

ABB INC. v. United States

Consol. Court No. 16-00054, Slip Op. 18-156 (CIT November 13, 2018)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

The Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) issued on November 13, 2018, in *ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 18-156 (CIT 2018) (*Second Remand Order*). These remand results concern the final results in the antidumping duty (AD) administrative review (AR) of large power transformers from the Republic of Korea (Korea). The period of review (POR) is February 16, 2013, through July 31, 2014.¹

In the *Second Remand Order*, for the purpose of capping service-related revenue, the Court directed Commerce not to rely on Hyundai’s internal communications when applying Commerce’s capping methodology. The Court found that such communications do not constitute substantial

¹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) (*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; 2013-2014” (Issues and Decision Memorandum); see also “Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation, USA - Analysis Memorandum for the Final Results of the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated March 8, 2016 (Hyundai’s Final Analysis Memorandum). On May 5, 2016, Commerce published amended final results upon consideration of various ministerial error allegations. See *Large Power Transformers from the Republic of Korea: Amended Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 27088 (May 5, 2016) (*Amended Final Results*); see also “Ministerial Error Memorandum for the Amended Final Results of the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated April 29, 2016 (Ministerial Error Memorandum).

evidence that would support a finding that Hyundai's provision of the services at issue were separately negotiable from the price of subject merchandise with the unaffiliated customer.²

Also, in the *Second Remand Order*, with regard to Commerce's application of partial adverse facts available related to the capping of service-related revenue for certain of Hyundai's U.S. sales, the Court directed Commerce to further consider or explain its use of adverse inferences. The Court found that Commerce had not adequately explained, citing record evidence, how Hyundai failed to cooperate to the best of its ability.³ In accordance with the *Second Remand Order*, Commerce amended its capping methodology to require the capping of service-related revenue only in those transactions or services for which external communications exist. Additionally, in accordance with the *Second Remand Order*, Commerce further clarified its use of adverse inferences for certain of Hyundai's U.S. sales based on record evidence, and explained the factual basis for applying partial adverse facts available related to the service-related revenue capping of such U.S. sales. Our final results are discussed below.

DISCUSSION

Statutory and Regulatory Background

Commerce conducts administrative reviews in accordance with 19 CFR 351.221, pursuant to which Commerce sends AD questionnaires requesting company information pertinent to the review. Section 351.102(21)(i) of Commerce's regulations defines factual information as "evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any other interested party."

² See *Second Remand Order*, Slip Op. 18-156 (CIT 2018). Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) are referred to herein, collectively, as Hyundai.

³ *Id.*

In AD proceedings, section 772(c) of the Tariff Act of 1930, as amended (the Act) requires Commerce to make adjustments to the U.S. export price and constructed export price (CEP) for price comparison purposes. Additionally, section 773(a) of the Act requires Commerce to make adjustments to normal value for price comparison purposes. Further, 19 CFR 351.401(c) directs Commerce to use a price that is net of any price adjustment, as defined in 19 CFR 351.102(b), that is attributable to the subject merchandise or the foreign like product (whichever is applicable).

Factual Background

ABB, Inc. (ABB or the petitioner) requested an administrative review on August 29, 2014, of imports of LPTs from Korea produced by the following companies: Hyosung,⁴ Hyundai, ILJIN, ILJIN Electric, and LSIS.⁵ On August 30, 2014, Commerce received requests for review from Hyosung, Hyundai, and ILJIN Electric.⁶ Based on these requests, on September 30, 2014, Commerce initiated an administrative review for the period August 1, 2013, through July 31, 2014.⁷ Commerce subsequently selected Hyosung and Hyundai as mandatory respondents.⁸ Relying on the factual information that it gathered through questionnaire responses, on September 4, 2015, Commerce determined preliminary dumping margins of 11.01 percent and 3.96 percent for Hyosung and Hyundai, respectively, in the *Preliminary Results*.⁹ On March 16, 2016,

⁴ Hyosung Corporation and HICO America Sales and Technology (HICO America) (collectively, Hyosung).

⁵ See ABB's Letter, "Large Power Transformers from the Republic of Korea - Petitioner's Request for Administrative Review," dated August 29, 2014.

⁶ See Hyosung's Letter, "Second Administrative Review of Large Power Transformers from the Republic of Korea: Request for Administrative Review," dated August 29, 2014; Hyundai's Letter, "Large Power Transformers from Korea," dated August 29, 2014; ILJIN Electric's Letter, "Large Power Transformers from the Republic of Korea: Request for Administrative Review," dated September 2, 2014.

⁷ See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 79 FR 58729 (September 30, 2014) (*Initiation Notice*).

⁸ See Memorandum, "Antidumping Duty ("AD") Administrative Review of Large Power Transformers ("LPTs") from the Republic of Korea ("Korea"): Respondent Selection Memorandum," dated November 18, 2014 (Respondent Selection Memorandum).

⁹ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014*, 80 FR 53496 (September 4, 2015) (*Preliminary Results*). Commerce also preliminarily determined dumping margins of 7.49 percent for ILJIN Electric, ILJIN, and LSIS Co., Ltd.

Commerce issued the *Final Results*, determining dumping margins of 9.40 percent and 4.07 percent for Hyosung and Hyundai, respectively.¹⁰ On May 5, 2016, Commerce issued the *Amended Final Results*, determining a dumping margin of 7.89 percent for Hyosung.¹¹ On March 31, 2016, and April 12, 2016, both ABB and Hyosung, respectively, initiated this action challenging certain aspects of the *Final Results* before the Court.¹²

In its *First Remand Order*, regarding the question of Commerce's treatment of service-related revenue associated with Hyundai's U.S. sales, the Court granted Commerce's request for a voluntary remand, explaining that Commerce's request to examine whether Commerce applied its revenue-capping methodology consistently for both Hyundai and Hyosung, was a substantial and legitimate concern.¹³ The Court directed Commerce to reevaluate its revenue-capping practice in order to ensure that its application of this practice is consistent with respect to Hyundai and Hyosung.¹⁴ Subsequently, pursuant to the *First Remand Order*, Commerce issued its draft remand results on January 9, 2018, and filed its final remand results before the Court on February 9, 2018.¹⁵ Commerce reexamined the record with respect to Hyundai's reporting of the gross unit prices for sales of subject merchandise in the United States and determined that Hyundai had failed to separately report service-related revenue from its reporting of gross unit prices.¹⁶ Accordingly, Commerce relied on facts available, with an adverse inference, for certain of Hyundai's U.S.

¹⁰ See *Final Results*, 81 FR at 14088.

