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Remand
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Hitachi Energy USA Inc. v. United States
Consol. Court No. 16-00054, CAFC 20-2114 (Fed. Cir. May 24, 2022)
Large Power Transformers from the Republic of Korea

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. SUMMARY

The U.S. Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion of the U.S. Court of Appeals for the Federal Circuit (CAFC) issued on May 24, 2022,[1] and remand order issued by the U.S. Court of International Trade (the Court) on December 16, 2022, in *Hitachi Energy USA Inc. v. United States*, Consol. Court No. 16-00054 (*Fourth Remand Order*). These final remand results concern the final results of the antidumping duty administrative review of large power transformers from the Republic of Korea (Korea) for the period of review (POR) August 1, 2013, through July 31, 2014.[2]

[1] *See Hitachi Energy USA Inc. v. United States*, 34 F.4th 1375 (Fed. Cir. 2022) (*CAFC Remand*).
[2] *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 Issues and Decision Memorandum (IDM); *see also* Memorandum, "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* Memorandum, "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.

In the *Fourth Remand Order*, the CAFC directed Commerce to permit Hyundai[3] to supplement the record with information concerning service-related revenue.[4] The CAFC stated that Commerce previously relied on incomplete data to determine antidumping duties, and vacated the Court's affirmance of Commerce's use of partial facts available with an adverse inference.[5] In the *Fourth Remand Order*, the Court ordered Commerce to reconsider, and to revise as appropriate, the final results of review, consistent with the *CAFC Remand*, and to provide Hyundai with an opportunity to supplement the record.[6] The Court further stated that Commerce would redetermine any dumping margin based on complete information provided in conformity with law.[7] In accordance with the *CAFC Remand* and the *Fourth Remand Order*, Commerce solicited complete information regarding service-related revenues and expenses from Hyundai and has recalculated the final antidumping duty margin for the administrative review based on the information provided. Our final results of redetermination are discussed below.

II. DISCUSSION

A. Statutory and Regulatory Background

Commerce conducts an administrative review in accordance with 19 CFR 351.221, under which Commerce sends to appropriate interested parties questionnaires requesting factual information for the review. Section 351.102(b)(21) of Commerce's regulations defines factual information. For instance, pursuant to 19 CFR 351.102(b)(21)(i), Commerce considers 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.

[3] Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai).
[4] *See CAFC Remand* at 19.
[5] *Id*.
[6] *See Fourth Remand Order*.
[7] *Id*.

To prevent U.S. price from being overstated, the statute and the regulations require revenues for services provided with the sale in excess of the related expense to be removed from the reported U.S. price. Section 772(c)(1) of the Tariff Act of 1930, as amended (the Act), provides that Commerce shall increase the price used to establish export price (EP) and constructed export price (CEP) (*i.e.*, U.S. price) in only the following three instances: (A) 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; (B) 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 (C) the amount of any countervailing duty imposed on the subject merchandise under Subtitle A to offset an export subsidy. Revenues received by a respondent on sales-related services are not included as an upward adjustment to U.S. price.

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

Section 772(c)(2) of the Act provides that Commerce shall reduce the price used to establish EP and CEP in the following instances: (A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States; and (B) the amount, if included in such price, of any export tax, duty, or other charge imposed by

the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 771(6)(C).

Also, Section 772(d)(1) of the Act defines additional adjustments to CEP, where the price will 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 (or subject merchandise to which value has been added): (A) commissions for selling the subject merchandise in the United States; (B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees, and warranties; (C) any selling expenses that the seller pays on behalf of the purchaser; and (D) any selling expenses not deducted under subparagraph (A), (B), or (C).

In addition, 19 CFR 351.401(c) directs that, in calculating EP, CEP, and NV, Commerce is normally 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.

