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March 6, 2017

MEMORANDUM TO: Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance

FROM: Gary Taverman
Associate Deputy Assistant Secretary
for Antidumping and Countervailing Duty Operations

SUBJECT: Issues and Decision Memorandum for the Final Results of the
Administrative Review of the Antidumping Duty Order on Large
Power Transformers from the Republic of Korea; 2014-2015

I. SUMMARY

We have analyzed the case and rebuttal briefs submitted by interested parties. As a result of our analysis, we have made changes to the margin calculations of both respondent companies, as discussed below. We recommend that you approve the positions described in the “Discussion of Interested Party Comments” section of this Issues and Decision Memorandum. Below is the complete list of the issues in this administrative review for which we received comments from parties:



II. LIST OF ISSUES

A. Hyundai-Specific Issues

- Comment 1: Application of Total Adverse Facts Available
- Comment 2: Corrections to the Draft Liquidation Instructions
- Comment 3: Moot Arguments

B. Hyosung-Specific Issues

- Comment 4: The Department's Application of Expense Revenue Caps
- Comment 5: Should the Department Continue to Apply Expense Revenue Caps, It Should Correct Hyosung's U.S. Inland Freight Cap
- Comment 6: The Department Should Grant Hyosung a Commission Offset
- Comment 7: The Department Should Correct Certain Clerical Errors in its *Preliminary Results*
- Comment 8: The Department Should Not Conduct a Differential Pricing Analysis in the Final Results
- Comment 9: Hyosung's Allocations for Costs and Prices of Spare Parts and Accessories Are Not Reasonable and Should Be Rejected
- Comment 10: Hyosung Misreported the Physical Characteristics for Certain Sales
- Comment 11: Hyosung Failed to Reconcile Its Reported U.S. Sales Data to Its Normal Books and Records
- Comment 12: Hyosung's Reported Increases to U.S. Prices Are Not Supported by Sales Documentation Generated in Its Normal Course of Business
 1. Freight and Sales Revenues Not Supported by the Record
 2. Hyosung's Commercial Invoices Are Not Reliable
 3. Hyosung's Invoices Show Incorrect Amounts
 4. Hyosung's Reported Warehouse Expenses and Storage Revenues Are Not Correct
 5. Hyosung's Reconciled U.S. Sales Database Is Reliable
- Comment 13: The Department Should Not Accept Hyosung's Understated Ocean Freight Expenses for U.S. Sales
- Comment 14: The Department Must Not Accept Hyosung's Reported Cost of Manufacture Data
- Comment 15: Application of Total Adverse Facts Available Is Not Warranted for The Final Results
- Comment 16: If The Department Relies On Any Portion of Hyosung's Data Then Additional Corrections Should Be Made in the Final Results
- Comment 17: Date of Sale

III. BACKGROUND

On September 2, 2016, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea) for the period August 1, 2014, through

July 31, 2015.¹ The review covers five producers/exporters of the subject merchandise: Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), Iljin, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co., Ltd. (LSIS). The two manufacturers/exporters that were selected as mandatory respondents were Hyosung and Hyundai. Iljin, Iljin Electric, and LSIS were not selected for individual examination.

On January 5, 2017, Hyosung, Hyundai, and the petitioner, ABB Inc. (Petitioner), timely submitted case briefs commenting on the *Preliminary Results*. The parties timely filed rebuttal briefs on January 11, 2017. Department officials met with counsel to Hyundai on January 27, 2017; with counsel to Hyosung on February 7, 2017; and with counsel to Petitioner on February 9 and 10, 2017.

Based on our analysis of the comments received, we revised the weighted-average dumping margins for Hyosung and Hyundai from those calculated in the *Preliminary Results*.

IV. SCOPE OF THE ORDER

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

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

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

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

V. MARGIN CALCULATION

For Hyosung, the Department calculated constructed export price (CEP) and normal value using the same methodology as stated in the *Preliminary Results*, except as follows: 1) we relied on partial facts available under section 776(a)(1) of the Act with respect to adjustments to the cost

¹ See *Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014–2015*, 81 FR 60672 (September 2, 2016) (*Preliminary Results*) and accompanying Memorandum, entitled “Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2014–2015” (Preliminary Decision Memorandum).

of manufacturing and U.S. gross unit price for certain sales; and 2) we relied on partial adverse facts available under sections 776(a) and (b) of the Act with respect to ocean freight expenses for certain sales made by Hyosung.

For Hyundai, we applied total facts available to the dumping margin based upon an adverse inference (AFA), as discussed in the section immediately below.

VI. APPLICATION OF TOTAL FACTS AVAILABLE WITH REGARD TO HYUNDAI

Section 776(a) of the Tariff Act of 1930, as amended (the Act) provides that the Department, 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 the Department; 2) fails to provide such information within the deadlines established, or in the form or manner requested by the Department, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if the Department finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, the Department may use an adverse inference to the interests of that party in selecting the facts otherwise available.

As discussed in Comment 1 below, Hyundai has not acted to the best of its ability to provide the Department with necessary information, as requested, to calculate an accurate antidumping duty margin and has, therefore, impeded this administrative review. Hyundai has impeded the review by failing to act to the best of its ability in providing the Department with requested information in a timely manner. Specifically, Hyundai has significantly impeded this review by failing to act to the best of its ability by not providing complete and accurate information, thereby raising issues as to whether Hyundai: (1) systematically overstated U.S. prices; and (2) systematically understated home market prices. Further, Hyundai failed to provide the Department with requested cost information, which prevented the Department from determining whether such costs are distorted by incomplete reporting. In addition to the “selective reporting” issues identified below, these three issues demonstrate that Hyundai engaged in a pattern of behavior that leaves the Department with a response that, taken as whole, is unreliable. Although Hyundai has participated in the administrative review, it has done so with the effect of undermining and delaying the review process. Rather, Hyundai has demonstrated a pattern of behavior which causes us to question certain fundamental aspects of its reporting. We have, on numerous occasions, had to repeat requests for information, the kind of information that Hyundai should have known, and had reason to know from the start of the review, that the Department was requesting. Further, what key information Hyundai did provide came in very late in the process (post-preliminary results); in other words, the need to repeat requests for information led to information being provided later than would, and should, otherwise be the case, and worked to negate the Department’s ability to analyze the data for purposes of determining whether additional information was required. For these reasons, and as discussed below in Comment 1, the Department concludes that application of total facts available with an adverse inference is

appropriate with respect to Hyundai, pursuant to sections 776(a)(2)(A) and (C), and 776(b) of the Act.

VII. SELECTION OF ADVERSE FACTS AVAILABLE (AFA) RATE

Section 776(b) of the Act provides that the Department may use an adverse inference in applying the facts otherwise available when a party fails to cooperate by not acting to the best of its ability to comply with a request for information. In doing so, and under the Trade Preferences Extension Act of 2015 (TPEA),² the Department is not required to determine, or make any adjustments to, a weighted-average dumping margin based on assumptions about information an interested party would have provided if the interested party had complied with the Department's request for information.³ In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that the Department may employ an adverse inference "to ensure that the party does not obtain a more favorable result by failing to cooperate than if it had cooperated fully."⁴ Furthermore, affirmative evidence of bad faith on the part of a respondent is not required before the Department may make an adverse inference.⁵ It is the Department's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.⁶

Further, section 776(b)(2) of the Act states that the Department, when employing an adverse inference, may rely upon information derived from the petition, the final determination from the less-than-fair-value (LTFV) investigation, a previous administrative review, or other information placed on the record.⁷ In selecting a rate based on AFA, the Department selects a rate that is sufficiently adverse to ensure that the uncooperative party does not obtain a more favorable result by failing to cooperate than if it had fully cooperated.⁸

When using facts otherwise available, section 776(c) of the Act provides that, in general, where the Department relies on secondary information (such as a rate from the petition) rather than information obtained in the course of an investigation, it must corroborate, to the extent

² See Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (2015) (TPEA). The 2015 law does not specify dates of application for those amendments. On August 6, 2015, the Department published an interpretative rule, in which it announced the applicability dates for each amendment to the Act, except for amendments contained to section 771(7) of the Act, which relate to determinations of material injury by the ITC. See *Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015*, 80 FR 46793 (August 6, 2015).

³ See section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

⁴ See H.R. Doc. 103-316, Vol. 1 (1994) at 870; *Certain Polyester Staple Fiber from Korea: Final Results of the 2005-2006 Antidumping Duty Administrative Review*, 72 FR 69663, 69664 (December 10, 2007).

⁵ See, e.g., *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382-83 (Fed. Cir. 2003); *Notice of Final Determination of Sales at Less Than Fair Value: Circular Seamless Stainless Steel Hollow Products from Japan*, 65 FR 42985 (July 12, 2000); *Preamble*, 62 FR at 27340.

⁶ See, e.g., *Steel Threaded Rod from Thailand: Preliminary Determination of Sales at Less Than Fair Value and Affirmative Preliminary Determination of Critical Circumstances*, 78 FR 79670 (December 31, 2013), and accompanying Issues and Decision Memorandum at page 4, unchanged in *Steel Threaded Rod from Thailand: Final Determination of Sales at Less Than Fair Value and Affirmative Final Determination of Critical Circumstances*, 79 FR 14476 (March 14, 2014).

⁷ See 19 CFR 351.308(c).

⁸ See SAA at 870.

practicable, information from independent sources that are reasonably at its disposal. Secondary information is defined as information derived from the petition that gave rise to the investigation or review, the final determination from the LTFV investigation concerning the subject merchandise, or any previous review under section 751 of the Act concerning the subject merchandise.⁹ The SAA clarifies that “corroborate” means that the Department will satisfy itself that the secondary information to be used has probative value.¹⁰ To corroborate secondary information, the Department will, to the extent practicable, examine the reliability and relevance of the information to be used.¹¹

Finally, under section 776(d) of the Act, the Department may use any dumping margin from any segment of a proceeding under an antidumping order when applying an adverse inference, including the highest of such margins.¹² The Act also makes clear that when selecting an AFA margin, the Department is not required to estimate what the dumping margin would have been if the interested party failing to cooperate had cooperated or to demonstrate that the dumping margin reflects an “alleged commercial reality” of the interested party.¹³

In these final results of review, in order to determine the probative value of the dumping margin alleged in the Petition¹⁴ for assigning an AFA rate to Hyundai, we examined the information on the record obtained during the course of the review. When we compared the Petition dumping margin of 60.81 percent to transaction-specific data for Hyosung in this review, we found the highest transaction-specific rate related to sales by Hyosung exceeded the dumping margin alleged in the Petition.¹⁵ Therefore, we are applying the dumping margin alleged in the Petition as AFA for Hyundai in this review.

Pursuant to section 776(b)(2) of the Act, an adverse inference may include reliance on information derived from the petition, the final determination from the LTFV investigation, a previous administrative review, or other information placed on the record. Because the AFA rate determined for Hyundai is derived from a rate in the Petition¹⁶ and, consequently, based upon secondary information, the Department must corroborate the rate to the extent practicable.

⁹ *Id.*

¹⁰ *Id.*; see also 19 CFR 351.308(d).

¹¹ See, e.g., *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Preliminary Results of Antidumping Duty Administrative Reviews and Partial Termination of Administrative Reviews*, 61 FR 57391, 57392 (November 6, 1996), unchanged in *Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from Japan, and Tapered Roller Bearings, Four Inches or Less in Outside Diameter, and Components Thereof, from Japan; Final Results of Antidumping Duty Administrative Reviews and Termination in Part*, 62 FR 11825 (March 13, 1997).

¹² See section 776(d)(1)-(2) of the Act.

¹³ See sections 776(d)(3)(A) and (B) of the Act.

¹⁴ See Petition for the Imposition of Antidumping Duties on Large Power Transformers from Korea, dated July 14, 2011 (the Petition).

¹⁵ See the Initiation Checklist, dated August 3, 2011 (Initiation Checklist) at 9; see also Analysis of Data Submitted by Hyosung Corporation in the Final Results of the 2014/2015 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea, dated March 6, 2017 (Hyosung Final Analysis Memorandum).

¹⁶ See Petition; see also Initiation Checklist.

We determined that the highest Petition margin of 60.81 percent is reliable where, to the extent appropriate information was available, we reviewed the adequacy and accuracy of the information in the Petition during our pre-initiation analysis¹⁷ and for purposes of the final results of this review, as set forth below.

We examined evidence supporting the calculations in the Petition to determine the probative value of the dumping margins alleged in the Petition for use as AFA for purposes of this review. During our pre-initiation analysis, we also examined the key elements of the export price and normal value calculations, and the alleged dumping margins.¹⁸ During our pre-initiation analysis, we also examined information from various independent sources provided either in the Petition or, on our request, in the supplements to the Petition that corroborates key elements of the export price and normal value calculations used in the Petition to derive the dumping margins alleged in the Petition.¹⁹

Our examination of the information is discussed in detail in the Initiation Checklist, where we considered Petitioner's export price and normal value calculations to be reliable. We confirmed the accuracy and validity of the information underlying the derivation of the dumping margins alleged in the Petition by examining source documents and publicly available information. We obtained no other information that calls into question the validity of the sources of information or the validity of the information supporting the export price and normal value calculations provided in the Petition. Therefore, we determine that the highest dumping margin alleged in the Petition of 60.81 percent is reliable for purposes of this review.

In calculating normal value for the petition, Petitioner adjusted the U.S. producer's cost of manufacturing for known differences between the U.S. and Korean markets. Petitioner then added to the cost of manufacturing amounts for selling, general and administrative (SG&A), financial expenses and profit based on financial statements of certain Korean producers.²⁰ In calculating export price, Petitioner based U.S. price on lost U.S. sales and offers for sale for major types of large power transformers for delivery from Korean manufacturers to the U.S. customer during the period of investigation (POI).²¹ Specifically, Petitioner provided sales declarations concerning U.S. sales of large power transformers lost to Korean competitors.²² Based on the four prices for the large power transformers manufactured in Korea and offered for sale in the United States by two Korean producers/exporters, to calculate ex-factory export price, Petitioner deducted from these prices the adjustments, charges, and expenses associated with exporting and delivering the product to the U.S. customer, including inland rail freight, ocean freight, and U.S. port fees.²³ Based on this information, we determine that the highest dumping margin alleged in the Petition is relevant.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ See Initiation Checklist at 8.

²¹ *Id.*, at 7.