¹¹ See *Amended Final Results* at 27088. Commerce also determined amended dumping margins of 5.98 percent for ILJIN Electric, ILJIN, and LSIS Co., Ltd.

¹² See *Second Remand Order*, Slip Op. 18-156 at 2.

¹³ See *ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 17-138 (CIT 2017) (*First Remand Order*) at 7-8; see also *Second Remand Order*, Slip Op. 18-156 at 3.

¹⁴ *Id.*

¹⁵ See Draft Results of Redetermination Pursuant to Court Remand: *ABB INC. v. United States*, Consol. Ct No. 16-00054; Slip Op. 17-138 (January 9, 2018) (January 9, 2018 Draft First Remand Results); see also Final Results of Redetermination Pursuant to Court Remand: *ABB INC. v. United States*, Consol. Ct No. 16-00054; Slip Op. 17-138 (February 9, 2018) (February 9, 2018 Final First Remand Results); *Second Remand Order*, Slip Op. 18-156 at 4.

¹⁶ See *Second Remand Order*, Slip Op. 18-156 at 4.

sales.¹⁷

Following Hyundai's challenge to Commerce's February 9, 2018, Final First Remand Results, in its *Second Remand Order*, the Court remanded to Commerce the two aforementioned revenue-capping issues discussed in the "Summary" section above.¹⁸

Commerce released its Draft Second Remand Results on April 2, 2019, and invited comments from interested parties.¹⁹ ABB and Hyundai submitted comments on April 11, 2019.²⁰ After reviewing comments from interested parties, Commerce prepared these final results of redetermination in accordance with the Court's *Second Remand Order*.

Analysis

Capping Sales-Related Expense Revenue

A. Legal Basis for Commerce's Capping Methodology

To prevent U.S. price from being overstated, the statute and regulations require service-related revenue that exceeds the associated expenses to be capped by the amount of those service-related expenses, and thus deducted from the reported U.S. gross unit price. Section 772(c)(1) of the Act provides that Commerce shall increase the price used to establish export price and CEP (*i.e.*, U.S. price) in only the following three instances:

- (1) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in a condition packed ready for shipment to the United States;
- (2) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and
- (3) the amount of any countervailing duty

¹⁷ *Id.*

¹⁸ *Id.* at 5.

¹⁹ See Draft Results of Redetermination Pursuant to Court Remand: *ABB INC. v. United States*, Consol. Ct No. 16-00054; Slip Op. 18-156 (April 2, 2019) (Draft Second Remand Results).

²⁰ See ABB's Letter, "Large Power Transformers from the Republic of Korea – Petitioner's Comments on the Draft Remand Redetermination," dated April 11, 2019 (ABB's Comments); see also, Hyundai's Letter, "Large Power Transformers from South Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated April 11, 2019 (Hyundai's Comments).

imposed on the subject merchandise under subtitle A to offset an export subsidy.²¹

Revenue received by a respondent on sales-related services is not included as an upward adjustment to U.S. price in excess of the related expenses. Commerce has previously found that service-related revenue in excess of the service-related expenses should not be added to U.S. price under section 772(c)(1) of the Act.²²

Similarly, section 773(a)(6) of the Act provides that Commerce shall increase the price used to establish normal value by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in a condition which is packed and ready for shipment to the United States. Again, revenue received by a respondent on sales-related services is not included as an upward adjustment to normal value.²³

In addition, 19 CFR 351.401(c) directs Commerce to use a price that is net of any price adjustment, as defined in 19 CFR 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The term “price adjustment” is defined under 19 CFR 351.102(b)(38) as “any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser’s net outlay.” The definition specifies that the adjustment applies to changes in the price charged for the subject merchandise or the foreign like product. Stated differently, whether adjusting U.S. price or normal value, Commerce will increase such prices only by the adjustments stipulated in sections 772(c) and 773(a)(6) of the Act.

²¹ See Section 772(c)(1)(A)-(C) of the Act.

²² See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 23, 2017), and accompanying Issues and Decision Memorandum at Comment 5.

²³ See *Light-Walled Rectangular Pipe and Tube from Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 9547 (February 18, 2011), and accompanying Issues and Decision Memorandum at Comment 5B.

Pursuant to the relevant statute and regulations, which prevent U.S. price from being overstated by any upward adjustments other than the three instances above, Commerce’s practice is to cap service-related revenue by the corresponding expense when making adjustments to U.S. price.²⁴

B. Commerce’s Capping Methodology Using Hyundai’s External Communications with Regard to Service-Related Revenue for Certain U.S. Sales

In Commerce’s January 9, 2018, Draft First Remand Results and February 9, 2018, Final First Remand Results, Commerce reexamined the record and analyzed whether there was a legal and factual basis for determining whether to cap Hyundai’s service-related revenue with the associated expenses. Specifically, Commerce re-examined the sales documentation collected during verification (*i.e.*, Hyundai’s documentation corresponding to its U.S. sale sequence numbers (SEQUs) 1, 8, 14, and 27) and which Hyundai submitted during the administrative review related to its SEQU 11.²⁵ After reexamining the record evidence, Commerce found that applying

²⁴ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012), and accompanying Issues and Decision Memorandum at 7 (where we stated that “{b}ased on the plain language of the law and the Department’s regulations, it has been the Department’s stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). We further stated that “... although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services ...”); see also *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012) and accompanying Issues and Decision Memorandum, at 34 (where we stated that “we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services...such profits should be attributable to the sale of the service, not to the subject merchandise.” We further stated that “the Department has consistently applied the same capping methodology to both U.S. and home market revenues, regardless of whether it limits the increase to U.S. price or NV {normal value}.”); see also *Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010) (where we stated that “{i}n accordance with our practice, we capped the amount of freight revenue permitted to offset gross unit price at no greater than the amount of corresponding inland freight expenses incurred by...”), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 75 FR 77829 (December 14, 2010).