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.[8]

[8] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty*

B. Factual Background

The petitioner[9] requested an administrative review on August 29, 2014, of imports of large power transformers from Korea produced by the following companies: Hyosung;[10] Hyundai; ILJIN; ILJIN Electric; and LSIS Co., Ltd. (LSIS).[11] On August 30, 2014, Commerce received requests for review from Hyosung, Hyundai, and ILJIN Electric.[12] Based on these requests, on September 30, 2014, Commerce initiated an administrative review for the period August 1, 2013, through July 31, 2014.[13] Commerce subsequently selected Hyosung and Hyundai as mandatory respondents.[14] Relying on the factual information that it gathered through questionnaire responses, on September 4, 2015, Commerce determined preliminary dumping margins of 11.01

Administrative Review, 77 FR 61738 (October 11, 2012)(*Steel Pipes Thailand*) and accompanying IDM at 7 (where we stated that "{b}ased on the plain language of the law and {Commerce's} regulations, it has been {Commerce'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, {Commerce} 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 IDM 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 … . {S}uch profits should be attributable to the sale of the service, not to the subject merchandise." We further stated that Commerce "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}."); and, *e.g.*, *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 {the respondent} and its U.S. affiliate"), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 75 FR 77829 (December 14, 2010).

[9] The petitioner for this segment of the proceeding is ABB, Inc.

[10] Hyosung Corporation and HICO America Sales and Technology (collectively, Hyosung).

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

[12] *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; and ILJIN Electric's Letter, "Large Power Transformers from the Republic of Korea: Request for Administrative Review," dated September 2, 2014.

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

[14] *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.

percent and 3.96 percent for Hyosung and Hyundai, respectively, in the *Preliminary Results*.[15] On March 16, 2016, Commerce issued the *Final Results*, determining dumping margins of 9.40 percent and 4.07 percent for Hyosung and Hyundai, respectively.[16] On May 5, 2016, Commerce issued the *Amended Final Results*, determining a dumping margin of 7.89 percent for Hyosung.[17] On March 31 and April 12, 2016, both the petitioner and Hyosung, respectively, initiated this action challenging certain aspects of the *Final Results* before the Court.[18]

In its *First Remand Order*, regarding the question of Commerce's treatment of service-related revenues 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 is a concern that is substantial and legitimate.[19] The Court directed Commerce to evaluate its revenue-capping practice and ensure that its application of this practice is consistent with respect to Hyundai and Hyosung.[20] Subsequently, pursuant to the Court's directives, Commerce issued its draft results of redetermination on January 8, 2018, and filed its final remand results before the Court on February 7, 2018.[21] Commerce re-examined the record with respect to Hyundai's reporting of the gross U.S. prices for the subject merchandise and determined that Hyundai had failed to separately

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[15] *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 applied a dumping margin of 7.49 percent to ILJIN Electric, ILJIN, and LSIS.
[16] *See Final Results.*
[17] *See Amended Final Results*.
[18] *See ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 17-138 (CIT 2017) (*First Remand Order*) at 2.
[19] *Id.* at 7-8
[20] *Id*.
[21] *See* Draft Results of Redetermination Pursuant to Court Remand, *ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 17-138 (CIT October 10, 2017), dated January 8, 2018; and *Final Results of Redetermination Pursuant to Court Remand, ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 17-138 (CIT October 10, 2017), dated February 7, 2018 (*First Final Remand*), available at https://access.trade.gov/resources/remands/17-138.pdf.

report service-related revenues from its gross unit prices.[22] Accordingly, Commerce relied on facts available, with an adverse inference, for certain of Hyundai's U.S. sales.[23]

Following Hyundai's challenge to Commerce's *First Final Remand*, the Court issued its *Second Remand Order*.[24] 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.[25] The Court found that such communications do not constitute substantial 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.[26] While the Court sustained Commerce's application of facts available, the Court directed Commerce to further consider or explain its use of adverse inferences to certain of Hyundai's U.S. sales for the purpose of capping service-related revenue.[27] The Court found that in applying partial adverse facts available, Commerce had not adequately explained, citing record evidence, how Hyundai failed to cooperate to the best of its ability.[28]

In accordance with the Court's directives in the *Second Remand Order*, Commerce reexamined the record evidence and amended its capping methodology to apply the capping for service-related revenues only in those transactions or services which indicate external communications.[29] Additionally, Commerce did not apply its capping methodology to the delayed delivery charges associated with two transactions (*i.e.*, U.S. sale sequence numbers (SEQU) 11 and

[22] *See First Final Remand* at 19-25.
[23] *Id*. at 31-32.
[24] *See ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 18-156 (CIT 2018) (*Second Remand Order*).
[25] *Id.* at 29-30.
[26] *Id*. at 24.
[27] *Id*. at 28-30.
[28] *Id*. at 29.
[29] *See* Draft Results of Redetermination Pursuant to Court Remand, *ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 18-156 (CIT November 13, 2018), dated April 2, 2019; and *Final Results of Redetermination Pursuant to Court Remand, ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 18-156 (CIT November 13, 2018), dated April 26, 2019 (*Second Final Remand*), available at https://access.trade.gov/resources/remands/18-156.pdf.