²² *Id.*

²³ *Id.*

Based on the above, the Department determines that the dumping margin alleged in the Petition has probative value and has corroborated the AFA rate of 60.81 percent to the extent practicable within the meaning of section 776(c) of the Act by demonstrating that the rate: (1) was determined to be reliable in the pre-initiation stage of the investigation; and (2) is relevant based on information obtained during the course of this administrative review.²⁴

VIII. RATE FOR UNEXAMINED RESPONDENTS

The statute and the Department's regulations do not address the rate to be applied to companies not selected for individual examination when the Department limits its examination in an administrative review pursuant to section 777A(c)(2) of the Act. Generally, the Department looks to section 735(c)(5) of the Act, which provides instructions for calculating the all-others rate in a market economy investigation, for guidance when calculating the rate for companies which were not selected for individual review in an administrative review. Under section 735(c)(5)(A) of the Act, the all-others rate is normally "an amount equal to the weighted average of the estimated weighted-average dumping margins established for exporters and producers individually investigated, excluding any zero or *de minimis* margins, and any margins determined entirely {on the basis of facts available}." In this review, Hyosung and Hyundai are two mandatory respondents and Hyundai has a margin determined entirely on the basis of facts available. Accordingly, we have applied a rate of 2.99 percent from Hyosung to the non-selected companies.

IX. DISCUSSION OF THE ISSUES

A. Hyundai-Specific Issues

Comment 1: Application of Total Adverse Facts Available

A. Revenue Reporting

Petitioner's Comments:

- Hyundai failed on three occasions to report separately negotiated revenues regarding ocean freight, inland freight, oil, *etc.*²⁵
- Hyundai's failure to report the above revenues renders its U.S. sales database unusable, as reported.²⁶

²⁴ See section 776(c) of the Act and 19 CFR 351.308(c) and (d); *Final Determination of Sales at Less Than Fair Value and Affirmative Determination of Critical Circumstances, in Part: Light Walled Rectangular Pipe and Tube from the People's Republic of China*, 73 FR 35652, 35653 (June 24, 2008) and accompanying Issues and Decision Memorandum at Comment 1; see also Initiation Checklist.

²⁵ See Letter from Petitioner to the Department, regarding "Petitioner's Case Brief Regarding Hyundai Issues," dated January 5, 2017 (Petitioner's Case Brief) at 9 (citing 19 CFR 351.102(b)(38)).

²⁶ *Id.*

- The Department specifically employed its revenue reporting and capping methodology on Hyosung’s sales in the last review, as well as in the *Preliminary Results* of this review.²⁷
- Failure to apply the same methodology to Hyundai in the *Preliminary Results* of this review based on similar facts is contrary to law and not supported by record facts.²⁸
- Hyundai makes a variety of arguments, *e.g.*, separately negotiated revenues are invoiced in a lump sum and are not severable from the lump-sum price, for why it should not be required to report separately negotiated revenues.²⁹ Regardless of those arguments, at no point in this proceeding did the Department excuse Hyundai from the requirement to report revenues separately.³⁰
- The Department is required to cap revenues for non-subject merchandise, or services included in gross unit price by the associated expense, pursuant to its established practice and the facts of this case.³¹
- Hyundai is required to report additional revenues separately, but failed to do so. The Department, therefore, is unable to apply properly its revenue capping policy to Hyundai’s reported U.S. sales.³²
- The Department should reject Hyundai’s unsolicited, untimely filed, and incomplete worksheet regarding certain revenues it failed to report previously.³³
- Hyundai’s reporting failure overstated the U.S. gross unit price, understated associated expenses, and prohibited the Department from implementing its capping policy. Consequently, the antidumping margin is decreased and the Department cannot use Hyundai’s reported U.S. sales as the basis of a margin calculation.³⁴

Hyundai’s Comments:

- Petitioner’s argument that Hyundai failed to report certain data to the Department appears to be based on a misreading of the scope of the antidumping duty order on LPTs, the

²⁷ *Id.*, at 11.

²⁸ *Id.*

²⁹ *Id.*, at 11-18.

³⁰ *Id.*, at 12.

³¹ *Id.*, at 19.

³² *Id.*

³³ *Id.*, at 19-22 (citing 19 CFR 351.301(c)(1)).

³⁴ *Id.*, at 22-23.

material terms of sale, the Department's prior clarifications, and Petitioner's own position on installation in the original investigation.³⁵

Petitioner's Rebuttal Comments:

- Hyundai's excuses for failing to follow the Department's requests to report certain revenues separately should be rejected.³⁶
- First, at no point in this review did the Department excuse Hyundai from the requirement to report certain revenues separately. Second, Hyundai's non-compliance prevented the Department from applying its capping policy in the same manner for both respondents.³⁷
- Hyundai had the choice to report certain revenues separately, in addition to making its legal arguments, but it chose not to do so. It has, therefore, not cooperated to the best of its ability with the Department's requests for information in this review.³⁸
- Hyundai's argument that Petitioner misread the scope of the antidumping duty is incorrect. The scope does not determine what expenses and revenues are to be reported or in what manner.³⁹
- The Department, therefore, is unable to apply its revenue capping policy to Hyundai's reported home market sales properly and should find that Hyundai has deliberately withheld data requested by the agency that results in an inability to calculate normal value accurately.⁴⁰

Hyundai's Rebuttal Comments:

- Petitioner bases its claims that the Department is unable to calculate an accurate dumping margin for Hyundai on the false premise that Hyundai failed to provide the requested breakout of revenues and expenses. However, Hyundai, in fact, did provide the breakdown of revenues and expenses.⁴¹

³⁵ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Case Brief," dated January 5, 2017 (Hyundai's Case Brief) at 21-24.

³⁶ See Letter from Petitioner to the Department, regarding "Petitioner's Rebuttal Brief to Hyundai's Case Brief," dated January 11, 2017 (Petitioner's Rebuttal Brief) at 15-17.

³⁷ *Id.* When making such adjustments to U.S. price, the Department caps revenues from sales-related services at the level of corresponding expenses in order to prevent overstating U.S. price.

³⁸ *Id.*, at 19.

³⁹ *Id.*, at 20.

⁴⁰ *Id.*

⁴¹ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Rebuttal Brief," dated January 11, 2017 (Hyundai's Rebuttal Brief) at 1 (citing Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to Questions 13 and 17 of the Third Supplemental Sections A, B, C and D Questionnaire," dated November 10, 2016 (Hyundai's November 10, 2016, Supplemental Questionnaire Response) at 23).

- Petitioner’s complaint that Hyundai failed to provide the requested breakdown of revenues is contrary to the record.⁴²
- The Department should continue to find that what Petitioner claims to be “separate revenues” are, in fact, correctly included in the gross unit price, in accordance with the terms of sale or are transformer components that are part of the subject transformer, in accordance with the scope of the antidumping duty order.⁴³
- In all prior segments of this proceeding, including two sales verifications, the Department found that Hyundai correctly reported gross unit prices based on the terms of sale.⁴⁴
- The Department also confirmed that “no such capping was indicated as Hyundai did not report revenues from reimbursement expenses and the record did not suggest it should have done so.”⁴⁵
- The Department’s conclusions regarding Hyundai were consistent with other precedent that considered the terms of sale.⁴⁶
- Petitioner’s claim that Hyundai improperly included transformer components in the gross unit price is inconsistent with the scope of the antidumping duty order. As demonstrated previously, the components of which Petitioner complains are attached to, imported with, and invoiced with the active parts of LPTs. Thus, Hyundai correctly included such components in the gross unit price.⁴⁷
- Petitioner’s assertion that Hyundai has refused to provide separate revenue data ignores the detailed price breakdowns Hyundai provided. The Department should continue to reflect in the gross unit price those services that are required under the terms of sale.⁴⁸
- Petitioner’s characterization of Hyundai’s sales is not supported by the record. Hyundai was not permitted to sell the service to the customer separately and customers required the service as part of the purchase of the transformer. Informational breakdowns of the services do not remove them from being required under the terms of sale.⁴⁹

⁴² *Id.*, at 5.

⁴³ *Id.*, at 2-5.

⁴⁴ *Id.*, at 5-6.

⁴⁵ *Id.* at 6 (citing Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Scot Fullerton, Director, Office VI, regarding “Ministerial Error Memorandum for the Amended Final Results of the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from Republic of Korea,” dated April 29, 2016 (2013-2014 Ministerial Error Memorandum) at 7).

⁴⁶ *Id.*

⁴⁷ *Id.*, at 8.

⁴⁸ *Id.*, at 9.

⁴⁹ *Id.*, at 10.

- Petitioner does not acknowledge that Hyundai submitted its worksheet providing the breakdown of revenues and expenses pursuant to a question from the Department.⁵⁰
- Further, Petitioner’s complaints regarding the substance of the worksheet are erroneous.⁵¹
- Petitioner wrongly argues that Hyundai’s reported home market gross unit prices cannot be tied to the documents submitted by Hyundai. Petitioner’s argument appears to be based on a misreading of the scope of the antidumping duty order on transformers.⁵²
- Hyundai agrees that if the customer separately sought installation in a transaction outside of the sale of the transformer (*e.g.*, if the installation was not included in the sales contract but was later separately procured), installation in that case would not be within the terms of sale and not included in the contract and should be reported separately.⁵³
- Accordingly, where the customer separately procured a service outside of the contract for the transformer, Hyundai has reported such revenues and associated expenses separately.⁵⁴
- No party has sought to change the scope of the antidumping duty order to exclude assembled transformers, nor has any party demonstrated that installation is no longer a material term of sale.⁵⁵
- Therefore, Petitioner’s argument that Hyundai failed to report certain revenue is without merit and inconsistent with the scope of the antidumping duty order, the material terms of sale, the Department’s prior clarifications, and Petitioner’s own position on installation in the investigation.⁵⁶

B. *Exclusion of Certain Parts of Foreign Like Product in the Home Market*

Petitioner’s Comments:

- Record evidence demonstrates that Hyundai understated the reported gross unit price by excluding subject merchandise which are integral parts of the subject transformers.⁵⁷

⁵⁰ *Id.*, at 15 (citing Letter from the Department to Hyundai, regarding “Supplemental Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corporation USA’s Questionnaire Responses,” dated October 7, 2016 (October 7, 2016, Supplemental Questionnaire) at Question 17; Hyundai’s November 10, 2016, Supplemental Questionnaire Response at 23 and Attachment 3S-46).

⁵¹ *Id.*, at 16.

⁵² *Id.*, at 53 (citing Exhibit 1 of Hyundai’s Case Brief).

⁵³ *Id.*, at 55.

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.*

⁵⁷ *See* Petitioner’s Case Brief at 51-52.

- This exclusion, and Hyundai's submission of un-reconcilable data, confirm that the Department cannot rely on the reported home market gross unit prices for any of Hyundai's home market sales. This finding should be extended to all home market sales.⁵⁸
- The Department cannot calculate the normal value or dumping margin for Hyundai due to Hyundai's failure to report its gross unit price accurately and fully. Further, the Department cannot accurately determine any gap-filling value to correct Hyundai's reported home market prices, because Hyundai withheld key home market sales documents.⁵⁹

Hyundai's Comments:

- As demonstrated in Hyundai's worksheet, Petitioner's previous claim that the submitted gross unit price does not reconcile with the sales documents is wrong.⁶⁰
- Petitioner alleges that Hyundai understated gross unit price for home market sales. However, Petitioner based its arguments on a document submitted on August 18, 2016, *i.e.*, more than three months prior to Petitioner's raising of this issue.⁶¹
- At this stage of the proceeding, Hyundai cannot submit rebuttal information to respond to Petitioner's argument and is limited to documents on the record. The record is ambiguous, and Hyundai, therefore, provided a revised price calculation worksheet.⁶²

Petitioner's Rebuttal Comments:

- Hyundai denies understating home market gross unit prices, but fails to discredit Petitioner's claim and does not address record evidence or claim that there are inaccuracies in Petitioner's calculations.⁶³
- Hyundai's revised price calculation worksheet essentially proves Petitioner's point that home market gross unit prices are understated by the value of the excluded subject components. Further, Hyundai essentially admits to underreporting home market gross unit prices and that it is not possible to calculate an accurate dumping margin under these circumstances.⁶⁴

⁵⁸ *Id.*, at 52.

⁵⁹ *Id.*, at 54.

⁶⁰ See Hyundai's Case Brief at 21 and Exhibit 1.

⁶¹ *Id.*, at 21.

⁶² *Id.*, at 21 and Exhibit 2.

⁶³ See Petitioner's Rebuttal Brief at 12-13.

⁶⁴ *Id.*, at 14.

- This fact is sufficient justification for application of total adverse facts available. Hyundai’s failure to act to the best of its ability in reporting home market prices justifies the application of AFA.⁶⁵

C. Failure to Report the Price and Cost for Accessories Separately

Petitioner’s Comments:

- Hyundai provides three arguments to support its refusal to report price and cost for spare parts and accessories, which the Department requested to ensure that the product matches are based on accurate physical characteristics of the LPTs.⁶⁶
- None of Hyundai’s arguments justify Hyundai’s failure to report the requested data. Moreover, Hyundai intentionally impeded the Department’s cost analysis.⁶⁷
- The Department, therefore, cannot accept Hyundai’s cost data as provided for purposes of difference-in-merchandise adjustments, below cost sales analysis, or constructed value.⁶⁸

Hyundai’s Rebuttal Comments:

- Hyundai addressed Petitioner’s claims regarding “accessories” throughout this review. Petitioner’s arguments are misplaced.⁶⁹
- Specifically, Hyundai has demonstrated that Petitioner’s argument is based on the flawed premise that the components Petitioner claims to be accessories are, in fact, subject merchandise and not severable from the transformer. Petitioner’s arguments are based on a misreading of the scope.⁷⁰
- All of the “accessories” previously identified by Petitioner were attached to, imported with, and invoiced with the active parts of LPTs. By definition, they are subject merchandise and properly included in the transformer. Petitioner has not demonstrated otherwise.⁷¹

⁶⁵ *Id.*, at 15.

⁶⁶ *See* Petitioner’s Case Brief at 62.

⁶⁷ *Id.*, at 63.

⁶⁸ *Id.*, at 64.

⁶⁹ *See* Hyundai’s Rebuttal Brief at 66 (citing Hyundai’s November 10, 2016, Supplemental Questionnaire Response at 12-16).

⁷⁰ *Id.*

⁷¹ *Id.*, at 66-67.

- The Department considered and rejected identical arguments by Petitioner in the LTFV investigation and second administrative review.⁷²
- Consequently, the Department previously found that Hyundai’s inclusion of the components in the gross unit price was “appropriate.”⁷³

D. Selective Reporting and Other Discrepancies

Petitioner’s Comments:

- Concerning the Korean trucking and barge expenses for Hyundai’s U.S. sales, Petitioner argues that although required, Hyundai did not provide invoices for its truck or barge expenses for its U.S. sales, thereby undermining the reliability of the submitted freight expenses.⁷⁴
- Regarding the international freight and marine insurance expenses, Petitioner argues that there are discrepancies between the values reported to U.S. Customs and Border Protection (CBP) and the reported corresponding expenses to the Department, which indicates that Hyundai understated these reported expenses to the Department.⁷⁵
- Regarding the Korean brokerage expenses, Petitioner asserts that Hyundai failed to submit certain documents for some U.S. sales.⁷⁶
- Regarding U.S. brokerage and handling expenses, Petitioner argues that Hyundai failed to include certain expenses within its reporting, thereby understating U.S. brokerage and handling expenses.⁷⁷
- Regarding commission expenses for Hyundai’s U.S. sales, Petitioner argues that Hyundai withheld key documents, which are within the scope of the Department’s request for documentation of Hyundai’s U.S. sales.⁷⁸
- Concerning home market installation expenses, Petitioner argues that Hyundai failed to allocate installation expenses over the value of subject merchandise and spare parts, thereby overstating such costs for the home market sales.⁷⁹
- Concerning home market barge expenses, Petitioner argues that Hyundai failed to submit the barge invoice to document the barge expense and, instead, relied on another

⁷² *Id.*, at 67.