²⁵ See Memorandum, “Verification of the Sales and Cost Responses of Hyundai Heavy Industries Co., Ltd., in the

Commerce’s standard practice to cap Hyundai’s service-related revenue by the corresponding expense was warranted.²⁶ With regard to SEQU 1, as the documentation shows a [], which is a product, rather than a service, Commerce did not apply its capping methodology to adjust its gross unit price.²⁷ However, for the remaining four sales, Hyundai’s documentation (*e.g.*, purchase orders, an internal corporate contract between affiliated Hyundai entities, and internal email exchanges, and invoices) indicates that the price charged to the final customer includes revenue that is dedicated to various services, and that this revenue exceeds the related service expenses.²⁸ Accordingly, based on record evidence, Commerce determined that Hyundai collected revenue from customers to cover various service-related expenses, and that the revenue collected exceeded the expenses incurred, resulting in the overstatement of the gross unit prices for Hyundai’s U.S. sales.²⁹ For the U.S. sales related to SEQUs 8, 11, 14, and 27, with the exception of SEQU 1, Commerce used Hyundai’s data to calculate the difference between the reported service-related expenses and the identified service-related revenue, expressed as a percentage, and then reduced the gross unit price of each sale by the corresponding percentage difference.³⁰ Also, because Commerce determined that (1) necessary information is missing from the record due to Hyundai’s failure to report service-related

2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea,” dated August 31, 2015 (Verification Report) at Sales Verification Exhibits (SVEs) 8, 12-15; *see also* Hyundai’s Letter, “Antidumping Administrative Review of Large Power Transformers from Korea – First Sales Supplemental Questionnaire; Section A Response,” dated May 13, 2015 (SAQR) at Attachment SS-17.

²⁶ *See* January 9, 2018 Draft First Remand Results at 11.

²⁷ *Id.* at 12. *See also* Memorandum, “Analysis of Data Submitted by Hyundai Heavy Industries (HHI) in the Draft Results of Remand of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2013-2014,” dated January 8, 2018 (January 8, 2018 Draft First Remand Results Analysis Memo) at 3.

²⁸ *See* January 9, 2018 Draft First Remand Results at 12-13; *see also* Verification Report at SVEs 12-15 and SAQR at Attachment SS-17; Hyundai’s Letter, “Antidumping Administrative Review of Large Power Transformers from Korea – Response to Second Supplemental DIFMER Questionnaire,” dated June 26, 2015 (DIFMER SSQR), and accompanying U.S. sales database (hyunus04); ABB’s Case Brief, “Large Power Transformers from Korea: Petitioner’s Case Brief,” dated October 16, 2015 (ABB’s Case Brief) at 13.

²⁹ *See* January 9, 2018 Draft First Remand Results at 13; *see also* *Remand Order*, Slip Op. 18-156 at 13.

³⁰ *See* January 9, 2018 Draft First Remand Results at 11 and 13-14; *see also* January 8, 2018 Draft First Remand Results Analysis Memo at 3.

revenue, and (2) Hyundai failed to act to the best of its ability to report necessary information, in the form and manner requested by Commerce (even though it had the information necessary to report specific service-related revenue for specific service-related expenses), as partial adverse facts available, Commerce reduced the gross unit prices for all other U.S. sales (*i.e.*, all sales other than SEQUs 1, 8, 11, 14, and 27), by the highest percentage difference identified on sales documentation collected during verification for SEQU 14 (*i.e.*, 15.37 percent).³¹

In the *Second Remand Order*, the Court found that Commerce was correct in applying facts available because Hyundai failed to provide the requested information for the purpose of Commerce’s service-related revenue capping.³² However, the Court held that Commerce could not rely on Hyundai’s internal communications when applying its capping methodology, because these communications do not provide substantial evidence that would support a finding that Hyundai’s provision of the services at issue were separately negotiable from the price of the subject merchandise with the unaffiliated customer.³³ In particular, (1) as certain of the services (*i.e.*, []) for SEQU 14 are derived from an email exchange between Hyundai employees and (2) all services (*e.g.*, []) for SEQU 27 are listed in the internal contract between HHI and Hyundai USA, the Court found that Commerce may not rely on internal company communications when applying its capping methodology for the applicable services for these two sales.³⁴ Further, because the Court found that substantial evidence does not support Commerce’s finding that [] were separately negotiable for SEQU 14, for the purpose of capping service

³¹ See January 9, 2018 Draft First Remand Results at 14; *see also* January 8, 2018 Draft First Remand Results Analysis Memo at 3.

³² See *Second Remand Order*, Slip Op. 18-156 at 18-20 and 24-25.

³³ *Id.* at 20-25.

³⁴ *Id.* at 21-22 and 25; *see also* Verification Report at SVE-14, page 12 and SVE-15, page 20.

revenue, the Court directed Commerce to revisit its selection of the facts available with an adverse inference to reduce the gross unit prices of other U.S. sales using the highest percentage difference of SEQU 14 (*i.e.*, [] percent).³⁵

Consistent with Commerce’s January 9, 2018, Draft First Remand Results and February 9, 2018, Final First Remand Results, regarding the five SEQUs for which we have record documentation discussed above, we have continued to use the data from the record to reduce the gross unit prices by capping the service-related revenue by the associated expense, as applicable. However, the Court explained that, unlike external documentation between Hyundai and its customer (*e.g.*, purchase orders or invoices), Hyundai’s internal communications could not be considered substantial evidence that would support a finding that Hyundai’s provision of the services at issue were separately negotiable.³⁶ As a result, pursuant to the *Second Remand Order*, we have not considered Hyundai’s internal communications in our analysis, and relied solely on external communications in applying the service-related revenue-capping methodology to the sales on the record. As such, we reduced the gross unit prices by applying the percentage differences between the service-related revenue and the service-related expenses for SEQUs 8, 11, and 14, based solely on external documentation. In addition, concerning SEQU 27, we did not apply the capping methodology, as there were no external communications on the record to rely upon. The details are set forth in the “Selection of Adverse Facts Available with Respect to Capping Service-Related Revenue with the Associated Expenses for All Other Sales” section below.

³⁵ See *Second Remand Order*, Slip Op. 18-156 at 24, note 22.

³⁶ *Id.* at 24.

C. Commerce's Application of Adverse Facts Available for All Other Sales to Cap the Service-Related Revenue

Facts Available

Hyundai failed to report any service-related revenue in its questionnaire responses as requested by Commerce; Commerce only learned of the existence of service-related revenue from one set of sales documentation submitted with its questionnaire response and from the sales trace documents collected at verification. These documents support a finding that Hyundai had service-related revenue information, but did not report it. This information was necessary to establish the appropriate U.S. gross price needed to perform a dumping calculation. Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply “facts otherwise available” if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified. Commerce found that it was appropriate to resort to facts available because this requested information was missing from the record because Hyundai failed to provide it. This Court has found that Commerce properly resorted to facts available for service-related revenue because Hyundai failed to report service-related revenue for its U.S. sales.³⁷

Adverse Inferences

While Commerce found that it was appropriate to apply an adverse inference in the selection of facts available for service-related revenue, based on Hyundai's failure to cooperate by

³⁷ *Id.* at 18-20 and 24-25.

not acting to the best of its ability, the Court found that this conclusory sentence was not sufficiently explained or tied to record evidence such that the Court could sustain Commerce's finding; the Court thus remanded the finding back to Commerce for further consideration and explanation.