14), and, instead, made circumstance-of-sale (COS) adjustments to NV for those delayed delivery charges.[30] Further, pursuant to the *Second Remand Order*, Commerce provided additional explanations regarding its decision to apply partial adverse facts available, concluding that an adverse inference was warranted because Hyundai had the service-related revenue information but failed to provide it as requested; thus, Commerce found that Hyundai failed to cooperate to the best of its ability with regard to the reporting of service-related revenue.[31]

Following the petitioner's and Hyundai's challenges to Commerce's *Second Final Remand*, the Court issued the *Third Remand Order*.[32] In the *Third Remand Order*, the Court directed Commerce to reconsider its COS adjustments for the delay delivery charges, while sustaining Commerce's *Second Final Remand* in all other respects.[33] In accordance with the Court's directives in the *Third Remand Order*, Commerce recalculated NV without making COS adjustments to the delayed delivery charges.[34] As a result, Commerce calculated an antidumping duty rate of 16.13 percent for Hyundai.[35] The Court sustained the *Third Final Remand*.[36]

Following the Court's sustainment of the *Third Final Remand*, Hyundai appealed the decision to the CAFC. In the *CAFC Remand*, the CAFC stated that Hyundai's request to supplement the record with respect to service-related revenues and expenses is in accordance with the law, as Commerce had modified its methodology for the determination of service-related revenues after the *First Remand Order*.[37] The CAFC further stated that Commerce's denial of

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[30] *See Second Final Remand*.
[31] *Id*.
[32] *See ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 20-21 (CIT 2020) (*Third Remand Order*).
[33] *Id.* at 7 and 21.
[34] *See* Draft Results of Redetermination Pursuant to Court Remand, *ABB INC. v. United States*, Consol. Ct No. 16-00054; Slip Op. 20-21 (CIT February 19, 2020), dated March 31, 2020; and *Final Results of Redetermination Pursuant to Court Remand, ABB INC. v. United States*, Consol. Court No. 16-00054, Slip Op. 20-21 (CIT February 19, 2020), dated April 14, 2020 (*Third Final Remand*), available at https://access.trade.gov/resources/remands/20-21.pdf.
[35] *See Third Final Remand* at 11.
[36] *See ABB Inc. v. United States*, Consol. Court No. 16-00054, Slip Op. 20-72 (CIT 2020) (*ABB Inc.*).
[37] *See CAFC Remand* at 12.

Hyundai's request to supplement the record was contrary to section 782(d) of the Act.[38] Furthermore, the CAFC stated that the record provides no basis for an adverse inference and recourse to adverse facts available under section 776(b)(1)(A) of the Act.[39] The CAFC thus remanded the decision with instructions for redetermination of an antidumping duty margin based on complete information provided in conformity with law.[40] The Court remanded the case to Commerce with instructions to provide Hyundai an opportunity to supplement the record with information concerning service-related revenue and to determine any dumping margin based on complete information provided in conformity with law.[41]

C. Analysis

Commerce has implemented its capping methodology with respect to the antidumping duty order on large power transformers from Korea in numerous segments of this proceeding subsequent to the 2013-2014 administrative review at issue in this case.[42] The Court has upheld this methodology.[43] Consistent with the *CAFC Remand* and the *Fourth Remand Order*, Commerce issued a request to Hyundai for complete sales documentation.[44] Specifically, Commerce requested that Hyundai provide revised home market and U.S. sales databases to include all service-related revenues and their associated expenses, where such revenues and expenses are contained in customer-facing documentation generated as part of the sales process.[45]

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[38] *Id*. at 15.
[39] *Id*. at 18-19.
[40] *Id*. at 19.
[41] *See Fourth Remand Order*.
[42] *See, e.g.*, *Large Power Transformer from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2016-2017*, 84 FR 16461 (April 19, 2019), and accompanying IDM at Comment 6.
[43] *See Second Remand Order* at 22 (citing *First Remand Order*). In the *First Remand Order*, the Court cited *Dongguan Sunrise Furniture Co., Ltd. v. United States*, 36 CIT ___,___, 865 F. Supp. 2d 1216, 1248 (2012)(*Dongguan Sunrise Furniture*), stating that "Commerce's approach is reasonable under the statute" when it "deducts respondent's freight expenses from {the price used to establish CEP} … {and} then offsets respondent's freight expenses with related freight revenues, resulting in a net freight expense."
[44] *See* Commerce's Letter, "Request for Information," dated January 6, 2023.
[45] *Id*.