⁷³ *Id.*

⁷⁴ *See* Petitioner’s Case Brief at 24-25.

⁷⁵ *Id.*, at 30-31.

⁷⁶ *Id.* at 32.

⁷⁷ *Id.* at 35-36 and Attachment 4.

⁷⁸ *Id.* at 41.

⁷⁹ *Id.* at 55.

document to do so. Also, Petitioner points out that Hyundai only submitted such documents in part.⁸⁰

Hyundai's Rebuttal Comments:

- Concerning the Korean trucking and barge expenses for its U.S. sales, Hyundai argues that it did not provide invoices for its truck or barge expenses for its U.S. sales because the Department did not make a specific request to provide invoices.⁸¹ Hyundai further argues that given Hyundai's long standing use of such systems in lieu of invoices and the Department's acceptance of Hyundai's response to an identical question by the Department in this review, it was reasonable to interpret that providing screen prints from its system were sufficient to demonstrate the accuracy of the domestic inland freight expenses for its U.S. sales.⁸²
- Regarding the international freight and marine insurance expenses, Hyundai argues that the Department has taken the stance that it is not in a position to determine whether representations made to another agency (*i.e.*, CBP) were accurate as that is a matter within the purview of the other agency.⁸³
- Regarding the U.S. and Korean brokerage and handling expenses, Hyundai did not comment to rebut Petitioner's argument above in its rebuttal brief.
- Regarding commission expenses for its U.S. sales, Hyundai argues that it submitted documentation demonstrating the reported commission expenses, as requested by the Department, stating that the Department neither specifically asked for such documents that Petitioner listed nor informed Hyundai of any deficiency in its prior identical question.⁸⁴
- Concerning home market installation expenses, Hyundai provided a recalculation of the allocation of: (1) the supervision and installation expenses in the United States; and (2) the installation expenses in the home market, but argues that such recalculation has a "barely discernable" effect.⁸⁵
- Concerning home market barge expenses, Hyundai argues that the Department requested that Hyundai document its expenses and did not ask for invoices for the expenses.⁸⁶ Hyundai further argues that the document provided is sufficient to document the expenses and that the complete form of such document was not necessary to demonstrate the expenses and was not required by the Department's instructions.⁸⁷

⁸⁰ *Id.* at 56-57.

⁸¹ *See* Hyundai's Rebuttal Brief at 19.

⁸² *Id.*, at 19-21.

⁸³ *Id.*, at 27.

⁸⁴ *Id.*, at 40-41.

⁸⁵ *Id.*, at 56; *see also* Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Case Brief," dated January 5, 2017 (Hyundai's Case Brief) at Exhibit 3.

⁸⁶ *See* Hyundai's Rebuttal Brief at 59.

⁸⁷ *Id.*, at 60.

Department's Position:

The Department finds that Hyundai has impeded this administrative review by failing to act to the best of its ability in providing the Department with necessary information in a timely manner, as requested by the Department. Specifically, Hyundai has significantly impeded this review by failing to provide complete and accurate information, which raises serious concerns regarding whether Hyundai: (1) systematically overstated U.S. prices; and (2) systematically understated home market prices. Further, Hyundai failed to provide the Department with cost information, which prevented the Department from determining whether costs could be distorted by incomplete reporting. In addition to the “selective reporting” issues identified below, these three issues demonstrate that Hyundai has engaged in a pattern of behavior that leaves the Department with a response that, taken as whole, is unreliable. In applying facts available, we find an adverse inference is warranted, as the company significantly impeded the review and failed to cooperate to the best of its ability for the reasons identified below.

A. Revenue Reporting

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 Hyundai's reported U.S. price. Section 772(c)(1) of the Act provides that the Department 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 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 the Department 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 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 normal value.

In addition, 19 CFR 351.401(c) directs the Department 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, the Department's practice is to cap service-related revenue by the corresponding expense when making adjustments to U.S. price.⁸⁸

Although we requested that Hyundai report separately service-related revenues (*e.g.*, freight, installation, and supervision) from the associated expenses in prior segments of this proceeding, we did not require Hyundai to do so in the previous segments because Hyundai stated that such services were required under the terms of sale and that these revenues were not separately invoiced to the customers. However, record evidence in the prior review shows that Hyundai's U.S. price could be inflated by the inclusion of service-related revenues, thereby affecting the Department's ability to calculate an accurate antidumping margin. Given these concerns, at the onset of this instant review, we requested that Hyundai separately report such revenues and related expenses so that, per our practice, we could cap such revenues by the related expenses.

On December 3, 2015, we issued the initial AD Questionnaire to Hyundai.⁸⁹ In our questionnaire, we instructed Hyundai to report separately service-related revenues and the related expenses for each revenue. Specifically, the Department instructed Hyundai in relevant part:

*Please report revenue in separate fields (e.g., ocean freight revenue, inland freight revenue, oil revenue, installation, etc.) and identify the related expense(s) for each revenue.*⁹⁰

⁸⁸ 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 Memorandum, entitled "Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: 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 Memorandum, entitled "Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Orange Juice from Brazil – March 1, 2010, through February 28, 2011," 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 *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..."), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review*, 75 FR 77829 (December 14, 2010).

⁸⁹ See Letter from the Department to Hyundai, regarding "Request for Information Antidumping Duty Administrative Review," dated December 3, 2015 (AD Questionnaire).

⁹⁰ *Id.*, at B-1 and C-1.

On January 27, 2016, Hyundai filed its initial questionnaire response to sections B and C of the Department's AD Questionnaire.⁹¹ In its response, Hyundai refused to provide the requested information. Instead, citing the *Final Determination*,⁹² Hyundai stated that the Department found that Hyundai correctly reported its gross unit price and properly did not separate revenues, because such revenues are included in the terms of sale.⁹³ Hyundai further stated that it is required to provide such services (e.g., delivery, supervision, and installation) by the terms of sale and such services are not separable from subject merchandise.⁹⁴ In addition, citing *Ball Bearings*,⁹⁵ Hyundai sought to distinguish separately provided and charged services from those within the terms of sale, arguing its services are within the applicable terms of sale and not separately arranged on behalf of the customer.⁹⁶

On July 27, 2016, we issued a supplemental questionnaire to Hyundai.⁹⁷ In our questionnaire, we again requested, for a second time, that Hyundai report service-related revenues and the corresponding expenses, separately. Specifically, the Department instructed Hyundai in relevant part:

*Please clarify whether HHI or Hyundai USA received revenue related to international freight, inland freight, oil, installation, or any other expenses on U.S. sales. If so, please report this revenue in a field separate from the related expense.*⁹⁸

⁹¹ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to Sections B and C Questionnaire," dated January 27, 2016 (Hyundai's January 27, 2016, Sections B and C Questionnaire Response).

⁹² See *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) (*Final Determination*) and accompanying Memorandum, entitled "Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea" (Investigation Issues and Decision Memorandum) at 29-30.

⁹³ See Hyundai's January 27, 2016, Sections B and C Questionnaire Response at B-3.

⁹⁴ *Id.*, B-3 and B-4.

⁹⁵ See *Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819 (August 31, 2009) and accompanying Memorandum, entitled "Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom for the Period of Review May 1, 2007, through April 30, 2008," at 31 (where we stated that respondents' "freight and insurance revenues are revenues received from customers for invoice items covering transportation and insurance expenses and arise when freight and insurance are not included in the selling price under the applicable terms of delivery but when the respondent arranges and prepays freight and insurance for the customer." We further stated that "{a}ccordingly, the respondents incurred expenses and realized revenue for these activities," which we capped such revenue at the level of the corresponding expense.).

⁹⁶ See Hyundai's January 27, 2016, Sections B and C Questionnaire Response at B-3 and B-4.

⁹⁷ See Letter from the Department, regarding "Supplemental Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corporation USA's Questionnaire Responses," dated July 27, 2016 (July 27, 2016, Supplemental Questionnaire).

⁹⁸ *Id.*, at 7.

On August 10, 2016, Hyundai filed the *first* part of its supplemental questionnaire response.⁹⁹ Again, Hyundai refused to provide such information, stating that “[i]n accordance with the Department’s review and treatment of Hyundai’s sales documentation in prior segments of this proceeding, Hyundai did not receive separate revenue related to international freight, inland freight, oil, installation, or any other expenses on home-market sales or U.S. sales.”¹⁰⁰ Citing to the Department’s position in the prior review,¹⁰¹ Hyundai stated that its reporting of home market and U.S. gross unit prices is appropriate and in accordance with the Department’s prior consideration of Hyundai’s sales.¹⁰² Hyundai added that it reported the sales revenues and corresponding expenses separately when it received a purchase order for a separate service, pursuant to the Department’s requirements.¹⁰³

On August 18, 2016, Hyundai filed the *second* part of its supplemental questionnaire.¹⁰⁴ In reviewing this response, we found that certain documents identified separate service line items with a corresponding price/revenue listed.¹⁰⁵ We also noted that the prices/revenues for these services were higher than the expenses reported by Hyundai in its sales database for this sale, which indicated that Hyundai was improperly overstating gross unit price.¹⁰⁶ This finding affirmed our concerns regarding the methodology Hyundai used to report gross unit price.

In light of the finding identified above, in a supplemental questionnaire issued after the *Preliminary Results*, we again requested, for a third time, that Hyundai report service-related revenues and the related expenses separately. Specifically, the Department instructed Hyundai in relevant part:

...Please revise your U.S. sales database to report all such expenses and revenues for these sales in separate fields...¹⁰⁷

⁹⁹ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Response to the Second Supplemental Sections A, B, C and D Questionnaire,” dated August 10, 2016 (Hyundai’s August 10, 2016, Supplemental Questionnaire Response).

¹⁰⁰ *Id.*, at 11.

¹⁰¹ See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016) 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” (2013-2014 Administrative Review Issues and Decision Memorandum) at 39-40; see also 2013-2014 Ministerial Error Memorandum at 7 (where the Department’s position in the prior review stated that Hyundai was not obligated to report separate expenses and revenues for reimbursed services related to its U.S. sales and that its reported gross unit price for each sale is the appropriate basis for the calculation of CEP for its final dumping margin.).

¹⁰² See Hyundai’s August 10, 2016, Supplemental Questionnaire Response at 12.

¹⁰³ *Id.*

¹⁰⁴ See Letter from Hyundai to the Department, regarding “Large Power Transformers from South Korea: Response to Questions 8, 16, 25, 26 and 28 of the Second Supplemental Sections A, B, C and D Questionnaire,” dated August 18, 2016 (Hyundai’s August 18, 2016, Supplemental Questionnaire Response).

¹⁰⁵ *Id.*, at Attachment 2S-17.

¹⁰⁶ *Id.*, at Attachment 2S-26.

¹⁰⁷ *Id.*, at 6.

Hyundai submitted its response to our post-*Preliminary Results* supplemental questionnaire on October 27, 2016,¹⁰⁸ November 3, 2016,¹⁰⁹ and November 10, 2016.¹¹⁰ In Hyundai's November 10, 2016, Supplemental Questionnaire Response, Hyundai provided the Department with a worksheet in which it claimed that service-related revenues and the corresponding expenses for U.S. sales were reported separately.¹¹¹

While reviewing Hyundai's November 10, 2016, Supplemental Questionnaire Response, we found that purchase orders and/or invoices for many of Hyundai's U.S. sales contained separate line items for services.¹¹² This finding confirmed that, while revenues from such services may not have been *separately* invoiced to the customers, Hyundai and its customers separately assigned prices for the related services and identified these amounts as separate line items on invoices, separate from the price of the subject merchandise. Although these services are required under the terms of sale and are invoiced on a lump-sum basis, as Hyundai argued, we find that Hyundai's sales documentation specifically indicates that these sales-related services could be negotiable, apart from subject merchandise, since each service is shown/listed with the corresponding amount in purchase orders and/or invoices. In other words, if customers do not like Hyundai's price for a certain service, they can procure/arrange such service on their own without using Hyundai's service. That is, we cannot conclude that such service is non-negotiable and that customers cannot opt out of the service prior to accepting the offer just because a specific service is included in the selling price under the terms of sale. Similarly, we cannot conclude, as Hyundai suggests, that such service-related revenue should always be part of the gross unit price just because a service is not arranged separately. Therefore, given the record evidence, we find that service-related revenues for the sale of subject merchandise should not be considered as a component of the gross unit price.

Above, we have established that our concern related to Hyundai's reporting of U.S. gross unit prices was confirmed by record evidence and, therefore, that Hyundai should have reported service-related revenues separately from the related expenses. As noted above, in Hyundai's November 10, 2016, Supplemental Questionnaire Response, upon a third request, Hyundai provided the Department with a worksheet which shows the breakdown of service-related revenues and the corresponding expenses for its U.S. sales. While Hyundai claimed to have provided the information the Department requested, the worksheet provided is incomplete and casts serious doubt on the reliability of such information. For example, as Petitioner noted, the worksheet appears to be missing information for multiple U.S. sales (*i.e.*, it is missing the related expenses for its claimed revenues).¹¹³ In its rebuttal brief, Hyundai attempted to explain the reason for the missing information by claiming that: (1) such items relate to the manufacture of

¹⁰⁸ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to the Third Supplemental Sections A, B, C and D Questionnaire," dated October 27, 2016 (Hyundai's October 27, 2016, Supplemental Questionnaire Response).

¹⁰⁹ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to the Third Supplemental Sections A, B, C and D Questionnaire," dated November 3, 2016 (Hyundai's November 3, 2016, Supplemental Questionnaire Response).

¹¹⁰ See Hyundai's November 10, 2016, Supplemental Questionnaire Response.

¹¹¹ *Id.*, at Attachment 3S-46.

¹¹² *Id.*, at Attachment 3S-35.

¹¹³ See Petitioner's Case Brief at 21-22.

the transformer and the costs are, therefore, included in the reported cost of production; and (2) there are no separate sales expenses for these production costs.¹¹⁴ However, we cannot examine the validity of Hyundai's reporting at this late stage of the review. What key information Hyundai finally provided came in very late in the process, thereby negating our ability to satisfy ourselves that the data provided are accurate and reliable, and to develop deficiency questionnaires, as needed. Had Hyundai followed the Department's request to report separately service-related revenues and the related expenses early on (*i.e.*, in Hyundai's January 27, 2016, Sections B and C Questionnaire Response or even in Hyundai's August 10, 2016, Supplemental Questionnaire Response), we would have had the time to request additional necessary information (*i.e.*, the missing data) and verify other issues that Petitioner raised in its case brief.¹¹⁵ In sum, the worksheet Hyundai eventually provided, and which contained missing data, is not reliable for calculating an accurate margin.