Section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting from the facts otherwise available.

Record evidence demonstrates that Hyundai failed to separately report service-related revenue to Commerce, as requested, despite the fact that it had the information requested by Commerce. In Commerce's initial AD Questionnaire to Hyundai, Commerce instructed Hyundai to "report the sale price, discounts, rebates and all other revenues and expenses in the currencies in which they were earned or incurred."³⁸ Commerce also instructed Hyundai that "{t}he gross unit price less price adjustments should equal the net amount of revenue received from the sale. If the invoice to your customer includes separate charges for other services directly related to the sale, such as a charge for shipping, create a separate field for reporting each additional charge."³⁹ In response, Hyundai reported fields ADDPOPRU and ADDPOEXPU, explaining that "ADDPOPRU is {sic} sales amount under a separate purchase order for services that were not included in the purchase order for the transformer (*e.g.*, supervision), but that are related to the transformer. ADDPOEXPU is the expense associated with the additional services."⁴⁰ Hyundai also reported

³⁸ See Commerce's Letter re: Request for Information, dated December 1, 2014 (AD Questionnaire) at C-20.

³⁹ *Id.* at C-18.

⁴⁰ See Hyundai's Letter, "Antidumping Administrative Review of Large Power Transformers from Korea - Response to Sections B and C Questionnaires," dated January 26, 2015 (BCQR) at C-28.

specific services and related expenses in connection with various U.S. sales.⁴¹ However, Hyundai did not report separate revenue for these expenses.

In a supplemental questionnaire, Commerce requested clarification regarding the figures reported in the fields ADDPOPRU and ADDPOEXPU.⁴² In response, Hyundai stated in part:

In certain instances, Hyundai sells pursuant to terms of sale under which Hyundai is required to provide services related to the LPT. Where the terms of sale require Hyundai to perform such services, the gross unit price includes the value of the services required. For example, the terms of sale may require Hyundai to deliver the LPT to the customer where the []. Consistent with Commerce's determination in the original investigation, Hyundai has included the [

]

In accordance with Commerce's decision in the Original Investigation, where the customer has issued a separate, additional purchase order for services related to, but not included in the purchase order for the sale, Hyundai has reported the value of the additional purchase order and related expenses separately (*i.e.*, in the fields ADDPOPRU and ADDPOEXPU).⁴³

As the Court recognized, despite Commerce's initial instruction that when the invoice to the customer included separate charges for other services directly related to the sale, Hyundai was to create a separate field for reporting such additional charges, but failed to do so.⁴⁴ Instead, it submitted a seemingly complete response to Commerce's AD Questionnaire and responded to Commerce's supplemental questionnaire, citing Commerce's determination in the original investigation to justify its reporting methodology. It stated that such services were required under

⁴¹ *Id.* at C-40 – C-41.

⁴² See Commerce's Letter re: Supplemental Questionnaire for Sections B and C of Hyundai Heavy Industries and Hyundai Corporation USA's Responses to the Antidumping Duty Questionnaire, dated May 22, 2015, at 7 (Question 2).

⁴³ See Hyundai's Letter, "Antidumping Administrative Review of Large Power Transformers from Korea – Response to Supplemental Sections B and C Questionnaires," dated June 3, 2015 (SBCQR) at 14-15.

⁴⁴ See *Second Remand Order*, Slip Op. 18-156 at 19-20; see also AD Questionnaire at C-18.

the terms of sale.⁴⁵ As the Court noted, while Hyundai explained its reporting methodology, it did not alert Commerce to the existence of the very information – *i.e.*, invoices listing separate line items for services (including the one which it submitted as part of SEQU 11 before verification) – that Commerce had requested and, instead, Hyundai chose not to provide in the manner requested by Commerce.⁴⁶

Commerce conducted a verification of Hyundai’s questionnaire responses from July 16, 2015, through July 24, 2015.⁴⁷ During the verification, Commerce examined four additional sales by Hyundai to the United States, corresponding to SEQUs 1, 8, 14, and 27.⁴⁸ With the exception of SEQUs 1 and 27, Hyundai’s invoices to its unaffiliated customers list separate line items for services.⁴⁹ As the Court found, these invoices are directly responsive to what we initially requested in the AD Questionnaire and that such invoices constitute substantial evidence that Hyundai failed to provide Commerce with the requested information.⁵⁰ These invoices also indicate that the provision of those listed services may reasonably have been separately negotiable.⁵¹

The record demonstrates that Hyundai had the ability to report service-related revenue separately as requested in the AD Questionnaire because its sales documentation identifies separate line items for service-related revenue. However, as explained above, Hyundai simply stated that its reporting was consistent with its reporting methodology in the original investigation, rather than following our instructions in the AD Questionnaire. Hyundai merely provided a

⁴⁵ See BCQR C-28 and C-40 – C-41; *see also* SBCQR at 14-15; *Remand Order*, Slip Op. 18-156 at 27.

⁴⁶ See *Second Remand Order*, Slip Op. 18-156 at 28.

⁴⁷ See Verification Report.

⁴⁸ *Id.* at SVE-8 and SVE-12 – SVE-15.

⁴⁹ See *Second Remand Order*, Slip Op. 18-156 at 20, footnote 19; *see also*, Verification Report at SVE-13 and SVE-14. Pursuant to the Court’s directive, we are excluding SEQU 27 for the purpose of revenue capping as it only lists service line items in Hyundai’s internal communications.

⁵⁰ See *Second Remand Order*, Slip Op. 18-156 at 20.

⁵¹ *Id.* at 24.

response which it indicated was based on its experience in the original investigation without alerting Commerce to the existence of the service-related revenue which appears in its invoices to certain unaffiliated customers. Because Hyundai had the service-related revenue information and failed to provide it as requested by Commerce, we find that Hyundai failed to cooperate to the best of its ability with regard to the reporting of service-related revenue. Therefore, we find that making an adverse inference in the selection of facts available is warranted.

For the sales for which the record contains no service-related revenue information, the application of partial adverse facts available is warranted in order to cap Hyundai's service-related revenue by the associated expenses.