Commerce additionally requested a chart identifying each service expenses field and the associated revenue field, as well as a description of the service expenses and associated revenues.[46] Commerce also requested complete sales documentation for all home market sales, and all U.S. sales except for SEQUs 1, 8, 11, 14, and 27, as Commerce had already requested and received complete sales documentation for those sales in the underlying administrative review.[47]

In response to a request from Hyundai on January 12, 2023, to modify Commerce's request for information, Commerce declined to modify its request, citing the need for complete information on the record.[48] In response to Hyundai's January 17, 2023, letter, Commerce granted Hyundai a 30-day extension to respond to Commerce's request for information.[49] Commerce granted multiple additional extensions to Hyundai to submit the requested information.[50] Hyundai filed responses to Commerce's request for information between February 6 and April 4, 2023.[51] The petitioner filed comments on May 9, 2023,[52] and Hyundai filed rebuttal comments on May 23, 2023.[53] Commerce issued a supplemental questionnaire to Hyundai on May 24, 2023,[54] to which Hyundai responded on June 7, 2023.[55]

[46] *Id*.
[47] *Id*.
[48] *See* Commerce's Letter, "Request for Information," dated January 18, 2023.
[49] *Id*.
[50] *See* Commerce's Letters, "Request for Information," dated January 27, 2023; "Request for Information," dated February 6, 2023; "Request for Information," dated February 10, 2023; "Request for Information," dated February 17, 2023; and "Request for Information," dated March 13, 2023.
[51] *See* Hyundai's Letters, "Remand Supplemental Questionnaire Response," dated February 6, 2023; "Remand Supplemental Questionnaire Second Response," dated February 21, 2023; and "Remand Supplemental Questionnaire Third Response," dated March 14, 2023; and "Remand Supplemental Questionnaire Third Response," dated April 4, 2023.
[52] *See* Petitioner's Letter, "Petitioner's Comments on Hyundai's Submission Reporting Service-Related Revenues," dated May 9, 2023.
[53] *See* Hyundai's Letter, "Response to Petitioner's Comments on Hyundai's Submission Reporting Service-Related Revenues," dated May 23, 2023.
[54] *See* Commerce's Letter, "Supplemental Questionnaire," dated May 24, 2023.
[55] *See* Hyundai's Letter, "Remand Second Supplemental Questionnaire Response," dated June 7, 2023.

We reviewed the information submitted by Hyundai and, in accordance with the *CAFC Remand* and the *Fourth Remand Order*, we implemented Commerce's capping methodology consistent with sections 772(c)(1) and 773(a)(6) of the Act.[56]

In conformance with the *Fourth Remand Order*, Commerce released the draft remand for comment on June 21, 2023.[57] Hyundai filed comments, in accordance with the briefing schedule, on June 28, 2023.[58] Below, we address arguments raised by Hyundai on our draft redetermination.

D. Hyundai Comments

- Commerce's decision to implement its capping methodology is consistent with the *Fourth Remand Order*.[59]
- Commerce should correct an error related to installation expenses (Field INSTALLATIONU) where Commerce calculated the variable RINSTALLATIONU but did not use this new variable as part of the capping program language in the margin calculation program.[60]
- Commerce used other recalculated variables in the comparison market program, and should use RINSTALLATIONU for consistency.[61]
- Hyundai provided net expense variables for credit, indirect selling expenses, and early payment discounts, which Commerce should use instead of the gross expense variables.[62]

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[56] *See* Memorandum, "Analysis of Data Submitted by Hyundai Heavy Industries (HHI) in the Draft Results of Fourth Remand of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2013-2014," dated June 21, 2023.
[57] *See* Draft Results of Redetermination Pursuant to Court Remand, *Hitachi Energy USA Inc. v. United States*, Consol. Court No. 16- 00054, CAFC 20-2114 (Fed. Cir. May 24, 2022), dated June 21, 2023 (Draft Redetermination).
[58] See Hyundai's Letter, "Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated June 28, 2023 (Hyundai Comments).
[59] *See* Hyundai Comments at 2.
[60] *Id*. at 2-3.
[61] *Id*. at 3.
[62] *Id*. at 4-6.

