USCOMM = COMMU" with the description for this field indicating that "All commissions on EP sales and those on CEP sales incurred *outside* of the US." See Memorandum to the File from Brian Davis, International Trade Compliance Analyst, regarding "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013," dated March 23, 2015 (Hyosung's Final Analysis Memo) at Attachment 3; see also Memorandum to the File from David Cordell, International Trade Compliance Analyst, regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai) in the Final Results of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013," dated March 23, 2015 (Hyundai's Final Analysis Memo) at Attachment 3.

¹⁵⁷ Hyosung's First Amended Final Analysis Memo stated that "we erred in including the direct selling expenses incurred in the U.S. on CEP sales in ... USCOMM. Instead, these expenses should have been captured in field CEPOTHER ..." It further noted that "USCOMM = 0" and placed in U.S. commission in CEPOTHER in its U.S. margin program as follows: "CEPOTHER = ... + COMMU" with the description for this field indicating "Any other CEP (incurred in the U.S.) commissions ..." See Hyosung's First Amended Final Analysis Memo at 3 and

reversed its determination in the *First Amended Final Results* and found that U.S. commission expenses were incurred outside the United States, thereby granting home market commission offsets to both respondents.¹⁵⁸

In addition, in our brief to the Court, we argued that Hyosung and Hyundai incurred their commissions at the time they received their purchase orders, which is generally a matter of many months or years before delivery of the subject merchandise and, thus, occurs {their commission expenses} outside of the United States.¹⁵⁹ Because the commission expenses for U.S. sales were incurred prior to importation, we determined that both respondents' commissions were incurred outside the United States in the *Second Amended Final Results*, thereby granting home market commission offsets.

In light of the Court's directive, after reviewing the available record evidence, we now find that the respondents' U.S. commissions were incurred in the United States, and that we should not have granted home market commission offsets to Hyosung and Hyundai. Based on the legal and factual background concerning the treatment of U.S. commissions and home market commission offsets as discussed above, we find that when the commission expenses on U.S. sales are incurred in the United States and there are no commission expenses in the home market, which is the case here, such commission expenses are treated as CEP selling expenses and the commission expenses and allocated profit get deducted from the price used to establish CEP, and that there are no home market commission offsets granted. It is because such

Attachment 3; *see also* Hyundai's First Amended Final Analysis Memo at 3-4 and Attachment 3.

¹⁵⁸ Hyosung's Second Amended Final Analysis Memo states that "{w}e first moved U.S. commission expenses (field COMMU) from field "CEPOTHER" back to field "USCOMM" in the U.S. Margin Program." Furthermore, the U.S. margin program log further stated that "USCOMM = COMMU" with the description for this field indicating that "All commissions on EP sales and those on CEP sales incurred *outside* of the US." *See* Hyosung's Second Amended Final Analysis Memo at 2-3 and Attachment 3; *see also* Hyundai's Second Amended Final Analysis Memo at 2 and Attachment 3; *see also* Second Amended Final Ministerial Error Memo at 4.

¹⁵⁹ *See* Defendant's Response to Plaintiff's Rule 56.2 Motion for Judgement upon the Agency Record, at 28-29.

commissions for U.S. sales are only associated with economic activities occurring in the United States, as discussed above.

In particular, record evidence indicates that all economic activities concerning both respondents' commissions occurred in the United States. To determine the scope of economic activities with regard to the commission expenses which occurred in the United States, we considered the following non-exhaustive factors: (1) where sales agents are located at the time of the commission agreement; (2) where and by what entity the corresponding commission payments were booked or made; and (3) when the commission payments were made during the normal course of business.

First, record evidence demonstrates that []]. For Hyosung, we find that [

].¹⁶⁰ For Hyundai, we note that the commission agreement between Hyundai and a sales agent identifies [], indicating that the sales agents were located in the United States at the time of the agreement.¹⁶¹

Second, record evidence demonstrates that both respondents' [

¹⁶⁰ See Letter from Hyosung to the Department, regarding "Large Power Transformers from the Republic of Korea: First Supplemental Section A Questionnaire Response," dated February 25, 2014 (Hyosung's February 25, 2014, Questionnaire Response) at Exhibit SA-25; see also Letter from Hyosung to the Department, regarding "Large Power Transformers from the Republic of Korea: Supplemental Section A-C Questionnaire Response," dated April 10, 2014 (Hyosung's April 10, 2014, Questionnaire Response) at Exhibit S-36.

¹⁶¹ See Hyundai's January 7, 2014, Questionnaire Response at Attachment C-15; see also Letter from Hyundai to the Department, regarding "Antidumping Administrative Review of Large Power Transformers from Korea – Third Sales Supplemental Questionnaire Response," dated July 3, 2014 (Hyundai's July 3, 2014, Questionnaire Response) at Attachment SSS-23.

]. For Hyosung, record evidence shows that [

].¹⁶² For Hyundai,

record evidence demonstrates that Hyundai USA recorded the commission expenses in its books and records and/or paid the commission expenses.¹⁶³

Third, record evidence demonstrates that during the normal course of business for both respondents, [

For Hyosung, record evidence clearly demonstrates this. For example, for SEQU [], the selling agent was paid, and the expenses were booked in [] books and records on

[], [] the initial purchase order date ([]), the shipment date ([]), the customer invoice date ([]) and the customer payment date ([]).¹⁶⁴ For Hyundai, the commission payment was made [

]. Hyundai states that it normally “[

].”¹⁶⁵

It further states that “payment of the commission was due to the agent after [

].¹⁶⁶ It adds that a commission ... *will be paid*

¹⁶² See Hyosung’s December 24, 2013, Questionnaire Response at A-20 and Exhibit A-13; see also Hyosung’s January 14, 2014, Questionnaire Response at C-32 and Exhibit C-19; see also Hyosung’s April 10, 2014, Questionnaire Response at 24, 37 and Exhibit S-36.