The statute and regulations, as stated above, only permit adjustments to U.S. price in certain limited instances. An upward adjustment to U.S. price due to the inclusion of revenues received by a respondent on sales-related services is not included. Furthermore, the Department caps revenues from such services at the level of corresponding expenses, in order to prevent overstating U.S. price. As described above, although we permitted Hyundai to include service-related revenues in the gross unit price on the basis of Hyundai's claim in prior segments, the record evidence in this review indicates that there are separate line items for revenues from service-related revenues, as shown in purchase orders and/or invoices. Hyundai has demonstrated to the Department its ability to report service-related revenues separately. As a result, we find that Hyundai's arguments regarding the Department's practice of having respondents separately report service-related revenues from the associated expenses for purposes of "capping" do not excuse Hyundai from complying with the Department's request for such reporting. In addition, contrary to Hyundai's assertions, it cannot simply rely on its reporting from prior segments; the Department specifically requested that Hyundai provide this information in the instant review, because Hyundai's sales documentation identifies separate line items for sales-related services, demonstrating that these sales-related services could be negotiable.

For the reasons herein, we determine that Hyundai impeded this review by failing to act the best of its ability by failing to provide the Department with the requested information in a timely manner. In addition to Hyundai being aware of the Department's practice, the Department provided Hyundai three opportunities to report this information in the instant review separately. Nonetheless, Hyundai refused to provide such information until the very late in this review process. The data Hyundai eventually provided were missing information; we cannot verify the validity of Hyundai's reporting at this late stage of the review. Hyundai's delay in providing the requested information further negated our ability to satisfy ourselves that the data provided are accurate and reliable, or to develop deficiency questionnaires, as needed.

¹¹⁴ See Hyundai's Rebuttal Brief at 17.

¹¹⁵ See Petitioner's Case Brief at 20-22.

B. Exclusion of Certain Parts of Subject Merchandise in the Home Market

In Appendix III of the Department's AD Questionnaire, the description of products under review is stated as:

*The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. **Incomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs.** The "active part" of the transformer consists of one or more of the following when attached to or otherwise assembled with one another: the steel core or shell, the windings, electrical insulation between the windings, the mechanical frame for an LPT.*¹¹⁶

The scope clearly indicates that parts physically attached to, imported with or invoiced with active parts of subject merchandise are also subject merchandise. In addition, due to the Department's consistent instructions, Hyundai has known since the investigation that such parts should be included in the reported gross unit price when the parts are required to assemble an incomplete LPT.¹¹⁷

In its February 5, 2016, Section D Questionnaire Response, Hyundai cites to the issues and decision memorandum from the investigation where we stated that "{t}he Department asked Hyundai to verify that for all sales, the gross unit price only reflects the actual LPT, and not any spare parts, unless such parts are needed to assemble an incomplete LPT" and states that "{t}ransformer parts physically attached to an LPT are within the definition of the scope of subject merchandise"¹¹⁸ (emphasis added). In addition, in its November 10, 2016, Supplemental Questionnaire Response, Hyundai states that "{a}ssembled transformers are clearly within the scope of the antidumping duty order," that "{t}he Department has recognized that the gross unit price properly included those elements that are "needed to assemble an incomplete LPTs,""¹¹⁹ and that "...the Department instructed respondents to report gross unit price to only reflect the price of the LPT and not any spare parts, unless such parts were needed to assemble an incomplete LPT."¹²⁰

Since the investigation, Hyundai has known that: (1) parts that are physically attached to, imported with, or invoiced with active parts of a LPT; or (2) parts that are required to assemble an incomplete LPT, are also subject merchandise/foreign like product, and that they should be included in its reported gross unit price. Despite Hyundai's knowledge and clear instructions by

¹¹⁶ See AD Questionnaire at Appendix III. (Emphasis added).

¹¹⁷ See Investigation Issues and Decision Memorandum at 29; see also 2013-2014 Administrative Review Issues and Decision Memorandum at 39.

¹¹⁸ See Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to Section D Questionnaire," dated February 5, 2016 (Hyundai's February 5, 2016, Section D Questionnaire Response) at D-2 and D-3.

¹¹⁹ See Hyundai's November 10, 2016, Supplemental Questionnaire Response at 6-7.

¹²⁰ *Id.*, at 7.

the Department, Hyundai did not correctly report its home market price in this review. Specifically, Hyundai excluded a particular part which, as explained above, is considered foreign like product. Even though Hyundai was given three opportunities, as described below, to correct its reporting concerning the home market sales, it failed to do so until the issue was identified by the Department.

As noted above, on December 3, 2015, we issued the initial AD Questionnaire to Hyundai,¹²¹ to which Hyundai responded to sections B and C on January 27, 2016.¹²² This was Hyundai's first opportunity to include properly a particular part in its reported home market gross unit prices.

In our July 27, 2016, Supplemental Questionnaire, to which Hyundai responded on August 18, 2016,¹²³ we requested full sales and expenses documentation for two home market sales.¹²⁴ In its response, Hyundai submitted documentation which incorrectly identified a certain part required to assemble a complete LPT as non-foreign like product. Specifically, this documentation indicated that Hyundai reported the home market gross unit prices exclusive of such a part for the sales covered by that document. This was Hyundai's second opportunity to provide the Department with correct home market prices for these sales.

In our October 7, 2016, Supplemental Questionnaire, we asked Hyundai to provide any supporting documentation related to: (1) Hyundai's sales negotiation process;¹²⁵ and (2) all reported expenses concerning/covering the same home market sales described above. In response, Hyundai continued to exclude the same particular part from its home market gross unit price for these sales and, in fact, continued to reference documentation which incorrectly identified the part as non-foreign like product; thereby incorrectly excluding the part from the reported gross unit prices.¹²⁶ It was in the process of reviewing the submitted documents provided by Hyundai in its October 27, 2016, response that we identified this problem.¹²⁷ This was Hyundai's third opportunity to correct its misreporting.

Hyundai argues that: (1) this issue was raised at a very late stage of the review process, which does not permit Hyundai to submit rebuttal information; and (2) the record is ambiguous.¹²⁸ However, Hyundai bears the burden to demonstrate what has been reported is correct and accurate in a timely manner; it cannot fault Petitioner or the Department for raising this issue when it had the obligation and multiple opportunities to correct its misreporting.

¹²¹ See AD Questionnaire.

¹²² See Hyundai's January 27, 2016, Sections B and C Questionnaire Response.

¹²³ See Hyundai's August 18, 2016, Supplemental Questionnaire Response at 1-3 and Attachment 2S-17.

¹²⁴ See July 27, 2016, Supplemental Questionnaire at 5.

¹²⁵ See October 7, 2016, Supplemental Questionnaire at 5.

¹²⁶ See Hyundai's October 27, 2016, Supplemental Questionnaire Response at Attachment 3S-7.

¹²⁷ See Letter from Petitioner to the Department, regarding "Third Administrative Review of Large Power Transformers from Korea – Petitioner's Comments on Hyundai's Fifth Supplemental Questionnaire Response," dated December 2, 2016 at 10-13.

¹²⁸ See Hyundai's Case Brief at 21.

We find that record evidence¹²⁹ demonstrates that the excluded part is required to assemble a complete LPT. As a result, this part should have been treated as foreign like product. In its case brief, Hyundai provided the revised gross unit prices for those sales identified by the Department in its review of Hyundai's October 27, 2016, Supplemental Questionnaire Response.¹³⁰ These revisions show increased gross unit prices (*i.e.*, gross unit prices that are now inclusive of parts that Hyundai initially excluded).¹³¹ Further, other than arguing that: (1) the issue was raised at a very late stage of this review process, which does not permit Hyundai to submit rebuttal information; and (2) the record is ambiguous, Hyundai does not dispute Petitioner's claim of such misreporting.¹³²

In addition, even though Hyundai provided the "revised" gross unit prices for such sales in its case brief, which show increased gross unit prices for those sales identified by the Department in its review of Hyundai's October 27, 2016, Supplemental Questionnaire Response,¹³³ we have no time to confirm or verify the validity of these revisions. For example, we cannot confirm whether other parts, which Hyundai listed as "non-subject merchandise" (*i.e.*, non-foreign like product) in the same document referred to above, are, in fact, non-foreign like product. To confirm the accuracy of Hyundai's reporting as a whole, we requested full sales and expenses documentation for a very limited number of sample home market sales. The fact that a certain document exhibits a consistent pattern of understating the reported home market prices for the requested sale and other covered sales, for which we did not request full documentation, calls into question the reliability of Hyundai's reported home market prices.

In particular, we note that an examination of the record evidence indicates that Hyundai included such parts in the reported gross unit prices for its U.S. sales. Certain documents from multiple U.S. sales refer to the same part and indicate that such parts were attached to, imported with, or invoiced with subject merchandise, which in accordance with the scope makes the parts subject merchandise.¹³⁴ The U.S. sales database indicates that Hyundai included such parts in the reported gross unit prices for the U.S. sales.

To verify the accuracy of Hyundai's reporting, we requested full documentation for certain home market sales, only to determine, at such a late stage in the review, that there is a significant issue which could be related to Hyundai's entire reporting of home market gross unit prices. Specifically, as detailed above, Hyundai failed to include a certain part (*i.e.*, foreign like product) in the reported gross unit prices for particular home market sales. Hyundai knew that such part should have been included in the gross unit prices for home market sales. While Hyundai excluded the part in the gross unit prices for home market sales, Hyundai included the same part in the gross unit prices for U.S. sales.

Including such parts in U.S. price, but not in home market price, is a serious issue because it renders U.S. price and normal value incomparable. Furthermore, the vast majority of the

¹²⁹ See Hyundai's October 27, 2016, Supplemental Questionnaire Response at Attachment 3S-7.

¹³⁰ See Hyundai's Case Brief at Exhibit 2.

¹³¹ *Id.*

¹³² See Hyundai's Case Brief at 21 and Exhibits 1-2.

¹³³ *Id.*, at Exhibits 1-2.

¹³⁴ See Hyundai's November 10, 2016, Supplemental Questionnaire Response at Attachment 3S-35.

reported gross unit prices provided by Hyundai, pursuant to the Department's request for full documentation for a limited number of sample sales, as described above, display the understatement of such reported prices. Thus, we find that Hyundai's misreporting is grounds to find Hyundai's reported home market prices in their entirety are unreliable.

Finally, as described above, Hyundai knew at the onset of this review that this part is covered by the scope of the order. Hyundai should have reported this information in its initial response to the Department's AD Questionnaire. Alternatively, Hyundai should have alerted the Department of its misreporting at some earlier point in the course of the review. Hyundai did neither.

For the reasons identified above, we determine that Hyundai impeded this review by failing to act to the best of its ability in providing the Department with accurate information. As a result, the facts and circumstances in this review indicate that Hyundai has systematically understated home market sales in its reporting by excluding foreign like product, rendering Hyundai's reported home market gross unit prices unreliable.

C. Failure to Separately Report the Price and Cost for Accessories

For the purpose of determining whether the differences in costs between similar product matching control numbers (*i.e.*, CONNUMs) reported by Hyundai were due to the differences in the physical characteristics of the products within the CONNUMs or were the result of factors other than the physical characteristics, we requested that Hyundai separately report the price and costs for accessories of the LPTs. Specifically, in our AD Questionnaire issued to Hyundai, the Department instructed Hyundai in relevant part:

*Please separately report the price and cost for "spare parts" and "accessories" to ensure that product matches are based on accurate physical characteristics of the LPTs.*¹³⁵

On February 5, 2016, Hyundai filed its questionnaire response to section D of the Department's AD Questionnaire.¹³⁶ Hyundai failed to provide the requested information, stating that "there is no definition of what constitutes "accessories."¹³⁷ Hyundai argued that: (1) all of the "accessories" identified by Petitioner are in the scope by definition, and thus, properly included in subject merchandise; and (2) the Department accepted Hyundai's reporting of including such components in the reported gross unit price in prior segments.¹³⁸ However, Hyundai cannot simply rely on its reporting from prior segments. The Department specifically requested that Hyundai provide this information in the instant review to determine why there are differences in costs between similar CONNUMs and whether something else other than the physical characteristics captured in CONNUMs results in such differences.

¹³⁵ See AD Questionnaire at D-1.

¹³⁶ See Hyundai's February 5, 2016, Section D Questionnaire Response.

¹³⁷ *Id.*, at D-2 and D-3 (citing Investigation Issues and Decision Memorandum at 29 where we stated that "{t}he Department asked Hyundai to verify that for all sales, the gross unit price only reflects the actual large power transformer, and not any spare parts, unless such parts are needed to assemble an incomplete large power transformer.").

¹³⁸ See Hyundai's Rebuttal Brief at 66-69.

Furthermore, if Hyundai had questions related to the definition of “accessories,” it could have contacted the Department to request clarification; it failed to do so, and instead refused to provide such information. Furthermore, record evidence contradicts Hyundai’s assertion that Hyundai has been unaware of the definition of accessories. Specifically, at a minimum, Hyundai is aware of what constitutes an accessory, because sales documentation provided by Hyundai indicates that the industry uses such term and that term is referred to in certain documents provided by Hyundai.¹³⁹

For the reasons identified above, we determine that Hyundai impeded this review by failing to act the best of its ability. Hyundai failed to provide information specifically requested by the Department. Hyundai is obligated to submit the requested information whether it agreed with the request or not. Rather than seeking clarification, Hyundai withheld necessary information that was specifically requested by the Department. Because Hyundai failed to provide the information requested by the Department, the Department’s concerns related to Hyundai’s reporting of costs remain unaddressed, rendering such reporting unreliable.

D. Selective Reporting and Other Discrepancies

In addition to the items described above in sections A-C, Hyundai has been systematically selective in providing various documents to the Department, thereby impeding the course of the review. While these items may not, on their own, warrant the application of adverse facts available, these specific examples demonstrate that Hyundai has been selective in its reporting to the Department, thereby demonstrating that Hyundai has engaged in a pattern of behavior that leaves the Department with a response that, taken as whole, is incomplete and unreliable. We find that this pattern of behavior has impeded the review and negated our ability to satisfy ourselves that the data provided are accurate and reliable, and to develop and issue deficiency questionnaires as needed.

For example, in our October 7, 2016, supplemental questionnaire, we asked Hyundai to provide complete sales and expense documentation, including *all* sales and expense-related documentation generated in the sales process, for each U.S. sale.¹⁴⁰ Specifically, because of our concern regarding Hyundai’s revenue reporting issue as discussed above in section A of the Department’s Position, the Department instructed Hyundai in relevant part:

Please provide complete sales and expenses documentation (including all sales and expenses related documentation generated in the sales process) for all U.S. SEQUs. For example, please provide (1) a complete set of sales and contract documents (including requests for quote, evidence of negotiations, contracts, amendments to contracts (where applicable), purchase orders, amendments to purchase orders, invoices, etc. (2), proposals, design blueprints, or documents showing the process by which Hyundai and the customer arrived at a final price, (3) correspondence between HHI and Hyundai USA, (4) Korean export documents or U.S. Customs Entry documents, (5) documents relating to transportation costs or bills of lading, (6) installation services documentation, (7)

¹³⁹ See Hyundai’s November 10, 2016, Supplemental Questionnaire Response at Attachment 3S-35.