- The reported net expense variables, for both the home and U.S. markets, reflect only the expenses related to the large power transformer (based on the proportion of the total sales price represented by the large power transformer) rather than the gross expense variables, which reflect expenses related both to the large power transformer and the service-related revenues.[63]
- Commerce should correct an error in its analysis memorandum where Commerce listed an incorrect figure for the quantity of merchandise sold by Hyundai during the POR.[64]

E. Comment Analysis

Hyundai alleges two ministerial errors, one with respect to the total number of units listed as sold by Hyundai during the POR, and the second with respect to the use of the correct variable for the capping calculation of installation revenues in the margin calculation program. We have examined these allegations, and agree with Hyundai that these are inadvertent ministerial errors. We have corrected these errors for the final results of redetermination.[65]

However, we have not implemented Hyundai's suggestion that Commerce should use certain net expense variables in the calculation of the antidumping duty margin. Our analysis and reasoning are set forth below.

Hyundai is requesting that credit expenses, early payment discount, and indirect selling expenses be treated the same as service-related revenues. However, such expenses and discounts are very different than service-related revenues. Therefore, in accordance with the statute, Commerce treats them differently because the adjustments serve different and discrete purposes.

[63] *Id*. at 4.
[64] *Id*. at 7.
[65] *See* Memorandum, "Analysis of Data Submitted by Hyundai Heavy Industries (HHI) in the Final Results of Fourth Remand of the Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea; 2013-2014," dated concurrently with these final results of redetermination.

Thus, treating these expenses/discounts in the same way as service-related revenue would be inappropriate.

In the United States market, service-related revenues are not included as adjustments to increase U.S. price. Based on the plain language of the statute and regulations, it has been Commerce's stated practice to decline to treat service-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).[66]

Instead, such service-related revenues are typically treated as an offset to the associated service-related expenses such as, but not limited to, movement expenses. Commerce will offset service-related expenses by service-related revenues, but will not increase U.S. Price by service-related revenues that are in excess of the associated service-related expenses. The reason for limiting the amount to actual expenses is that any part of the service price over expenses would consist of profit on the service rather than being part of the price for the subject merchandise. In this case, the service-related revenues are movement and installation expenses. By applying the offset cap, limiting the amount included to actual service-related expenses and then under section 772(c)(2)(A)(movement) and (d)(2)(installation) removing those expenses, Commerce supports the goal of the statute to isolate the price of the subject merchandise to determine if subject merchandise is being sold at a dumped price by removing the service-related revenues.

The expenses that Hyundai requests Commerce to subtract are credit expenses, early payment discounts, and indirect selling expenses, which are different from the service-related revenues discussed above. Credit expenses and early payment discounts are essentially the same in that they reflect the time value of money. With respect to the calculation of credit expenses, Commerce "imputes a U.S. credit expense and a foreign market credit expense on each sale.

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

{Commerce} measures the credit expense on a sale by the amount of interest that the sale revenue would have earned between the date of shipment and the date of payment."[67] Commerce further states that "credit expenses may also be thought of as the opportunity cost of money: they are the cost to the respondent for not receiving immediate payment for its sales."[68] Commerce has also noted that "the practice that many companies have of offering 'early payment' discounts to their customers is an implicit acknowledgment of the fact that payment terms affect revenue."[69]

Hyundai requests that, in calculating the credit expenses and early payment discount, Commerce apply the interest rates only to the price of the subject merchandise after service-related revenues are removed. The statute directs Commerce to reduce the U.S. price by the amount of credit expenses under 772(d)(1)(B). The regulations further direct Commerce to reduce the U.S. price by any discounts or rebates pursuant to 19 CFR 102(b)(38). However, Hyundai's suggested method would understate the amount of the actual credit expenses and early payment discount incurred. The expense and the discount should be based on the actual amount of money that was financed, which necessarily includes the total cost of the service-related revenues. Not to include the U.S. price and service-related revenues in the credit expense and early payment discount calculation would not reflect the actual credit and early payment discount being incurred. It would actually leave some credit expense in the U.S. price and reduce the amount of the early payment discount, both of which artificially increase the U.S. price. Hyundai's request that Commerce calculate the credit expense and early payment discount on only the price after service-related revenues are removed would not reflect Hyundai's actual costs. In addition, Commerce

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[67] *See* Import Administration Policy Bulletin 98.2: *Imputed credit expenses and interest rates* (February 23, 1998). The Court has cited to this Policy Bulletin as the source of Commerce's calculation of credit expenses. *See Hornos Electricos de Venezuela, S.A. (Hevensa) v. United States*, Court No. 02–00452; Slip Op. 03-112 (CIT August 29, 2003).