D. Selection of Adverse Facts Available with Respect to Capping Service-Related Revenue with the Associated Expenses for All Other Sales

The sole information on the record concerning Hyundai's service-related revenue is the information from the four SEQUs discussed above (*i.e.*, 8, 11, 14, and 27). The documentation for SEQU 1 does not contain any service-related revenue. Because the service-related revenue for SEQU 27 is based solely on internal documentation and we have three SEQUs with service-related revenue based on external documentation between Hyundai and its customers, we are not considering the SEQU 27 service-related revenue information in our selection of adverse facts available, in light of the Court's order. As such, for the purpose of service-revenue capping, we used the highest percentage difference between service-related revenue and the service-related expenses from the SEQUs with usable service-related expenses. SEQU 8 had the highest percentage difference (*i.e.*, [] percent). We used this percentage to reduce the U.S. gross unit prices of Hyundai's U.S. sales (except for SEQUs 1, 8, 11, 14 and 27), as partial adverse facts available. Our percentage calculations for each of the five sales for which we have documentation of Hyundai service-related revenue activity on the record are detailed below.

As explained above, the only record information regarding Hyundai's service-related revenue for U.S sales is with regard to SEQUs 1, 8, 11, 14 and 27. We analyzed the sales documentation for these five SEQUs and, where appropriate, calculated the percentage difference between the service-related revenue and the service-related expenses. What follows is an analysis of the service-related revenue cap for each of the five sales and our pool of percentage differences from which the partial adverse facts available plug was selected for all other sales.

SEQU 1: For SEQU 1, we previously explained that there is no service-related revenue to cap for SEQU 1.⁵² Therefore, we did not calculate a percentage difference for SEQU 1.

SEQU 8: Regarding SEQU 8, we made no changes from our January 9, 2018, Draft First Remand with regard to the percentage difference calculation (*i.e.*, [] percent), as sales documentation shows that there are certain service items listed in Hyundai's external communications (*i.e.*, the invoice between Hyundai USA and its unaffiliated customer).⁵³

SEQU 11: Concerning SEQU 11, [] are listed in the purchase orders and invoice between Hyundai and its unaffiliated customer.⁵⁴ The invoice to Hyundai's unaffiliated customer contains a price for the subject merchandise of [], as well as itemized prices for []. The total price of [] appears on the same invoice, which is Hyundai's reported gross unit price.⁵⁵ By contrast, the reported expenses associated with the listed revenue items are all less than the values provided.⁵⁶ The actual expense for [] was [], the expense for [] was

⁵² See January 9, 2018 Draft First Remand Results at 12.

⁵³ See January 8, 2018 Draft First Remand Results Analysis Memo at 3; *see also* Verification Report at SVE-13, pages 44-45.

⁵⁴ See SAQR at Attachment SS-17.

⁵⁵ *Id.*

⁵⁶ *Id.*

[], the expense for [] was [].⁵⁷ With regard to [], we find that such items do not qualify as a service performed and thus will not use such data for the purpose of service-revenue capping. In addition, for the delayed delivery charge, we find that it is not service related and thus will not use such data for the purpose of service-revenue capping. However, this does represent a difference in the circumstances of sale and we therefore made a circumstances of sale adjustment for it.⁵⁸ Accordingly, we only included [] in the service-related revenue capping calculation.⁵⁹ As such, by not capping the revenue earned for [] service by the actual expense, the reported gross unit price for this sale is overstated by [] percent.⁶⁰ Thus, we reduced the gross unit price by [] percent, which is the amount of revenue attributable to a service in excess of an expense for SEQU 11.⁶¹

SEQU 14: Regarding SEQU 14, although [] are identified in Hyundai's internal communications (*i.e.*, an email exchange between Hyundai employees), other line items (*i.e.*, []) are listed in Hyundai's external documentations (*i.e.*, purchase orders and an invoice to its unaffiliated customer).⁶² For the delayed delivery charge, we also find that that it is not service related and, thus, we will not use such data for the purpose of service-revenue capping. However, this does

⁵⁷ See, e.g., January 9, 2018 Draft First Remand Results at 12, footnote 57; see also DIFMER SSQR and accompanying U.S. sales database (hyunus04).

⁵⁸ See Memorandum, "Analysis of Data Submitted by Hyundai Heavy Industries (HHI) in the Final Results of Second Remand of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2013-2014," dated concurrently with these final remand results (Final Second Remand Results Analysis Memo) at 3.

⁵⁹ *Id.* at 2.

⁶⁰ See SAQR at Attachment SS-17; see also DIFMER SSQR, and accompanying U.S. sales database (hyunus04); Final Second Remand Results Analysis Memo.

⁶¹ See Final Second Remand Results Analysis Memo at 2-3.

⁶² See, e.g., Verification Report at SVE-14, pages 23-24 and 45. Consistent with SEQU 11, we did not consider [] as a service performed and thus did not use such data for the purpose of the service-related revenue capping.

represent a difference in the circumstances of sale and we therefore made a circumstances of sale adjustment for it.⁶³ Accordingly, applying a similar calculation to that used for SEQU 11, and relying only on external communications, we only included [] in the service-related revenue capping calculation. As such, by not capping the revenue earned for the [] service by the actual expense, the reported gross unit price for this sale is overstated by [] percent.⁶⁴ Thus, we reduced the gross unit price by [] percent, which is the amount of revenue attributable to a service in excess of an expense for SEQU 14.⁶⁵

SEQU 27: As for SEQU 27, Hyundai's internal communications (*i.e.*, internal contract between HHI and Hyundai USA) only identifies services.⁶⁶ In light of the Court's directive, we do not find it appropriate to reduce the gross unit price for this sale by applying the capping methodology, because the record contains service-related revenue information based on internal communications with the customers. Therefore, we did not calculate a percentage difference for SEQU 27.

Final Results of Redetermination

In accordance with the *Second Remand Order*, we have removed Hyundai's internal communications from our analysis for the purpose of service-related revenue and applied our capping methodology based on Hyundai's external documentation on the record. Further, in light of the Court's directive, we further explained, citing record evidence, how Hyundai failed to cooperate to the best of its ability in responding to the requested information, which is the basis for the continued application of partial adverse facts available to certain of Hyundai's U.S. sales.

⁶³ See Final Second Remand Results Analysis Memo at 2-3.

⁶⁴ See, *e.g.*, ABB's Case Brief at 13; see also Verification Report SVE-14; DIFMER SSQR, and accompanying U.S. sales database (hyunus04); Final Second Remand Results Analysis Memo at 2.

⁶⁵ See Final Second Remand Results Analysis Memo at 2-3.

⁶⁶ See Verification Report at SVE-13, pages 44-45.