¹⁴⁰ See October 7, 2016, Supplemental Questionnaire at 5-6.

*documents relating to any commissions or other fees that may be paid for this sale, (8) any documents related to the purchase of {various items}, etc., (9) any test documents or documents relating to testing or testing expenses of the LPT, or (10) any clear documentation demonstrating that payment was received for this sample sale (including each recording in your accounting system regarding the sale and payment of the subject merchandise for both HHI and Hyundai USA (for U.S. sales)). Finally, please also be sure to provide a description of each of the documents generated in the sales process for each sale.*¹⁴¹

Rather than providing the requested documentation, Hyundai selectively reported what it considered “necessary” and “sufficient,” thereby stripping the Department of its ability to determine what is, in fact, necessary and sufficient to calculate an accurate margin. Although we asked Hyundai to submit all related documents, Hyundai did not provide invoices for many expenses and instead justified its failure to provide those invoices by claiming that: (1) the Department did not ask for such documents specifically; and (2) the Department accepted Hyundai’s questionnaire response regarding the same question prior to the *Preliminary Results*. While Hyundai refuted the fact that it failed to provide certain requested documents (*i.e.*, invoices), this particular question asked for *complete sales and expenses documentation, including all sales and expenses related documentation generated in the sales process*. Hyundai cannot excuse itself from submitting all related documents, such as invoices, which are vital for the Department to verify a respondent’s reporting. In other words, Hyundai was obligated to submit the requested information whether it agreed with the request or not; despite its obligation, it failed to provide the requested information.

Furthermore, there are other discrepancies on the record (*e.g.*, the values of the international freight and marine insurance expenses, reported to CBP and to the Department, respectively). There are also issues regarding certain expenses (*e.g.*, brokerage expenses) which Hyundai did not address in its rebuttal brief. As Petitioner noted, Hyundai did not correctly allocate the installation costs over the value of the transformer and spare parts in the home market. Collectively, these discrepancies and issues further undermine the reliability of Hyundai’s data.

E. Conclusion

For the reasons identified above, we determine that Hyundai failed to cooperate by not acting to the best of its ability to provide, in a timely manner, the information necessary for the Department to calculate a weighted-average dumping margin for exports of subject merchandise by Hyundai to the United States for this POR. Accordingly, we find that the application of facts available with an adverse inference, pursuant to section 776(b) of the Act, is warranted for the weighted-average dumping margin for Hyundai for these final results of this administrative review.

Hyundai has impeded the review by failing to act to the best of its ability in providing the Department with requested information in a timely manner. Specifically, Hyundai has significantly impeded this review by failing to act to the best of its ability by not providing complete and accurate information, and has, therefore, undermined the reliability of the response

¹⁴¹ *Id.* (Emphasis in original).

based upon Hyundai: (1) systematically overstating U.S. prices; and (2) systematically understating home market prices. Further, Hyundai failed to provide the Department with requested cost information, which prevented the Department from determining whether costs could be distorted by incomplete reporting. In addition to the “selective reporting” issues identified above, these three issues demonstrate that Hyundai has engaged in a pattern of behavior that leaves the Department with a response that, taken as whole, is unreliable. In applying facts available, we find an adverse inference is warranted in selecting from the available facts as the company significantly impeded the review and failed to cooperate to the best of its ability.

Comment 2: Corrections to the Draft Liquidation Instructions

Hyundai’s Comments:

- Hyundai requests that the Department revise the liquidation instructions to reflect the correct importer-of-record and to correct for an error in the quantity of LPTs entered during the period of review, as recorded by CBP. Hyundai provided the documentation concerning the error made by CBP in supplemental questionnaire responses, dated April 16 and November 10, 2016.¹⁴²

Petitioner’s Comments:

- Petitioner agrees with Hyundai that the liquidation instructions should be revised to identify the importer-of-record correctly, but states the Department should not make the other change to the instructions suggested by Hyundai. Because the problem identified by Hyundai was not with the Department’s calculations, it is for CBP to correct any error.¹⁴³

Department’s Position:

A review of the record shows the Department erred in identifying the importer-of-record in the draft liquidation instructions issued for Hyundai with the *Preliminary Results*. We agree with Hyundai’s suggested correction for the final results, as the record (*i.e.*, the CBP entry summaries for the reported U.S. sales) confirms this correction for the importer-of-record.

With respect to the quantity of LPTs entered during the period of review, a review of the record shows that Hyundai provided a narrative reconciliation for this amount in a supplemental questionnaire response, dated April 16, 2016, and a copy of one of the CBP entry summaries at issue in the April 16, 2016, supplemental questionnaire response.¹⁴⁴ We note that the Department is not in a position to determine whether representations made to the other agency were accurate as that was a matter properly within the purview of the other agency.

¹⁴² See Hyundai Case Brief at 12-14.

¹⁴³ See Petitioner’s Rebuttal Brief regarding Hyundai Issues at 54-55.

¹⁴⁴ See Hyundai’s supplemental questionnaire response, dated April 16, 2016, and entitled “Large Power Transformers from South Korea: First Supplemental Section A Questionnaire Response – Question 2,” at 1-2; Hyundai’s November 10, 2016, Supplemental Questionnaire Response at Attachment 3S-35.

Comment 3: Moot Arguments

Petitioner and Hyundai raised other issues related to Hyundai's margin calculations, including the reporting of sales and cost data and the granting of a commission offset.

Department's Position:

Because we did not calculate a final dumping margin for Hyundai, these issues are moot and are not addressed in this memorandum.

B. Hyosung-Specific Issues

Comment 4: The Department's Application of Expense Revenue Caps

Hyosung's Comments:

- The Department capped Hyosung's service-related revenues in the *Preliminary Results*. The facts of this case, and the unique, capital-intensive nature of LPTs, render revenue capping inappropriate.¹⁴⁵
- Freight, delivery, and installation terms are central to purchase transactions and functionality of LPTs. Therefore, delivery and installation-related expenses should be attributed to the unit and not subject to a separate cap.¹⁴⁶
- Delivery and installation expenses are part of the built-up gross unit price and based upon specific requests from customers.¹⁴⁷
- Delivery and installation revenues are not tied to actual expenses, regardless of whether or not a particular revenue item is listed separately on the invoice to the customer.¹⁴⁸
- None of these service revenue amounts are contracted separately from the underlying sales transaction, but, instead, are negotiated as part of the overall transaction.¹⁴⁹
- The Department should apply capping consistently across cases, markets, and respondents. In the instant proceeding, Hyosung broke out service revenue data by component from its invoices. The Department then applied caps to Hyosung's service revenues in the *Preliminary Results*, but not to Hyundai's.¹⁵⁰

¹⁴⁵ See Letter from Hyosung to the Department, regarding "Large Power Transformer from the Republic of Korea: Case Brief of Hyosung Corporation," dated January 5, 2017 (Hyosung's Case Brief) at 3.

¹⁴⁶ *Id.*, at 4.

¹⁴⁷ *Id.*

¹⁴⁸ *Id.*, at 5.

¹⁴⁹ *Id.*

¹⁵⁰ *Id.*, at 7.

Petitioner's Rebuttal Comments:

- The Department's separate reporting and capping of revenues included in gross unit price for services and other non-subject merchandise is based on the Department's well-established practice grounded in the requirements of the statute.¹⁵¹
- The statute does not recognize any such distinction between service-related revenues for commodity products and those for "unique" products like LPTs. Hyosung makes no attempt to explain a statutory or regulatory basis for its claimed exception to the revenue capping requirement for LPTs.¹⁵²
- In the final results of the 2013-2014 administrative review, the Department expressly rejected similar claims by Hyosung that the "unique" nature of LPT sales meant that the revenue capping requirement should not be applied to LPTs.¹⁵³
- The Department looks to give effect to material terms of sale reflected in the sales documentation, as in this case, where the contract/purchase order assigns separate revenues for freight and installation, among other services.¹⁵⁴
- The Department has previously rejected arguments regarding "lump sum" invoicing, or a respondent's claim that it does not bill freight separately so it should not be subject to the capping policy, finding that argument "not contemplated by the statute or regulations."¹⁵⁵
- Because the parties made the effort to separately negotiate and record individual revenues in the purchase order or other sales documents indicates that "this particular aspect of the sales contracts must therefore be given meaning as a material term of sale."¹⁵⁶

¹⁵¹ See Letter from Petitioner to the Department, regarding "Petitioner's Rebuttal Brief for Hyosung," dated January 11, 2017 (Petitioner's Rebuttal Brief) at 4.

¹⁵² *Id.*, at 6.

¹⁵³ *Id.*, at 6-7. See also *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014*, 81 FR 14087 (March 16, 2016), and accompanying Issues and Decision Memorandum at Comment 3 at 23-24 (2013-2014 Administrative Review Issues and Decision Memorandum).

¹⁵⁴ *Id.*, at 10. See also *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013), and accompanying Issues and Decision Memorandum at Comment 5.

¹⁵⁵ *Id.*, at 11. See also *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 (CWP from Thailand IDM) at Comment 3.

¹⁵⁶ *Id.*, at 11. See also CWP from Thailand IDM at Comment 5.

Department's Position:

We agree that the Department should continue to cap sales-related revenues. In Hyosung Preliminary Analysis Memorandum,¹⁵⁷ we explained that, consistent with the Department's normal practice, we capped sales-related revenues to offset directly associated sales expenses in the *Preliminary Results*.¹⁵⁸

With respect to Hyosung's argument regarding the "unique nature" of LPTs, we disagree with the contention that the purported "unique nature" of LPTs indicates that the Department should deviate from its normal practice of revenue capping.¹⁵⁹ Hyosung's argument is in opposition to the Department's policies, as well as the statute, with respect to the practice of capping service-related revenues. The Department has consistently stated that the statute and its regulations¹⁶⁰ do not permit the Department to raise U.S. prices for service-related revenues in excess of the related expense.¹⁶¹ In addition, there is no part of the statute, the regulations, or the Department's practice that makes a distinction between large capital goods and other goods subject to antidumping duty orders with respect to the capping of service-related revenue. To use the example of freight delivery, this service is integral in every case, at least up to the delivery point referenced in the terms of sale. Indeed, Hyosung states that it negotiates with its customers to determine freight revenue as part of the sales transaction process, and that such revenues are specifically negotiated.¹⁶² Services such as the provision of, and payment for, freight will always be central for an exchange of goods between parties within or across national borders, regardless of the product. Therefore, there is nothing "unique" about the provision or payment of freight. While LPTs may be "unique," regardless of where they are sold, the merchandise will need to be delivered and/or installed. This is true for all products.

Hyosung states that the "{f}reight, delivery, and installation terms are central to the transaction and the functionality of the LPT, any {sic} delivery and installation related expenses should be attributed to the unit itself and not be subject to a separate cap."¹⁶³ Hyosung also states that the "{a}mounts are specifically negotiated as part of the overall sales transaction" and that the expenses are "{p}art of the fully built-up gross unit price."¹⁶⁴ Finally, Hyosung notes that the

¹⁵⁷ See Memorandum to the File, "Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2014/2015 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated August 26, 2016 (Hyosung Preliminary Analysis Memorandum).

¹⁵⁸ See Hyosung Preliminary Analysis Memorandum at 6-7.

¹⁵⁹ When making adjustment to U.S. price, the Department caps revenues from sales-related services at the level of corresponding expenses in order to prevent overstating U.S. price.

¹⁶⁰ See 19 U.S.C. § 1677a(c)(1) and 19 CFR 351.102(b)(38).

¹⁶¹ See, e.g., *Circular Welded Carbon Steel Pipes and Tubes from Thailand* and accompanying Issues and Decision Memorandum at Comment 3; see also *Certain Orange Juice from Brazil* and accompanying Issues and Decision Memorandum at Comment 6; see also *Retail Carrier Bags* and accompanying Issues and Decision Memorandum at Comment 6; see also *Certain Steel Concrete Reinforcing Bars from Turkey*; see also *Purified Carboxymethylcellulose from the Netherlands*.

¹⁶² See Letter from Hyosung to the Department, regarding "Large Power Transformer from the Republic of Korea: Rebuttal Brief of Hyosung Corporation," dated January 11, 2017 (Hyosung's Rebuttal Brief) at 40, Hyosung's Case Brief at 4.

¹⁶³ See Hyosung's Case Brief at 4.

¹⁶⁴ *Id.*

shipping of an LPT is a complex process.¹⁶⁵ Petitioner states that producers and purchasers of LPTs will specifically and separately negotiate all of the various elements of a sales contract, and that each of these elements are included in the terms of sale.¹⁶⁶ Furthermore, Petitioner argues that record evidence shows that revenues for sales-related services are separately negotiated line items.¹⁶⁷ We agree that the negotiation of freight revenues is part of the terms of sale. At the same time, we disagree that such service-related revenues are part of a fully built-up gross unit price. As Petitioner noted, the evidence on the record indicates that these service-related revenues are separate from the gross unit price.¹⁶⁸ We do not believe that the record evidence provides any basis for the Department to deviate from its normal practice concerning the capping of service-related revenues. For these reasons, as provided in the statute and in line with past practice, we are continuing to cap service-related revenues to offset directly associated sales expenses for these final results.

With respect to the capping of Hyosung's service-related revenues, but not the service-related revenues for Hyundai, in the *Preliminary Determination*, see Comment 1.

Comment 5: Should the Department Continue to Apply Expense Revenue Caps, It Should Correct Hyosung's U.S. Inland Freight Cap

Hyosung's Comments:

- For the final results, should the Department continue to apply a revenue cap, it should revise its capping calculations to cap Hyosung's U.S. inland freight revenue amounts using the reported U.S. inland freight expenses in the field INLFWCU.¹⁶⁹
- Hyosung's initial questionnaire response, first supplemental response, and post-preliminary fifth supplemental response make clear that its reported inland freight revenue amounts related to U.S. inland freight, not domestic freight in Korea. U.S. inland freight revenue should be linked to U.S. inland freight expenses in any cap.¹⁷⁰

Petitioner's Rebuttal Comments:

- Hyosung inappropriately reported other amounts in the U.S. inland freight field. Therefore, the Department cannot rely on that field as the expense cap.¹⁷¹

Hyosung's admission that it was unable to report accurately expenses associated with the claimed revenues requires the Department to reject Hyosung's revenue offset claims, and to apply adverse fact available in the final results.¹⁷²

¹⁶⁵ *Id.*, at 4-5.

¹⁶⁶ See Petitioner's Rebuttal Brief at 8.

¹⁶⁷ *Id.*, at 8-11.