[68] *See* Import Administration Policy Bulletin 98.2: *Imputed credit expenses and interest rates* (February 23, 1998).

[69] *Id*. at footnote 1.

has stated that it is inappropriate to increase the gross unit selling price for subject merchandise as a result of profit earned on the sale of services.[70] However, the application of Hyundai's suggested methodology would result in the reduction of the gross unit price by an amount that does not account for the opportunity cost of credit for the service revenues, which is a *de facto* increase in the gross unit price as a result of profit earned on the sale of services.

Hyundai also would like the indirect selling expense ratio to be applied to the U.S. price after the service-related revenues are removed. However, this would cause a similar distortion to the U.S. price as with the credit expense and early payment discount. Section 772(d)(1)(D) of the Act provides that indirect selling expenses should be deducted from U.S. price. The Court has stated that Commerce has wide discretion in the methodology that it uses to calculate indirect selling expenses, because, "{t}he statute does not define 'indirect selling expenses.'"[71] The Court has also explained: "{l}ike the statute, Commerce's regulations are entirely silent as to how Commerce is to calculate indirect selling expenses" and thus, "{u}nder these circumstances, *Chevron*[72] accords Commerce great discretion as to the methodology used in the calculation of indirect selling expenses."[73] Similarly, the U.S. Court of Appeals for the Federal Circuit has noted that "{t}he statute is ambiguous, as the statute does not define the 'selling expenses' within subsection D" of section 772 (d)(1) of the Act.[74]

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[70] *See Steel Pipes Thailand* IDM at Comment 3.
[71] *See Heveafil Sdn. Bhd., and Filati Lastex Sdn. Bhd. V. United States*, 25 CIT 147, 159 (CIT 2001); *see also Dupont Teijin Films China Ltd. v. United States*, 7 F. Supp. 3d 1338, 1352 (CIT 2014) (*Dupont Teijin Films*) ("Commerce is not obligated by statute to calculate {the indirect selling expense ratio} in any particular way.").
[72] *See generally Chevron U.S.A., Inc. v. Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842-43 (1984).
[73] *See United States Steel Corp. v. United States*, 712 F. Supp. 2d 1330, 1337 (CIT 2010) (*U.S. Steel*) (citing *NSK Ltd. v. United States*, 29 CIT 1, 17-18, 358 F. Supp. 2d 1276, 1290-91 (CIT 2005); and *Timken Co. v. United States*, 209 F.Supp.2d 1373, 1381 (CIT 2002) ("Indeed, this court has previously underscored – in the context of calculating indirect selling expenses – that '{b}oth {section 772(d)}, the relevant statute, and the regulation, 19 C.F.R. § 351.401(g), give little direction on allocation methodology, and thus Commerce enjoys discretion in choosing its methodology.'").
[74] *See Micron Tech. Inc. v. United States*, 243 F.3d 1301, 1308 (Fed. Cir. 2001).

Commerce has stated that its standard methodology for U.S. sales is to calculate an indirect selling expense ratio using total expenses not reported as direct selling expenses divided by total sales of a U.S. affiliate, and to apply that ratio to the individual sales of subject merchandise to calculate U.S. indirect selling expenses.[75] The Court has acknowledged Commerce's standard methodology, stating that "Commerce's default methodology is to multiply each sale price by the ratio of total indirect selling expenses to total sales revenue,"[76] and "Commerce typically allocates indirect selling expenses by calculating an indirect selling expense ratio derived by dividing the total indirect selling expenses by the total sales value."[77]

The resulting indirect selling expenses, derived from the application of the ratio to the reported sale price, are further used to calculate the CEP profit, which is deducted from U.S. price. To take the indirect selling expense ratio and apply it to an individual U.S. price without the service-related revenues included reduces the CEP profit and inappropriately increases the U.S. price by the amount of the indirect selling expense associated with the service-related revenue which was excluded under Hyundai's suggested calculation method.