¹⁶³ See Hyundai’s January 7, 2014, Questionnaire Response at Attachment C-15; see also Hyundai’s July 3, 2014, Questionnaire Response at Attachment SSS-23.

¹⁶⁴ See, e.g., Hyosung’s February 25, 2014, Questionnaire Response at Exhibit SA-26 and Letter from Hyosung to the Department, regarding “Large Power Transformers from the Republic of Korea: Questions 10-13 of Hyosung’s Fourth Supplemental Sales Questionnaire Response,” dated August 25, 2014 (Hyosung’s August 25, 2014, Questionnaire Response) at Exhibit S-1.

¹⁶⁵ See Hyundai’s July 3, 2014, Questionnaire Response at 21.

¹⁶⁶ *Id.*; see also Letter from ABB to the Department, regarding “First Administrative Review of Large Power Transformers from Korea – Submission of Hyundai Verification Reports from the Original Investigation,” dated January 8, 2014 at Attachment 2 (Memorandum from David Cordell, International Trade Analyst, and Brian C. Davis, International Trade Analyst, Office 7, through Angelica L. Mendoza, Program Manager, Office 7, to the File, regarding “Constructed Export Price Verification of the Sales Response of Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea,” dated May 16, 2012 (Hyundai’s CEP Verification Report) at 28.

Hyundai failed to point to other cases or the statute/regulations where the scope of economic activities is interpreted/defined differently.

We also find that the argument of Hyosung and Hyundai, that our criteria regarding economic activities are inconsistent with the statute and the regulations on the ground that neither of them supports a geographic distinction for the granting or denial of commission offsets, is without merit based on our interpretation of the statute and the regulations, as discussed above. In addition, Hyundai's argument that our criteria will likely lead to the conclusion that all commissions are incurred in the United States and that it is hard to imagine that a commission offset would ever be made to normal value is without merit; specifically, there are instances where commission offsets would be granted. For example, export price sales could incur commissions outside the United States, thereby being granted commissions offsets. Furthermore, each case will have distinct facts regarding U.S. commissions for us to evaluate, and we will then determine whether commissions are incurred inside or outside the United States.

Regarding Hyosung's argument that the Department expanded its evaluation of the methodology in determining when commissions are incurred and reversed its determination instead of merely explaining discrepancies in the Department's argument before the Court,¹⁶⁹ the Department's margin program,¹⁷⁰ and certain language in Hyundai's Preliminary Analysis Memo,¹⁷¹ we disagree. We find that, by analyzing the legal and factual basis, examining our practice, and revisiting the record, the reversal of our prior determination was necessary to

¹⁶⁹ See *Remand Order*, Slip Op. 16-95 at 41; see also Defendant's Response to Plaintiff's Rule 56.2 Motion for Judgement upon the Agency Record at 27.

¹⁷⁰ See *Remand Order*, Slip Op. 16-95 at 42; see also Hyundai's Second Amended Final Analysis Memo at 2 and attachment III (*i.e.*, U.S. Margin Program Log).

¹⁷¹ See *Remand Order*, Slip Op. 16-95 at 42; see also Hyundai's Preliminary Analysis Memo at 10.

clarify our treatment of U.S. commissions in this case. For the same reason, we disagree with Hyundai that we did not discuss why our previous determination that Hyundai's U.S. commissions were incurred outside the United States is no longer valid; the legal basis, our practice and record evidence indicate that Hyundai's commissions were incurred outside the United States, as discussed above.


In accordance with the *Remand Order*, sections 772(d)(1), 772(d)(3), 773(a) of the Act, and the record findings herein, as discussed above, the Department continues to find that respondents' commissions on U.S. sales were incurred in the United States on the basis of record evidence and, thus, that commission offsets should not be granted.

FINAL RESULTS OF REDETERMINATION

Pursuant to the *Remand Order*, the Department has reconsidered the record evidence, and recalculated the dumping margins for Hyosung and Hyundai, respectively. Based on its analysis, the Department: (1) addressed the sequencing of certain of Hyundai's documents and finds that Hyundai provided sufficient explanations for this matter; (2) clarified the legal and factual basis of the granting or denial of the commission offsets; (3) further explained the Department's treatment of the respondents' U.S. commissions and denial of the commission offsets based on the record evidence; and (4) calculated the revised dumping margins for Hyosung and Hyundai. The weighted-average dumping margins for Hyosung and Hyundai for the period of review, February 16, 2012, through July 31, 2013, for large power transformers from the Republic of Korea were 8.23 percent and 12.36 percent, respectively, in the *Second Amended Final Results*. The weighted-average dumping margins for Hyosung and Hyundai

resulting from the Department's modified calculations pursuant to this remand are 9.09 percent and 13.82 percent, respectively.¹⁷²

2/2/2017

X 

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

¹⁷² See Memorandum to the File, through Brian C. Davis, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, from Moses Song, International Trade Compliance Analyst, Office VI, , regarding "Analysis of Data Submitted by Hyosung Corporation (Hyosung) in Administrative Review of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013 Draft Results of Remand," dated December 8, 2016 and Memorandum to the File, through Brian C. Davis, Program Manager, Office VI, Antidumping and Countervailing Duty Operations, from Moses Song, International Trade Compliance Analyst, Office VI, , regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation USA (Hyundai USA) (collectively, Hyundai) in Administrative Review of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2012-2013 Draft Results of Remand," dated December 8, 2016, unchanged from Draft Remand Redetermination.