The weighted-average dumping margin for Hyundai for the period of review, August 1, 2013, through July 31, 2014, resulting from our modified calculation pursuant to this remand is 16.58 percent.⁶⁷

DISCUSSION OF COMMENTS

Issue 1: Service-Related Revenue Capping Using Hyundai's External Communications for Certain U.S. Sales on the Record

Summary of Issue

ABB's Comments

- A close review of the documentation for the U.S. sales sequence numbers (SEQUs) 14 and 27 demonstrates that it contains evidence that the service-related revenue discussed therein was, in fact, communicated back to the unaffiliated customer.⁶⁸
- Hyundai's internal documents for these two SEQUs were issued pursuant to the customer's instructions.⁶⁹
- Thus, Hyundai's internal documentation nonetheless provides substantial evidence that the revenue reflected therein was negotiated between Hyundai and the unaffiliated customer and should serve as the basis for Commerce to cap service-related revenue.⁷⁰
- The Court's opinion does not preclude Commerce from explaining that the internal documentation reflects negotiations between Hyundai and its unaffiliated customer.⁷¹
- Specifically, regarding SEQU 27, the Court did not rule on ABB's argument that the separately listed services in Hyundai's internal contract were in response to the customer's request for a quote (RFQ); consequently, this leaves open the option for Commerce to provide a rationale tied to the terms of the RFQ.⁷²

Hyundai's Comments

- Commerce's treatment of the delayed delivery charge (SEQUs 11 and 14) as service-related revenue is not appropriate because such charges do not relate to an expense incurred after shipment; rather, it relates to costs at the factory.⁷³

⁶⁷ See Final Second Remand Results Analysis Memo.

⁶⁸ See ABB's Comments at 3.

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ *Id.* at 6.

⁷² *Id.* at 7.

⁷³ See Hyundai's Comments at 7-9.

Commerce’s Position:

We agree with ABB that if Hyundai’s internal documentation had demonstrated that specific amounts of service-related revenue were separately negotiated with the customer, Commerce could rely on such information as the basis for the service-related revenue capping. However, none of the internal documents cited by ABB indicate the service-related revenue amounts were separately negotiated with the customer.

With regard to SEQU 14, we disagree with ABB that Hyundai’s internal documentation can serve as the basis for capping the revenue. ABB argues that the email exchange reveals a clear communication between Hyundai and the unaffiliated customer, using Hyundai’s sales agent as an intermediary.⁷⁴ However, as the Court specifically ruled, this email “does not contain evidence that the costs for [] were discussed with the unaffiliated customer.”⁷⁵ The Court points out that the only communications with the customer do not include a discussion about [].⁷⁶ As a result, Commerce did not include the [] for sales revenue-capping purposes. Commerce also did not include the [] in service-related revenue capping because they are not services. For the delayed delivery charge, we agree with Hyundai that they are not service related. However, they do represent a difference in the circumstances of sale and we made a COS adjustment for them. Finally, we only included [] in the service-related revenue-capping calculation. In short, the record does not indicate the existence of the negotiation between Hyundai and the unaffiliated customer regarding [] services.

⁷⁴ See ABB’s Comments at 3; see also Verification Report at SVE-14.

⁷⁵ See *Second Remand Order*, Slip Op. 18-156 at 21, footnote 21; see also Verification Report at SVE-14.

⁷⁶ *Id.*

With regard to SEQU 27, we also disagree with ABB's claim that the record shows that the service-related revenue reflected in the contract between HHI and Hyundai USA was negotiated between Hyundai and the unaffiliated customer and that such an internal contract should serve as the basis for capping revenue.⁷⁷ ABB argues that the internal contract was issued in response to the U.S. customer's RFQ because the RFQ from the unaffiliated customer requested Hyundai provide the [

].⁷⁸ ABB further argues that [

].⁷⁹ Based

on our review of the RFQ, however, we cannot conclude that the customer was negotiating the items with Hyundai separately from the transformer price.⁸⁰ HHI's offer on the record shows that the price would include [

].⁸¹ HHI's offer, however, does not have values assigned to

the [].⁸² Also, it does not indicate that the []

are separately negotiable.⁸³ In addition, the purchase order and the invoice do not show the separate line items for services other than a lump-sum price.⁸⁴ In other words, the record does not contain the documentation showing explicitly that Hyundai's internal contract, which lists separate service line items, was issued in response to a request by the customer for separately itemized

⁷⁷ See ABB's Comments at 3.

⁷⁸ *Id.* at 5-6.

⁷⁹ *Id.*

⁸⁰ See Verification Report at SVE-15, pages 6-7.

⁸¹ *Id.* at SVE-15, page 10.

⁸² *Id.* at SVE-15, pages 9-11.

⁸³ *Id.*

⁸⁴ *Id.* at SVE-15, pages 13-18 and 35.

revenue. Accordingly, based on the record evidence, we cannot determine that the service line items contained in Hyundai's internal contract are separately negotiable. Also, as ABB acknowledged, record evidence does not show that the existence of the documentation explicitly communicating each service-related revenue listed in Hyundai's internal contract to the customer.⁸⁵ Thus, we find that it is appropriate not to rely on Hyundai's internal documentation referenced above for SEQUs 14 and 27 for the purpose of the capping revenue.

As for Hyundai's argument that Commerce should not treat the delayed delivery charges for SEQUs 11 and 14 as service-related revenue, we find that such charges do not constitute service-related revenue and thus will not use such data for the purpose of capping service-related revenue. For these two sales, however, the record shows that the delayed delivery charges were listed in the change purchase order from Hyundai's unaffiliated customer, which indicates that such a customer requested the delayed delivery of subject merchandise.⁸⁶ Section 773(a)(6)(C)(iii) of the Act provides that Commerce shall adjust the price used to establish normal value by the amount of other differences in the circumstances of sale. As Hyundai charged its customer due to the customer's specific request to delay the delivery of subject merchandise in the context of its sale, we find that making a circumstances of sale adjustment to normal value, instead of capping revenue for the delayed delivery, is appropriate for these two SEQUs.⁸⁷

⁸⁵ See ABB's Comments at 6.

⁸⁶ See SAQR at Attachment SS-17; see also Verification Report at SVE 14.

⁸⁷ See Final Second Remand Results Analysis Memo.