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[75] *See Stainless Steel Sheet and Strip in Coils from Mexico; Final Results of Antidumping Duty Administrative Review*, 76 FR 2332 (January 13, 2011), and accompanying IDM at Comment 5 ("{Commerce's} standard methodology, however, is to calculate indirect selling expenses based on expenses incurred and sales revenue recognized (or cost of goods sold (COGS)) during the same period of time."); s*ee also Certain Cold-Rolled and Corrosion-Resistant Carbon Steel Flat Products from Korea*, 67 FR 11976 (March 18, 2002) (*Steel Flat Products from Korea*), and accompanying IDM at Comment 1 (Commerce's "{c}alculation of indirect selling expenses, which is done on a company-wide basis, takes into account all of the indirect selling expense of the company and allocates them over all of the U.S. affiliate's sales in the United States."); *Methionine from Spain: Final Affirmative Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 86 FR 38985 (July 23, 2021) and accompanying IDM at Comment 3 ("Commerce generally allocates ISE by multiplying each gross sales price by the ratio of total ISE to total sales revenue."); *Stainless Steel Sheet and Strip in Coils from the Republic of Korea; Final Results and Rescission of Antidumping Duty Administrative Review in Part*, 72 FR 4486 (January 31, 2007) and accompanying IDM at Comment 3 (Commerce's normal methodology "{i}s to divide total ISE by total sales value."); and *Stainless Steel Wire Rod from Spain; Final Results of Antidumping Duty Administrative Review*, 66 FR 10988 (February 21, 2001) and accompanying IDM at Comment 2 (Commerce "{t}ypically allocates indirect selling expenses by multiplying the price of each sale by the ratio of total indirect selling expenses to total sales revenue.").

[76] *See Dupont Teijin Films*, 7 F. Supp. 3d at 1354.

[77] *See Diamond Sawblades Mfrs. Coalition v. United States*, 37 CIT 1501, 1505 n. 4 (CIT 2013) (*Diamond Sawblades*) (citing *Steel Flat Products from Korea* IDM at Comment 1).

With respect to Hyundai's proposed methodology regarding credit expenses and early payment discounts in the Korean market, we also find it inappropriate to implement this methodology. For the comparison market, section 773(a) of the Act requires Commerce to make adjustments to NV for price comparison purposes. Section 773(a)(6)(A) of the Act provides that Commerce shall increase the price used to establish NV by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in 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 NV.[78] Instead, as with the adjustments to U.S. price, Commerce will offset service-related expenses by service-related revenues, but will not increase NV by service-related revenues that are in excess of the associated service-related expenses. The reason for limiting the amount to actual expenses is that any part of the service price over expenses would be profit on the service rather than part of the price for the subject merchandise. Again, the service-related revenues in this proceeding are movement and installation expenses. By applying the offset cap, limiting the amount included to actual service-related expenses and then under sections 773(a)(6)(B)(ii) and (iii) removing those expenses, Commerce supports the goal of the statute to isolate the price of the subject merchandise in order to calculate NV.

Hyundai requests that, in calculating the credit expenses and early payment discount, Commerce apply the interest rates to the price of the foreign like product after service-related revenues are removed. 19 CFR 351.401(c) states that, in calculating NV (where NV is based on price), Commerce normally will use a price that is net of price adjustments, as defined in 19 CFR 351.102(b). As noted above, 19 CFR 351.102(b)(38) defines discounts or rebates, among other

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

changes in price, as price adjustments. The regulations at 19 CFR 351.410 define adjustments that Commerce may make to account for certain differences in the circumstances of sales in the calculation of NV, under section 773(a)(6)(C)(iii) of the Act, including for direct selling expenses. 19 CFR 351.410(c) defines "direct selling expenses" as expenses, such as commissions, credit expenses, guarantees, and warranties, that result from, and bear a direct relationship to, a particular sale. Hyundai's suggested method would understate the amount of the actual credit expenses and early payment discount incurred. The expense and the discount should be based on the actual amount of money that was financed which included the total cost of the service-related revenues. Not to include the home market price and service-related revenues in the credit expense and early payment discount calculation would not reflect the actual credit and early payment discount being incurred. As with the same proposed methodology and its effect on the calculation of U.S. price, Hyundai's request to calculate the credit expense and early payment discount on only the price after service-related revenues are removed would not reflect Hyundai's actual costs.