¹⁶⁸ *Id.*

¹⁶⁹ *Id.*, at 12.

¹⁷⁰ *Id.*, at 8-12.

¹⁷¹ See Petitioner's Rebuttal Brief at 13.

¹⁷² *Id.*, at 14.

Department's Position:

We agree with Hyosung and have adjusted the cap so that sales revenues for U.S. inland freight are capped by U.S. Inland freight expenses. With respect to Petitioner's arguments that the reported U.S. inland freight expenses are inaccurate, we disagree and have addressed those issues in Comment 13.

Comment 6: The Department Should Grant Hyosung a Commission Offset

Hyosung's Comments:

- In the *Preliminary Results*, Hyosung alleges that the Department, without detailed explanation and contrary to its practice in prior segments of this proceeding, denied Hyosung a reduction in normal value to offset commissions incurred with respect to sales of subject merchandise.¹⁷³
- Consistent with its regulations, Hyosung argues that the Department should incorporate a commission offset in calculating normal value in Hyosung's margin calculations for the final results.¹⁷⁴
- According to Hyosung, the plain language of the regulation (*i.e.*, 19 CFR 351.410(e)) requires that the Department allow for a commission offset where commissions are paid with respect to transactions in one market, but not the other. This is the precise case in the instant proceeding, according to Hyosung.¹⁷⁵
- Any rationale that excludes a commission offset based on how the commission expense is paid or where it is incurred is contrary to both the explicit terms and the intent of the regulation, and, therefore, contrary to law, according to Hyosung.¹⁷⁶
- Hyosung infers from the *Preliminary Results* that the Department's denial of a commissions offset was based upon a factual finding that Hyosung's commission expenses were incurred in the United States.¹⁷⁷
- Hyosung argues that the Department's regulation does not support a methodology that turns on where the commission expense is incurred. Additionally, the record does not support the conclusion that commissions were incurred in the United States.¹⁷⁸

¹⁷³ See Hyosung's Case Brief at 13.

¹⁷⁴ *Id.*, at 14.

¹⁷⁵ *Id.*, at 14-15.

¹⁷⁶ *Id.*, at 15.

¹⁷⁷ *Id.*, at 16.

¹⁷⁸ *Id.*

- Hyosung states that it incurs its commission expenses at the time that the customer transmits the purchase orders, which, in some cases, occurs years before delivery of the LPT unit and, thus, occurs outside of the United States.¹⁷⁹
- Regardless, the location of where the commission is paid is irrelevant for purposes of 19 CFR 351.410(e), and the Department should apply a commission offset to Hyosung in the final results.¹⁸⁰

Petitioner's Rebuttal Comments:

- Where commissions were incurred in the United States on CEP sales and no commissions were incurred on home market sales, the Department's established methodology deducts U.S. commissions from the U.S. gross unit price and makes no commission offset to the comparison sales in the home market, in accordance with section 772(d)(1)(A) of the Act.¹⁸¹
- The record evidence establishes that Hyosung's commission expenses are directly related to the economic activities in the United States, because they were incurred and paid in the United States between U.S. entities for U.S. sales activities.¹⁸²
- In the Draft Remand Results,¹⁸³ the Department found that Hyosung's U.S. commissions were incurred in the United States and determined that Hyosung is not entitled to a commission offset, and recalculated the final margin for Hyosung in the 2012/2013 review.¹⁸⁴

Department's Position:

For these final results, the Department continues to deny a commission offset for Hyosung's sales to the United States.

In accordance with section 772(d)(1)(A) and (3) of the Act, the Department deducts from the price used to establish CEP, the amount of commissions generally incurred by, or for the account of, the producer or exporter, or the affiliated seller in the United States, as well as the profit allocated to such commissions, for selling the subject merchandise in the United States. Furthermore, 19 CFR 351.410(e) states that "the Secretary normally will make a reasonable allowance for other selling expenses¹⁸⁵ if the Secretary makes a reasonable allowance for commissions in one of the markets under consideration, and no commission is paid in the other

¹⁷⁹ *Id.*, at 17.

¹⁸⁰ *Id.*

¹⁸¹ See Petitioner's Rebuttal Brief at 19.

¹⁸² *Id.*, at 20.

¹⁸³ See Draft Results of Redetermination Pursuant to Court Remand, Court No. 15-00108, Slip Op. 16-95 (CIT October 7, 2016) (Draft Remand Results)

¹⁸⁴ *Id.*, at 22. See also Draft Remand Results.

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

market under consideration. The Secretary will limit the amount of such allowance to the amount of the other selling expenses incurred in the one market or the commissions allowed in the other market, whichever is less.”¹⁸⁶ The Statement of Administrative Action (SAA) further clarifies the treatment of U.S. commissions. It states that CEP “will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following expenses (and profit) associated with economic activities occurring in the United States: (1) any commissions paid in selling the subject merchandise...(6) an allowance, as explained below, for profit allocable to the selling, distribution, and further manufacturing expenses incurred in the United States.”¹⁸⁷ It further states that the Department “is directed by section 772(d)(1)(A) to deduct commissions from CEP, but only to the extent that they are incurred in the United States on sales of the subject merchandise.”¹⁸⁸

In light of the statute and regulations, the Department’s practice has been to distinguish two types of commissions paid on U.S. sales: (i) commissions incurred inside the United States, for which the Department treats as CEP expenses and deducts such commission expenses and the related profit from respective U.S. prices used to establish CEP; and (ii) commissions incurred outside the United States, for which the Department adds such commission expenses to normal value and offsets differences in home market commission expenses and such U.S. commission expenses incurred outside the United States, if any.¹⁸⁹ Because the commissions incurred outside the United States are not associated with economic activities occurring in the United States, but with economic activities occurring in the home market, the Department does not treat them as

¹⁸⁶ See 19 CFR 351.410(e).

¹⁸⁷ See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

¹⁸⁸ *Id.* We considered several non-exhaustive factors to determine whether commissions were incurred in the United States including: (1) where sales agents are located at the time of the commission agreement; (2) where and by what entity the corresponding commission payments were booked or made; and (3) when the commission payments were made during the normal course of business.

¹⁸⁹ See, e.g., *Certain Pasta from Italy: Final Results of Antidumping Duty Administrative Review; 2012-2013*, 80 FR 8604 (February 18, 2015) (*Certain Pasta from Italy*) and accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Issues and Decision Memorandum for the Final Results of the 17th Antidumping Duty Administrative Review: Certain Pasta from Italy; 2012-2013,” dated February 10, 2015 (Issues and Decision Memorandum for *Certain Pasta from Italy*) at 8-9 (where we stated that “{t}here are two types of commissions that are possible for U.S. sales, commissions that are incurred in the United States and commissions that are not incurred in the United States.” We further stated that respondent’s commissions, “which are incurred in the United States, are deducted from the respective prices with profit, in accordance with the statute.”) and *Certain Steel Nails from the United Arab Emirates: Final Results of Antidumping Duty Administrative Review; 2011-2013*, 79 FR 78396 (December 30, 2014) (*Certain Steel Nails from the United Arab Emirates*) and accompanying memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, entitled “Certain Steel Nails from the United Arab Emirates: Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review; 2011-2013,” dated December 22, 2014 (Issues and Decision Memorandum for *Certain Steel Nails from the United Arab Emirates*) at 16 (where we stated that “{p}ursuant to section 772(d)(1)(A) of the Act, our normal practice is to treat commissions incurred in the United States as CEP selling expenses...”); see also the Department’s macro program part 15-B where it demonstrates that for CEP sales, USCOMM (*i.e.*, the commission expenses incurred outside the United States on US sales) becomes added to normal value while COMOFFSET (*i.e.*, home market commission offset) becomes deducted from normal value by stating “NV = FUPDOL - COMOFFSET&SUFFIX + USCOMM&SUFFIX + USDIRSELL&SUFFIX - CEPOFFSET&SUFFIX.”

CEP selling expenses, which are deducted from the U.S. price used to establish CEP.¹⁹⁰ The commission offsets account for home market indirect selling expenses associated with the selling activities for sales in the home market as an adjustment to normal value. For margin calculations, adding U.S. commissions to normal value has the same effect as deducting them from CEP. U.S. commissions incurred outside the United States are still part of the CEP profit ratio calculation. The results of this calculation then become part of the CEP profit calculation that is deducted from CEP when respondents make a profit from U.S. commissions, regardless of whether they are incurred inside or outside of the United States.¹⁹¹ Moreover, commission expenses for those home market sales, when incurred, are deducted from normal value.¹⁹² By granting home market commission offsets in the form of an additional adjustment to normal value when U.S. commission expenses for the respective U.S. sales are incurred outside the United States, a more appropriate apples-to-apples comparison between two markets can be achieved. That is, such offsets capture the corresponding economic activities and associated expenses in the home market for the matching home market sales, while the commission expenses for U.S. sales are added to normal value. In this manner, the commission offsets properly account for such economic activities performed by respondents in the home market, thereby resulting in an equitable comparison between normal value and U.S. price.

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

In *Certain Pasta from Italy*, we stated that a respondent's commissions, "which are incurred in the United States, are deducted from the respective U.S. prices with profit, in accordance with the statute."¹⁹³ We further stated that "section 772(d)(1)(A) of the Act identifies the adjustments related to commissions for CEP sales, which states...the price used to establish constructed export price shall also be reduced by...commissions for selling the subject merchandise in the United States."¹⁹⁴ In *Certain Steel Nails from the United Arab Emirates*, we also stated that "[p]ursuant to section 772(d)(1)(A) of the Act, our normal practice is to treat commissions incurred in the United States as CEP selling expenses."¹⁹⁵ In addition, as referenced above, the SAA states that CEP "will be calculated by reducing the price of the first sale to an unaffiliated customer in the United States by the amount of the following *expenses (and profit) associated*

¹⁹⁰ See the Department's macro program part 15-B.

¹⁹¹ Profit that respondents make in relation to U.S. commission expenses, if any, should be deducted from CEP, in pursuant to section 772(d)(1)(A) and (3) of the Act, in order to make a fair and equitable comparison between normal value and U.S. price (*i.e.*, CEP). See the Department's macro program part 5-A.

¹⁹² See also the Department's comparison market program part 4-B-ii where it demonstrates that CMCOMM (*i.e.*, comparison market commission expense) gets deducted from CMNETPRI (*i.e.*, comparison market net price), which is part of normal value by stating "CMNETPRI = CMGUP + CMGUPADJ – CMDISREB – CMMOVE – CMDSELL – CMCREB – CMCOMM – CMPACK."

¹⁹³ See Issues and Decision Memorandum for *Certain Pasta from Italy* at 9.

¹⁹⁴ *Id.*

¹⁹⁵ See Issues and Decision Memorandum for *Certain Steel Nails from the United Arab Emirates* at 16.

with economic activities occurring in the United States: (1) any commissions paid in selling the subject merchandise...”¹⁹⁶ It further states that the Department “is directed by section 772(d)(1)(A) to deduct commissions from constructed export price, but only to the extent that they are incurred in the United States on sales of the subject merchandise.”¹⁹⁷ Thus, the statute and the prior cases treat commissions incurred in the United States as CEP selling expenses, which are only associated with economic activities in the United States and which can only be deducted from CEP to the extent that they are incurred in the United States. Because commissions incurred in the United States are not related to economic activities in the home market, there is no basis for granting a home market commission offset. Therefore, when commissions are incurred in the United States, our normal practice is to treat them as CEP selling expenses and to deduct the amount of the commission expense and profit from the U.S. sales, while not granting a commission offset to normal value.

In light of 19 CFR 351.410(e), which addresses the situation where commissions are incurred in one market but not the other, the Department’s practice concerning the treatment of U.S. commissions, and the granting or denial of a home market commission offset, is further demonstrated in the standard margin calculation program. In the standard margin program, the commission expenses on U.S. sales incurred in the United States are included in field CEPOTHER, whereas the commission expenses on U.S. sales incurred outside the United States are included in field USCOMM. CEPOTHER then becomes part of CEP profit (*i.e.*, field CEPPROFIT) to calculate the profit for the corresponding commission expenses on U.S. sales incurred in the United States.¹⁹⁸ CEPPROFIT and CEPOTHER are deducted from U.S. price used to establish CEP (*i.e.*, field USNETPRI).¹⁹⁹ We note that the deduction of these expenses and profit in cases where commissions are incurred in the United States is consistent with sections 772(d)(1)(A) and (3) of the Act, which direct the Department to reduce the price used to establish CEP by commissions for selling subject merchandise in the United States, along with the profit allocated to such expenses.

When the commission expenses are incurred outside the United States on U.S. sales (*i.e.*, field USCOMM), the Department’s standard margin program has three sequential conditions to determine the granting or denial of the commission offsets. First, when home market commission expenses (*i.e.*, field COMMDOL in the standard macros program²⁰⁰) are greater than USCOMM, a home market commission offset is granted to increase normal value and is calculated as the minimum of either U.S. indirect selling expenses (*i.e.*, field USINDCOMM in

¹⁹⁶ See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

¹⁹⁷ *Id.*

¹⁹⁸ The Department’s standard margin calculation program demonstrates that CEP profit (*i.e.*, field CEPPROFIT) for the corresponding commission expenses incurred in the United States (*i.e.*, field CEPOTHER) are calculated as: $CEPPROFIT = (USCREDIT + CEPICC + CEPISELL + CEPOTHER) * CEPRATIO$.

¹⁹⁹ The Department’s standard margin calculation program demonstrates that CEP is calculated by deducting CEPPROFIT and CEPOTHER by stating “(USNETPRI = USGUP + USGUPADJ - USDISREB - USDOMMOVE - USINTLMOVE - USCREDIT - CEPICC - CEPISELL - CEPOTHER – CEPPROFIT).”

²⁰⁰ We note that field COMMDOL represents the U.S. dollar amount converted from the home market commission expenses (*i.e.*, field CMCOMM) which are in Korean Won in this case. The standard macro program states as “COMMDOL = CMCOMM + &XRATE1.” We further note that COMMDOL (*i.e.*, the home market commission expenses in U.S. dollars) are compared to USCOMM (*i.e.*, the commission expenses on U.S. sales incurred outside the United States) in the Department’s standard margin calculation program.

the standard macro program) or the difference in COMMDOL and USCOMM (*i.e.*, home market commission expenses and the commission expenses incurred outside the United States).²⁰¹ Second, when USCOMM is greater than the home market commission expenses (*i.e.*, COMMDOL), a home market commission offset is granted to decrease normal value and is calculated as the minimum of either the home market indirect selling expenses (*i.e.*, field ICOMMDOL in the standard macros program) or the difference in USCOMM and COMMDOL (*i.e.*, the commission expenses incurred outside the United States on U.S. sales and home market commission expenses).²⁰² Third, if USCOMM and COMMDOL are the same, there is no commission offset that adjusts normal value.²⁰³

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

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

²⁰¹ The Department's standard margin calculation program demonstrates that commission offsets will increase normal value and are the lesser of a) the U.S. market indirect selling expenses or b) the difference between home market commission expenses and U.S. commission expenses incurred outside the United States by stating "IF COMMDOL GT USCOMM THEN DO; COMOFFSET = -1 * MIN (ICOMMDOL, (USCOMM-COMMDOL)."