Issue 2: Commerce’s Application of Facts Available with an Adverse Inference for All Other Sales to Cap the Service-Related Revenue

Summary of Issue

ABB’s Comments

- Commerce correctly applied facts available with an adverse inference as the application of partial adverse facts available is crucial to avoid allowing Hyundai to benefit from its failure to cooperate.⁸⁸
- The fact that four of the five U.S. sales contain information regarding service-related revenue is substantial evidence that the same, pervasive problem likely exists for most if not all other U.S. sales.⁸⁹

Hyundai’s Comments

- Commerce has not provided adequate factual grounds for using an adverse inference. Hyundai made its maximum and best efforts to explain its reporting methodology clearly and to provide the data on service-related revenue requested by Commerce, based on its well-founded understanding of Commerce’s request to report service-related revenue and Commerce’s treatment of such revenue in prior segments of this proceeding.⁹⁰
- ABB also alerted Commerce to Hyundai’s reporting methodology prior to verification.⁹¹
- Hyundai put forth its maximum effort. Commerce clearly understood Hyundai’s reporting throughout the review, verified the information, acknowledged that its documentation showed service-related revenue was sometimes broken out in documents exchanged with the customer, agreed that Hyundai’s reporting was correct, and concluded that Hyundai had provided the information in the form and manner requested.⁹²
- Commerce’s Draft Second Remand Results incorrectly indicate that Commerce was not aware of Hyundai’s breakout of service-related revenue on its sales documentation until it discovered such breakouts at verification.⁹³
- The reporting inconsistency between Hyundai and Hyosung was not created by the failure of Hyundai to cooperate to the best of its ability.⁹⁴
- Hyundai should not be punished through the use of an adverse inference for developments after the review was completed and the record was closed. Neither the need for consistency nor evolution in Commerce’s understanding after completion of the review negate Commerce’s well-informed assessment during the review that Hyundai had cooperated fully.⁹⁵
- At most, Commerce could apply neutral facts available.⁹⁶

⁸⁸ See ABB’s Comments at 7-9.

⁸⁹ *Id.* at 9.

⁹⁰ See Hyundai’s Comments at 3-4 and 7.

⁹¹ *Id.* at 5, footnote 9.

⁹² *Id.* at 5-6.

⁹³ *Id.* at 6.

⁹⁴ *Id.* at 3.

⁹⁵ *Id.* at 7.

⁹⁶ *Id.* at 9-10.

Commerce's Position:

We disagree with Hyundai that the application of partial adverse facts available is unwarranted and continue to apply partial adverse facts available to all other U.S. sales for which the record contains no service-related revenue information in order to cap Hyundai's service-related revenue by the associated expenses. In order to examine the service-related revenue capping issue and our previous treatment/practice regarding the service-related revenue in this proceeding, Commerce requested a voluntary remand.⁹⁷ In other words, to be consistent between Hyundai and Hyosung regarding the revenue capping methodology applied, and to correct/modify any potentially inappropriate application of Commerce's established capping practice in this review, Commerce voluntarily sought an opportunity to conduct a remand. Subsequently, the Court granted our request for the voluntary remand.⁹⁸ Thus, Hyundai's claim that Commerce was aware of, clearly understood, and verified Hyundai's reporting, agreed that Hyundai's reporting was correct, and concluded that Hyundai had provided the information in the form and manner requested, is unpersuasive. If that were the case, we would not have requested a voluntary remand from the Court to address this specific issue.

Pursuant to the *First Remand Order*, Commerce then re-examined the record evidence and found that Hyundai failed to report any service-related revenue in its questionnaire responses as requested by Commerce; Commerce was only made aware of this deficiency from the sales trace documents collected at verification.⁹⁹ While Hyundai had submitted in a questionnaire response a single sales trace which included a document containing service-related revenue information, in the section of the questionnaire which specifically requested service relate revenue information,

⁹⁷ See *First Remand Order*; see also February 9, 2018 Final First Remand Results at 20.

⁹⁸ See *First Remand Order*.

⁹⁹ See Draft Second Remand Results at 11; see also Verification Report at SVE-8, SVE-12 – SVE-15; SAQR at Attachment SS-17.

Hyundai failed to report anything. The Court has already ruled that, it was not until Commerce sorted through Hyundai's sales documentation that the agency recognized that Hyundai's documents were inconsistent with its reporting.¹⁰⁰ These documents support a finding that Hyundai had service-related revenue information, but did not report it.¹⁰¹ This information was necessary to establish the appropriate U.S. gross price needed to perform an accurate dumping calculation.¹⁰² Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: (1) withholds information that has been requested by Commerce; (2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; (3) significantly impedes a proceeding; or (4) provides such information, but the information cannot be verified. Commerce found that it was appropriate to resort to facts available because this requested information was missing from the record because Hyundai failed to provide it.¹⁰³ The Court has found that Commerce properly resorted to facts available for service-related revenue because Hyundai failed to report service-related revenue for its U.S. sales.¹⁰⁴

While Commerce found that it was appropriate to apply an adverse inference in the selection of facts available for service-related revenue, based on Hyundai's failure to cooperate by not acting to the best of its ability, the Court found that this conclusory sentence was not sufficiently explained or tied to record evidence for the Court to be able to sustain Commerce's finding and remanded the finding back to Commerce for further consideration and explanation.¹⁰⁵

¹⁰⁰ See *Second Remand Order*, Slip Op. 18-156 at 27-28.

¹⁰¹ See *Draft Second Remand Results* at 11.

¹⁰² *Id.*

¹⁰³ *Id.*

¹⁰⁴ See *Second Remand Order*, Slip Op. 18-156 at 18-20 and 24-26; see also *Draft Second Remand Results* at 11.

¹⁰⁵ See *Second Remand Order*, Slip Op. 18-156 at 29.

Section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.

Record evidence demonstrates that Hyundai failed to report service-related revenue separately to Commerce, as requested, despite the fact that it had information available to it.¹⁰⁶ Despite Commerce's instructions regarding the reporting of separate revenue, Hyundai did not separately report service-related revenue.¹⁰⁷

As the Court recognized, despite Commerce's initial instructions that when the invoice to the customer included separate charges for other services directly related to the sale, Hyundai was required to create a separate field for reporting such additional charge, Hyundai failed to do so.¹⁰⁸ Instead, as the Court has already found, Hyundai provided a seemingly complete response to Commerce's AD Questionnaire and responded to Commerce's supplemental questionnaire, stating in its responses that it separately reported service-related revenue and expenses consistent with the original investigation.¹⁰⁹ In its response to Commerce's supplemental questionnaire, for example, Hyundai cited Commerce's determination in the original investigation to justify its reporting methodology, stating that such services were required under the terms of sale.¹¹⁰ The Court also noted that, while Hyundai explained its reporting methodology, it did not alert Commerce to the existence of the very information – *i.e.*, invoices listing separate line items for services (including the invoice which it submitted as part of SEQU 11 prior to verification) – that Commerce had

¹⁰⁶ See Draft Second Remand Results at 12.