With respect to indirect selling expenses in the home market, these expenses are calculated pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), in connection with CEP offsets. Section 773(a)(7)(B) of the Act states that "{w}hen normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 772(d)(1)(D)." The effect of the CEP offset is to reduce NV by the amount of indirect selling expenses, including inventory carrying costs, which the respondent

incurs on sales of the foreign like product in the comparison market.[79] The amount of the CEP offset adjustment cannot exceed the amount of indirect selling expenses, including inventory carrying costs, deducted from CEP under section 772(d)(1)(D) of the Act.[80]

As stated above, the calculation of indirect selling expenses is not fixed by the statute. Also as stated above, we believe that Hyundai's proposed methodology is distortive as it does not capture the full indirect selling expenses associated with Hyundai's operations in the comparison market. Thus, the proposed methodology distorts the calculation of the CEP offset. For these reasons, we will not adjust the calculation of home market indirect selling expenses on the basis of the sale of the subject large power transformers only.

Finally, we note that our use of the gross expense variables, related to both the large powers transformer and service-related revenues, is consistent with our practice in this segment of the proceeding. In our calculation of the dumping margin for Hyosung pursuant to the *First Remand Order*, Commerce used the full values of credit expenses and indirect selling expenses.[81] The Court affirmed Commerce's methodology with respect to Hyosung.[82] Hyundai's proposed methodology does not comport with the Court's previously-sustained methodology.

For all of the reasons cited above, we will not use Hyundai's proposed net-expense variables for credit, early payment, and indirect selling expenses.

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[79] *See* International Trade Admin., U.S. Department of Commerce, Antidumping Manual, Ch. 8 at 52 (January 22, 1997).

[80] *Id*.

[81] *See First Final Remand*. Commerce recalculated Hyosung's margin using the standard capping methodology, and recalculated a margin of 8.74 percent. *Id*. at 31-32. Commerce's recalculation of Hyosung's margin was unchanged in the *First Final Remand*, but Commerce explained its capping methodology and SAS programming in the preliminary draft redetermination. *See* Draft Results of Redetermination Pursuant to Court Remand, *ABB INC. v. United States*, Consol. Court No. 16- 00054, Slip Op. 17-138 (CIT October 10, 2017), dated January 8, 2018, and accompanying analysis memorandum, "Analysis of Data Submitted by Hyosung Corporation (Hyosung) 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, at Attachment III.

[82] *See* Court Order, *ABB Inc. v. United States*, Ct. No. 16-54 (CIT August 29, 2019); *see also Large Power Transformers from the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results, Notice of Amended Final Results*, 84 FR 54843 (October 11, 2019). The Court remanded to Commerce the issue of service-related revenues with respect to Hyundai for further consideration. *See Second Remand Order*.

III. FINAL RESULTS OF REDETERMINATION

In accordance with the *Fourth Remand Order*, Commerce has applied its capping methodology to Hyundai's sales during the POR, based on information submitted by Hyundai. We are, thus, not applying facts available in these final results of redetermination with respect to Hyundai's sales. In addition, we have considered Hyundai's comments and made certain changes to our program for these final redetermination results.

In these final results of redetermination, Commerce calculates a rate of 4.69 percent to Hyundai for the POR, August 1, 2013, through July 31, 2014, for large power transformers from the Republic of Korea. Additionally, in accordance with our stated methodology in the *Final Results* and the *Hyundai Timken Notice*,[83] the rate for the non-selected companies (*i.e.*, ILJIN, ILJIN Electric and LSIS) is a simple average of the margins calculated Hyosung[84] and Hyundai. On this basis, Commerce calculates a rate of 6.72 percent for ILJIN, ILJIN Electric and LSIS for the POR, August 1, 2013, through July 31, 2014, for large power transformers from the Republic of Korea.

7/24/2023

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Signed by: ABDELALI ELOUARADIA
Abdelali Elouaradia
Deputy Assistant Secretary
for Enforcement and Compliance

[83] *See Large Power Transformers from the Republic of Korea: Notice of Court Decision Not in Harmony with Final Results, Notice of Amended Final Results*, 85 FR 40247 (July 6, 2020) (*Hyundai Timken Notice*)
[84] *See Large Power Transformers from the Republic of Korea: Notice of Court Decision Not in Harmony With Final Results, Notice of Amended Final Results*, 84 FR 54843 (October 11, 2019). Commerce calculated a rate of 8.74 percent for Hyosung.