²⁰² The Department's standard margin calculation program demonstrates that commission offsets will decrease normal value and are the lesser of a) the home market indirect selling expenses or b) the difference between U.S. commission expenses incurred outside the United States and home market commission expenses by stating "ELSE IF USCOMM GT COMMDOL THEN DO; COMOFFSET = MIN (ICOMMDOL, (USCOMM-COMMDOL)."

²⁰³ The Department's standard margin calculation program demonstrates that there are no commission offsets when home market indirect selling expenses and U.S. commission expenses are the same by stating "ELES DO; COMOFFSET = 0."

While Hyosung argues that there is nothing in the statute, regulations, legislative history or other policy materials which distinguishes between commissions incurred in the United States and those incurred outside the United States, we disagree. We find that, based on our treatment of CEP expenses (including U.S. commissions incurred in the United States and the corresponding economic activities pursuant to section 772(d) of the Act and the SAA),²⁰⁴ our interpretation of the statute and the regulations regarding a commission offset is reasonable and allows us to achieve a more appropriate *apples-to-apples* comparison between normal value and U.S. price, as discussed above.

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

Record evidence demonstrates that Hyosung did not incur commissions on sales in the home market,²⁰⁵ but did incur commissions on sales in the United States.²⁰⁶ Hyosung has claimed that its United States affiliate, HICO America, pays the commissions.²⁰⁷ However, Hyosung has also claimed that the price paid to Hyosung by HICO America for sales of LPTs to the United States includes an amount for commissions.²⁰⁸ Thus, according to Hyosung, it is Hyosung in Korea

²⁰⁴ See SAA, H.R. Rep. No 103-316, Vol. 1 (1994), at 823.

²⁰⁵ See Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic of Korea: Sections B-D Questionnaire Response," dated February 5, 2016 (Hyosung's Section B-D Response) at B-37 through B-38.

²⁰⁶ *Id.* at C-38 through C-39 and Exhibit C-21.

²⁰⁷ *Id.*

²⁰⁸ See Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic Korea: Hyosung Supplemental Section A Questionnaire Response," dated May 9, 2016 (Hyosung's May 9, 2016, Supplemental Questionnaire Response) at 14; see also Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic Korea: Hyosung Supplemental Sections B-C Questionnaire Response," dated June 8, 2016 (Hyosung's June 8, 2016, Supplemental Questionnaire Response) at 23-24.

that bears the cost of the commissions (*i.e.*, incurring the commission expense) for sales to the United States.²⁰⁹

We are not persuaded that Hyosung in Korea bears the cost of the commissions for U.S. sales. The record shows that HICO America pays the commission.²¹⁰ In addition, Hyosung states that the agreement with HICO America with respect to the internal transfer price between Hyosung and HICO America includes an *estimate* for commission expenses.²¹¹ Thus, the record does not demonstrate whether the internal transfer price includes all, or even any, of the commission amounts. However, Hyosung provided information showing to which account HICO America books the expense for paying commissions.²¹² Thus, record evidence shows that HICO America carries the burden of the U.S. sales commissions. Because HICO America pays the commission, the expense is reflected on HICO America's accounting records, and Hyosung only provided an estimate of the commission expense, we are not granting a commission offset for Hyosung's U.S. sales that incurred a commission.

Comment 7: The Department Should Correct Certain Clerical Errors in its *Preliminary Results*

Both Petitioners and Hyosung submitted comments regarding clerical errors in their case briefs.²¹³ We address all of these comments below, beginning with those presented by Hyosung.

Hyosung's Comments:

- The Department committed certain errors in the *Preliminary Results*. First, it incorrectly excluded string warranty expenses and other direct selling expenses from its home market price. The Department should revise its comparison market program to correct these errors.²¹⁴
- Second, the preliminary margin program included an inadvertent error in the assignment of the mixed currency (MIXEDCUR) macro variable. The Department should correct this error in the final results by correcting the assignment of the MIXEDCUR macro variable.²¹⁵
- Third, the Department excluded certain sales transactions from the preliminary margin calculations which had a date of sale prior to the period of review, but a date of entry in the period of review. Consistent with the Department's standard reporting requirements

²⁰⁹ *Id.*

²¹⁰ See, e.g., Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic of Korea: Section A Questionnaire Response," dated December 20, 2015, at A-21, A30.

²¹¹ See Hyosung's June 8, 2016, Supplemental Questionnaire Response at 23-24.

²¹² See Hyosung's Section B-D Response at Exhibit C-4.

²¹³ See Hyosung's Case Brief at 17-18; see also Letter from Petitioner to the Department, regarding "Petitioner's Case Brief for Hyosung," dated January 5, 2017 (Petitioner's Case Brief) at 70.

²¹⁴ See Hyosung's Case Brief at 17-18.

²¹⁵ *Id.*, at 18-20.

and practice in administrative reviews, the Department should have included these transactions in the margin calculations.²¹⁶

Petitioner's Rebuttal Comments:

- Petitioner also states that the Department should correct certain clerical errors.²¹⁷
- Petitioner disagrees with Hyosung regarding the capping of U.S. inland freight revenue by the U.S. inland freight expenses and argues that the Department should not cap the U.S. inland freight revenue with the U.S. inland freight expenses.²¹⁸ Petitioner alleges that Hyosung's reported U.S. inland freight expenses includes expenses unrelated to inland freight, such as storage expenses.²¹⁹
- Petitioner states that Hyosung's misreporting of expenses was not brought to the Department's attention earlier in the proceeding.²²⁰ Petitioner argues that, due to the lack of notification by Hyosung and the improper reporting of expenses, the Department should resort to adverse facts available.²²¹
- Petitioner argues that the Department previously rejected Hyosung's alleged misreporting of expenses, because Hyosung cannot directly associate expense amounts to reported revenues, as required by the statute.²²²
- Petitioner alleges that Hyosung failed to support its reported U.S. sales prices, in the form of undocumented freight revenues, as it failed to reconcile the reported U.S. sales prices to sales documentation and accounting records.²²³
- Petitioner avers that the reported expenses in field INLFWCU (*i.e.*, U.S. inland freight from the warehouse to the unaffiliated customer) are unsupported by Hyosung's explanations, and should be rejected.²²⁴

Petitioner's Comments:

- The Department should include all of Hyosung's U.S. sales entered during the POR in the final margin analysis.²²⁵

²¹⁶ *Id.*, at 20.

²¹⁷ *See* Petitioner's Rebuttal Brief at 25.

²¹⁸ *Id.*, at 13.

²¹⁹ *Id.*

²²⁰ *Id.*, at 14.

²²¹ *Id.*

²²² *Id.*, at 15.

²²³ *Id.*, at 16.

²²⁴ *Id.*, at 17.

²²⁵ *See* Petitioner's Case Brief at 70.

- The Department should correct other clerical errors in the preliminary margin calculation programs, including the conversion of indirect selling expenses incurred in Korea to U.S. dollars, and including expense fields for U.S. brokerage, insurance, and warranty expenses.²²⁶

Hyosung's Comments:

Hyosung did not comment on this issue.

Department's Position:

We agree with Hyosung and have made appropriate corrections to the calculation. Specifically, we are capping U.S. inland freight revenues with the reported U.S. inland freight expenses, adding certain inadvertently omitted expenses fields to the program calculation, correcting mistyped keystrokes, and correcting the program to include all reported sales.²²⁷

As discussed in Comment 13, we believe that record evidence supports Hyosung's reporting of freight expenses. Except as noted in Comment 12, we do not agree with Petitioner that Hyosung improperly reported storage or other expenses as part of U.S. inland freight.

The Department also agrees with Petitioner and will make appropriate changes to the margin calculation program.²²⁸ We have adjusted the margin calculation program to convert indirect selling expenses incurred in Korea into U.S. dollars, adjusted the program to include all reported sales, and added certain expense fields into the margin calculation program that were inadvertently not included in the *Preliminary Results*.²²⁹

Also, see Comment 17 below regarding our change in the date of sale from the *Preliminary Results*.

Comment 8: The Department Should Not Conduct a Differential Pricing Analysis in the Final Results

Hyosung's Comments:

- The Department applied an average-to-average (A-to-A) method to all of Hyosung's sales in the *Preliminary Results* based on its finding that none of Hyosung's U.S. sales pass the Cohen's *d* test and that there is no pattern or prices that differ significantly.²³⁰

²²⁶ *Id.*

²²⁷ See Hyosung Final Analysis Memorandum for the programming language.

²²⁸ *Id.* for further discussion.

²²⁹ *Id.*

²³⁰ See Hyosung's Case Brief at 21.

- The Department should continue to apply an A-to-A method for the final results because the record confirms that there is no basis to resort to alternative calculation methodologies.²³¹
- Any alternate calculation methodology incorporating zeroing would violate U.S. law and run counter to World Trade Organization (WTO) decisions invalidating the practice.²³²
- A WTO dispute settlement panel recently confirmed that the Department’s differential pricing test violates the AD Agreement. That decision was then confirmed by the WTO Appellate Body.²³³
- Considering these developments, the Department should apply an A-to-A method for the final results, as it did in the *Preliminary Results*.²³⁴

Petitioner’s Rebuttal Comments:

- The United States has not adopted the WTO Appellate Body report cited by Hyosung. Thus, the Department’s application of the differential pricing test is consistent with U.S. law, and Hyosung’s claim should be rejected.²³⁵

Department’s Position:

With regard to Hyosung’s argument that the Department should not have conducted a differential pricing analysis in the first place and should eliminate this test from its analysis in its final results as the Department lacks the statutory authority to apply a differential pricing analysis in administrative reviews, we disagree. WTO findings are not self-executing under U.S. law. The Court of Appeals for the Federal Circuit (CAFC) has held that WTO reports are without effect under U.S. law, “unless and until such a {report} has been adopted pursuant to the specified statutory scheme” established in the Uruguay Round Agreements Act (URAA).²³⁶ In fact, Congress adopted an explicit statutory scheme in the URAA for addressing the implementation of WTO reports.²³⁷ As is clear from the discretionary nature of this scheme, Congress did not intend for WTO reports to automatically trump the exercise of the Department’s discretion in applying the statute.²³⁸ To date, the United States has fully complied with all adverse panel and Appellate Body reports adopted by the Dispute Settlement Body with regards to Article 2.4.2 of the Antidumping Agreement. However, the WTO’s findings in *US-Washers (Korea)* have not been implemented under U.S. law.

²³¹ *Id.*

²³² *Id.*, at 22.

²³³ *Id.*, at 22 (citing to *United States - Anti-Dumping and Countervailing Measures on Large Residential Washers from Korea*, Appellate Body Report, WT/DS464/AB/R (Sept. 7, 2016), at para. 5.43(*US-Washers (Korea)*))

²³⁴ *Id.*

²³⁵ See Petitioner’s Rebuttal Brief at 24.

²³⁶ See *Corus Staal BV v. U.S. Dep’t of Commerce*, 395 F.3d 1343, 1347-49 (Fed. Cir. 2005), *cert. denied* 126 S. Ct. 1023 (2006); accord *Corus Staal BV v. United States*, 502 F.3d 1370, 1375 (Fed. Cir. 2007).

²³⁷ See, e.g., 19 U.S.C. § 3533, 3538 (sections 123 and 129 of the URAA).

²³⁸ See, e.g., 19 U.S.C. § 3538(b)(4) (implementation of WTO reports is discretionary).

With regard to the A-to-T method, specifically, as an alternative comparison method and the use of zeroing under the second sentence of Article 2.4.2 of the WTO Antidumping Agreement, the Department has issued no new determination and the United States has adopted no change to its practice pursuant to the statutory requirements of sections 123 or 129 of the URAA. The Department cannot and will not circumvent the statutory process established for implementing WTO findings.

Furthermore, we find that this argument is moot for purposes of this administrative review. The Department is continuing to make comparisons for Hyosung using the A-to-A methodology because less than 33 percent of Hyosung's sales to the United States passed the Cohen's *d* test.²³⁹ Nonetheless, the Court has affirmed the Department's authority to consider an alternative comparison method in an administrative review.²⁴⁰

Additionally, with regard to Hyosung's argument that the Department is legally prohibited from zeroing when using the A-to-T method in administrative reviews, we find this argument moot. We are continuing to use the A-to-A method based on the results of our differential pricing analysis to calculate Hyosung's weighted-average dumping margin for these final results.

Comment 9: Hyosung's Allocations for Costs and Prices of Spare Parts and Accessories Are Not Reasonable and Should Be Rejected

Petitioner's Comments:

- Hyosung has failed to document properly, and has misreported prices for, spare parts and accessories for a number of sales. This renders such prices unreliable as a basis for calculating the margins for the final results of this review.²⁴¹
 - An examination of the documentation submitted by Hyosung to support its claimed additions of sales revenues to U.S. gross unit price demonstrates that Hyosung was unable to document the expenses properly, resulting in a misreporting of prices and costs for spare parts and accessories for U.S. sales during the period of review.²⁴²
 - The commercial invoices issued by third-party suppliers to Hyosung for accessories demonstrate that the amounts reported by Hyosung in field GRSUPR3U (*i.e.*, reported accessory prices) are inaccurate.²⁴³
 - Record evidence demonstrates a sequencing problem (*i.e.*, the reported invoice numbers are not in sequential order) between the invoices for accessories and the shipment of the LPT, rendering Hyosung's reported accessory prices (*i.e.*, field GRSUPR3U) inaccurate.²⁴⁴

²³⁹ See Hyosung Final Analysis Memorandum at "Margin Output Attachment."

²⁴⁰ See *CP Kelco Oy and CP Kelco US, Inc. v. United States*, Consol. Court No. 13-00079, Slip. Op. 14-42 (CIT 2014); see also *Apex Frozen Foods Private Limited et. al. v. United States*, Consol. Court No. 14-00226, Slip Op. 16-9 (CIT 2016).

²⁴¹ See Petitioner's Case Brief at 8.

²⁴² *Id.*

²⁴³ *Id.*, at 9-12.

²⁴⁴ *Id.*, at 12-14.