¹⁰⁷ *Id.* at 12-13.

¹⁰⁸ See *Second Remand Order*, Slip Op. 18-156 at 19-20; see also AD Questionnaire at C-18.

¹⁰⁹ See *Second Remand Order*, Slip Op. 18-156 at 27.

¹¹⁰ See BCQR C-28 and C-40 – C-41; see also SBCQR at 14-15; *Remand Order*, Slip Op. 18-156 at 27.

requested but Hyundai chose not to provide in the manner requested by Commerce.¹¹¹

Additionally, as the Court has recognized, as Commerce was not in possession of all of Hyundai's documentation with regard to these services, Commerce was not in a position prior to verification to know that Hyundai's responses were incomplete and inaccurate.¹¹²

As noted in the Draft Second Remand Results, Commerce conducted a verification of Hyundai's questionnaire responses from July 16, 2015, through July 24, 2015.¹¹³ As also noted in the Draft Second Remand Results, during the verification, Commerce examined four additional sales by Hyundai to the United States, corresponding to SEQUs 1, 8, 14, and 27.¹¹⁴ The sales documentation obtained at the verification revealed that, with the exception of SEQUs 1 and 27, Hyundai's invoices to its unaffiliated customers listed separate line items for services.¹¹⁵ As the Court noted, we found that these invoices were directly responsive to the questions Commerce initially asked in the AD Questionnaire, and further, that such invoices constituted substantial evidence that Hyundai had the information and nevertheless failed to provide it to Commerce.¹¹⁶ These invoices also indicate that the provision of certain of those listed services were separately negotiated.¹¹⁷

We requested a voluntary remand specifically to reexamine the revenue-capping issue and our revenue-capping analysis after the Court granted the requested remand. As the Court found, it was not until Commerce reexamined Hyundai's sales documentation that Commerce recognized

¹¹¹ See *Second Remand Order*, Slip Op. 18-156 at 28.

¹¹² *Id.*

¹¹³ See Verification Report; see also Draft Second Remand Results at 14.

¹¹⁴ See Verification Report at SVE-8 and SVE-12 – SVE-15; see also Draft Second Remand Results at 14.

¹¹⁵ See *Second Remand Order*, Slip Op. 18-156 at 20, footnote 19; see also Verification Report at SVE-13 and SVE-14.; Draft Second Remand Results at 14. Pursuant to the Court's directive, we are excluding SEQU 27 for the purpose of revenue capping as it only lists service line items in Hyundai's internal communications.

¹¹⁶ See *Second Remand Order*, Slip Op. 18-156 at 20; see also Draft Second Remand Results at 14.

¹¹⁷ See *Second Remand Order*, Slip Op. 18-156 at 24; see also Draft Second Remand Results at 14.

that Hyundai's documentation was inconsistent with its reporting.¹¹⁸ The record demonstrates that Hyundai had the ability to report service-related revenue separately as requested in the AD Questionnaire because its sales documentation identifies separate line items for service-related revenue.¹¹⁹ However, as discussed in the Draft Second Remand Results, Hyundai simply stated that its reporting was consistent with its reporting in the original investigation. In other words, Hyundai had not followed our instructions in the initial AD Questionnaire and had provided an incomplete response, based on its claimed experience in the original investigation. Furthermore, Hyundai had not alerted Commerce to the existence of the service-related revenue which clearly appears in its invoices to certain of its unaffiliated customers.¹²⁰ Given that Hyundai had the service-related revenue information but failed to provide it as requested by Commerce, consistent with the Draft Second Remand Results, we find that Hyundai failed to cooperate to the best of its ability with regard to the reporting of service-related revenue. Therefore, we find that making an adverse inference in the selection of facts available is warranted.

We also disagree with Hyundai that it made its maximum and best efforts to explain its methodology and to provide the data regarding service-related revenue requested by Commerce, based on its well-founded understanding of Commerce's request to report service-related revenue and Commerce's treatment of such revenue in prior segments of this proceeding.¹²¹ As the Court found, Commerce's conclusion in the original investigation was based on the record of that segment of the proceeding.¹²² As the Court also found, each review is separate and based on the record developed by the agency in that review.¹²³ In addition, as the Court acknowledged,

¹¹⁸ See *Second Remand Order*, Slip Op. 18-156 at 27-28.

¹¹⁹ See *Draft Second Remand Results* at 14.

¹²⁰ *Id.*

¹²¹ See Hyundai's Comments at 3-4 and 7.

¹²² See *Second Remand Order*, Slip Op. 18-156 at 25.

¹²³ *Id.*

Hyundai bears the burden to respond with all of the requested information and create an adequate record.¹²⁴ However, Hyundai relied on a reporting methodology which it indicated was based on a prior segment of the proceeding, rather than responding to Commerce's AD Questionnaire in the specific form and manner requested. As such, we find that Hyundai's argument is unavailing.

Accordingly, consistent with the Draft Second Remand Results, for the sales for which the record contains no service-related revenue information, the application of partial adverse facts available, using the highest percentage difference of [] percent between service-related revenue and the service-related expenses from SEQU 8 (as a reduction to U.S. gross unit price), is warranted in order to cap Hyundai's service-related revenue by the associated expenses.¹²⁵

FINAL RESULTS OF REDETERMINATION

In accordance with the *Second Remand Order*, we have not considered Hyundai's internal communications in our analysis of service-related revenue and applied our capping methodology based solely on Hyundai's external documentation on the record. In addition, we have removed the delayed delivery charges for SEQUs 11 and 14 as part of our revenue-capping analysis and instead made a circumstances of sale adjustment to normal value for these charges. Further, in light of the Court's directive, we further explained, citing record evidence, how Hyundai failed to cooperate to the best of its ability in its responses to Commerce's request for certain information, which is the basis for the continued application of partial adverse facts available to certain of Hyundai's U.S. sales.

¹²⁴ *Id.* at 27.

¹²⁵ *See* Draft Second Remand Results at 18.

The weighted-average dumping margin for Hyundai for the period of review, August 1, 2013, through July 31, 2014, for large power transformers from the Republic of Korea, as a result of our modified calculation pursuant to this remand, is 16.58 percent.¹²⁶

4/26/2019

X 

Signed by: JEFFREY KESSLER
Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

¹²⁶ See Final Second Remand Results Analysis Memo.