- Hyosung has misreported services provided in the United States as purchases of accessories.²⁴⁵
- Hyosung improperly included accessories unrelated to U.S. sales and accessories shipped directly to the U.S. customer in U.S. prices.²⁴⁶
 - Certain invoices demonstrate that the accessories were not sent to the United States, and are thus not relevant to the U.S. sale to which Hyosung has linked them.²⁴⁷
 - The direct shipments to the U.S. customer of the accessories or their components, separate from the LPTs themselves, confirms that Hyosung has either improperly included the value of non-subject merchandise to inflate the U.S. sales price for the subject LPTs or Hyosung has improperly added to U.S. price expenses related to the assembly of the accessories.²⁴⁸
- The record contains evidence that demonstrates that Hyosung’s reporting methodology for GRSUPR3U is unreliable.²⁴⁹
 - Hyosung provided no documentation or explanation of its methodology to support its reported freight expenses for accessories shipped from unrelated third-party suppliers to Hyosung.²⁵⁰
 - The record shows that Hyosung double-counted freight for shipments of accessories from unrelated third-party suppliers to Hyosung in the reported value for certain accessories.²⁵¹
 - Hyosung’s failure to submit actual commercial invoices to support its calculations for field GRSUPR3U greatly diminishes the reliability of Hyosung’s reported U.S. sales information. As a result, the Department should not rely on the values reported in GRSUPR3U for these sales.²⁵²
 - Hyosung requested this review, and bears the burden of creating a complete and accurate record.²⁵³ In accordance with 19 CFR 351.102(b)(38), where the price adjustment data are incorrect or unsupported by the documentary evidence, the Department may not rely on them.²⁵⁴

²⁴⁵ *Id.*, at 14-16.

²⁴⁶ *Id.*, at 16-18.

²⁴⁷ *Id.*, at 16-17.

²⁴⁸ *Id.*, at 17-18.

²⁴⁹ *Id.*, at 18-22.

²⁵⁰ *Id.*, at 18-19.

²⁵¹ *Id.*, at 19-21.

²⁵² *Id.*, at 21-22.

²⁵³ See *Essar Steel v. United States*, 678 F.3d 1268,1277 (Fed. Cir. 2012) (citing *Zenith Elecs Corp. v. United States*, 988 F.2d 1573,1583 (Fed. Cir. 1993)).

²⁵⁴ See Petitioner’s Case Brief at 19-21.

- The Department should use its new authority, under TPEA, to make adverse inferences without any assumption as to what impact complete or accurate information would have had on the margin.²⁵⁵
- Comparisons of Hyosung’s reported gross unit prices for spare parts and accessories (fields GRSUPR2U and GRSUPR3U, respectively) to the cost of manufacturing (COM) for the same spare parts and accessories reveals that there is a significant disconnect between Hyosung’s reported prices and costs for its U.S. sales.²⁵⁶

Hyosung’s Rebuttal Comments:

- The Department did not use fields associated with spare parts and accessories in its preliminary margin calculations. These fields are strictly informational.²⁵⁷
- Despite its focus on spare parts and accessories, Petitioner did not object to the Department’s preliminary methodology of including them in the starting price for the Department’s analysis.²⁵⁸
- Petitioner also did not object to Hyosung’s reporting methodology with respect to home market sales.²⁵⁹
- Hyosung’s broken-out spare parts and accessories price reporting is ultimately of no consequence, because the Department correctly used the full gross unit price, inclusive of all elements of the LPT, in its calculations.²⁶⁰
- Hyosung derived the reported costs of manufacturing from its normal accounting records. The Department verified Hyosung’s reporting in the underlying investigation without adjustment. The Department must confirm that Hyosung’s reporting is compliant and accurate.²⁶¹
- Documentation and third-party invoices support Hyosung’s reporting; there is no “sequencing problem” as Petitioner suggests; Petitioner mischaracterizes “services;” and Hyosung appropriately included all costs recorded as a cost of manufacturing in the reported costs.²⁶²

²⁵⁵ *Id.* See also Trade Preferences Extension Act of 2015, Pub. L. No. 114-27, 129 Stat. 362 (June 29, 2015).

²⁵⁶ See Petitioner’s Case Brief at 22-25.

²⁵⁷ See Hyosung’s Rebuttal Brief at 9.

²⁵⁸ *Id.*, at 10.

²⁵⁹ *Id.*

²⁶⁰ *Id.*, at 10-11.

²⁶¹ *Id.*, at 11-12.

²⁶² *Id.*, at 12-16.

- Petitioner alleges additional reporting issues to support its argument that Hyosung failed to cooperate, *i.e.*, Hyosung failed to provide supporting documentation related to the ancillary costs incurred in acquiring the accessories, “double counted” freight, provided “*pro forma*” invoices as supporting documentation in certain instances, and that there are significant variations in profits for spare parts and accessories.²⁶³ None of these issues warrant an adjustment to the data, much less rejection of Hyosung’s entire submissions, as Hyosung fully responded to the Department’s requests and reported its data accurately.²⁶⁴

Department’s Position:

Petitioner makes a number of arguments in its case brief with respect to the accuracy of Hyosung’s reported gross unit price for sales to the United States, service related revenues for U.S. sales, and the cost of manufacturing (COM). Petitioner noted in its rebuttal brief that there is a distinction between revenues related to services (such as freight, installation, *etc.*) charged to the U.S. customer, and revenues associated with the sale of the subject merchandise.²⁶⁵ Additionally, there is a distinction between invoices from third-parties for accessories, which affect the COM, and Hyosung’s charges to U.S. customers for service-related revenues. Thus, the Department must determine whether Hyosung has accurately reported portions of the subject merchandise which encompass the gross unit price, the reported service-related revenues and associated expenses, and the COM. If any of these items are inaccurate, the Department must determine the extent of the inaccuracy and whether to apply facts available or adverse facts available as appropriate.

Prior to addressing Petitioner’s arguments, it is important to understand the context of Hyosung’s reported costs, prices, and adjustments. In its rebuttal brief, Hyosung states the following:²⁶⁶

“As an initial matter, consistent with the Department’s instructions, Hyosung reported four separate price fields pertaining to its U.S. LPT sales:²⁶⁷

- GRSUPRU: Total gross unit price, *i.e.*, the total value of the transformer transaction as a whole. Pursuant to the Department’s instructions, Hyosung segregated this value into the following components, GRSUPRIU, GRSUPR2U, and GRSUPR3U, as described below.
 - a. GRSUPR1U: The price of the main body of the LPT
 - b. GRSUPR2U: The revenue associated with spare parts
 - c. GRSUPR3U: The revenue associated with accessories (monitoring units)

Separately, Hyosung also reported “revenues” associated with ocean freight, U.S. inland freight, oil, installation services, and Korean storage expenses. To account for these revenues, Hyosung

²⁶³ *Id.*, at 16-17.

²⁶⁴ *Id.*, at 16-18.

²⁶⁵ See Petitioner’s Rebuttal Brief at 8. “[t]he revenue earned on freight or installation is distinct from revenue earned on subject merchandise.” *Id.*

²⁶⁶ See Hyosung’s Rebuttal Brief at 8-9.

²⁶⁷ See Hyosung’s Section B-D Response at C-22 to C-23.

reported a fifth gross unit price field: NET_GRSUPRU.²⁶⁸ That is, the NET_GRSUPRU variable is the total gross unit price of the product (inclusive of the LPT unit, spare parts, and accessories), less service-related revenues.”²⁶⁹

As detailed in the Preliminary Decision Memorandum,²⁷⁰ the scope of the *Order* states, in part:

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

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

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

Petitioner, elsewhere in its case brief, asserts that Hyosung’s reported reconciliation of sales to the U.S. to its financial statements is incorrect and should be rejected.²⁷¹ As discussed here and in Comment 11 below, we are unable to conclude that the provided reconciliation is incorrect. In its November 3, 2016, submission, Hyosung provided a reconciliation worksheet for the reported U.S. sales in Exhibit S5-7.²⁷² Petitioner notes that certain sales listed in the worksheet are purportedly sales made by HICO America in 2015 that were not booked in HICO America’s general ledger in 2015, and avers that the exclusion of such sales revenues from HICO America’s 2015 financial statements is inconsistent with Generally Accepted Accounting Principles (GAAP).²⁷³ Hyosung states that HICO America had not yet recognized revenue in 2015 for certain shipments of LPTs during that same year because HICO America awaited final confirmation from the U.S. customer.²⁷⁴ In analyzing these claims, we examined the reconciliation provided by Hyosung for HICO America’s sales during 2014 and 2015.²⁷⁵ Exhibit S-4 of Hyosung’s June 8, 2016, submission reconciles HICO America’s total sales, by month, to

²⁶⁸ *Id.*, at C-24.

²⁶⁹ *Id.*

²⁷⁰ See Preliminary Decision Memorandum at 3.

²⁷¹ See Petitioner’s Case Brief at 29-40.

²⁷² See Letter from Hyosung to the Department of Commerce, “Large Power Transformers from the Republic Korea: Hyosung Fifth Supplemental Questionnaire Response,” dated November 3, 2016 (Hyosung’s November 3, 2016, Supplemental Questionnaire Response) at 4 and Exhibit S5-7.

²⁷³ See Petitioner’s Case Brief at 29.

²⁷⁴ See Hyosung’s Rebuttal Brief at 19-21.

²⁷⁵ See Hyosung’s June 8, 2016, Supplemental Questionnaire Response at Exhibit S-4.

the financial statements, and sub-divides the sales by LPTs and other products.²⁷⁶ The second step of Exhibit S-4 shows revenues from sales booked in 2014 and 2015, with a note indicating that certain sales were recognized in 2016.²⁷⁷ The value of the sales recognized in 2016 at Exhibit S-4 is nearly identical to the sum of the sales which were listed as not booked in 2016 in Exhibit S5-7.²⁷⁸ Therefore, we cannot conclude that Hyosung's booking of the revenues from the identified sales in 2016, rather than in 2015, is inconsistent with GAAP. Thus, Hyosung's reported revenues (both sales and service-related revenues) for U.S. sales reconciles to HICO America's audited financial statements.

With regard to its other comments, Petitioner states that Hyosung was unable to document the price paid for certain accessories sold by unrelated third parties to Hyosung.²⁷⁹ Petitioner points to the invoices from third-party suppliers to Hyosung, which Hyosung listed in Exhibits S5-9 and S5-22 of the November 3, 2016, submission, and asserts that certain of the invoices "do not support Hyosung's revenue additions to the gross unit price."²⁸⁰ Petitioner states that the invoices in question do not contain sufficient prices for accessory parts to cover all of the sales of LPTs that Hyosung alleges are covered by these invoices.²⁸¹ That is, the number of accessories covered by these invoices are not sufficient in number to be included in all of the sales of LPTs for which Hyosung has indicated are covered by these third-party invoices. As a result, Petitioner argues that the Department should reject Hyosung's reported U.S. sales listing in its entirety, as the reported prices for spare parts and accessories are not reliable.²⁸² Hyosung retorts that the invoices on the record indicate that the costs for purchasing accessories which are not specifically covered by these invoices is the same and that these invoices are representative of all purchases of the specified accessories for the sales in question.²⁸³ Hyosung indicates that it has booked the costs of the accessories shown on these invoices for all of the sales identified in its November 3, 2016, submission as having such an accessory.²⁸⁴

As we examine each of the issues brought before us in this proceeding by parties we must determine whether each issue raised affects the sales revenue, the service revenue, or the COM. In this instance, the lack of invoices for all of the accessories would affect either the reported COM, or raise questions concerning the sales revenue. With respect to the COM, we find that the submitted invoices provide record evidence of the most appropriate cost to assign to these units. That is, while the invoices from third parties do not account for accessories for all of the sales in question, Hyosung reports that it recorded the reported costs from these invoices as part

²⁷⁶ *Id.*

²⁷⁷ *Id.*

²⁷⁸ The difference in the sales value is equal to approximately .0036% of the total value of the gross unit price (i.e. revenue from sales of LPTs and revenue from sales of services associated with the LPTs) reported by Hyosung. Petitioner notes this difference in a later comment in its case brief, relating to a single sale. *See* Petitioner's Case Brief at 56, footnote 176. While it appears that this amount may have been booked in 2016, Hyosung has not provided an explanation for this difference. Thus, we are making an adjustment to the reported gross unit price for the sale identified by Petitioner. *See* Comment 13.

²⁷⁹ *See* Petitioner's Case Brief at 8.

²⁸⁰ *Id.*

²⁸¹ *Id.*, at 9-12.

²⁸² *Id.*, at 9.

²⁸³ *See* Hyosung's Rebuttal Brief at 12-13.

²⁸⁴ *See* Hyosung's November 3, 2016, Supplemental Questionnaire Response at 5, and Exhibit S5-9.

of its COM for all of the sales for which it indicated the invoices apply.²⁸⁵ As Hyosung did purchase the accessory units listed on the submitted invoices, we find that Hyosung correctly reported COM with respect to these accessories.

As to the question of sales revenues, we noted that Hyosung has reported a reconciliation of its list of U.S. sales to HICO America's financial statements. Hyosung states that Petitioner “{d}oes not dispute the accuracy and completeness of Hyosung’s reported U.S. sales. Nowhere in its various reconciliation arguments does Petitioner allege that Hyosung has omitted any U.S. sales from its reporting in this review. Nor has Petitioner argued that Hyosung has failed to tie all reported prices directly to invoices.”²⁸⁶ Other than the issue of revenue from certain sales which were booked in 2016 rather than 2015, the record evidence does not suggest that Hyosung’s reconciliation is inaccurate for this period of review. Hyosung submitted evidence of payment for sales in the United States.²⁸⁷ Petitioner has not questioned Hyosung’s segregation of sales revenues and service-related revenues.²⁸⁸ Thus, record evidence does not support the contention that the lack of invoices for some of the underlying purchases of accessories (for certain U.S. sales) calls into question the amounts paid by U.S. customers for sales-related revenues (*i.e.*, the reported NET_GRSUPRU).

Petitioner argues that Hyosung’s reported sales, through additions for amounts of spare parts and accessories and service revenue, unreasonably inflate the reported U.S. prices.²⁸⁹ Petitioner also avers that spare parts and unattached accessories are not subject merchandise.²⁹⁰ Hyosung, however, segregated the revenue from sales of LPTs from revenues associated with services. Additionally, we note that the scope of the *Order* describes subject merchandise as LPTs “{w}hether assembled or unassembled, complete or incomplete” and that {i}ncomplete LPTs are subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs.” Concerning those portions of the gross unit price which are based on items other than the main body of the LPT, Hyosung further states that “{t}heoretically, a respondent wants to reduce as much as possible its potential antidumping duty liability. Adding non-subject products and declaring them as subject to an antidumping duty order at the time of U.S. entry would only serve to increase that liability. Hyosung has reported the value of the units, including the spare parts and accessories, in a manner that the record reflects is consistent with the entry of those units into the United States.”²⁹¹ Thus, we do not find that the addition of these items unreasonably inflates the reported U.S. price, except as noted below.

²⁸⁵ See Hyosung’s Rebuttal Brief at 13.

²⁸⁶ *Id.*, at 19.

²⁸⁷ See Letter from Hyosung to the Department of Commerce, “Large Power Transformers from the Republic Korea: Hyosung Fourth Supplemental Questionnaire Response,” dated August 10, 2016, at Exhibit S4-1.

²⁸⁸ Petitioner has questioned the underlying service related expenses as reported by Hyosung. These arguments are addressed in Comment 13.

²⁸⁹ See Petitioner’s Case Brief at 1-2.

²⁹⁰ *Id.*, at 7.

²⁹¹ See Hyosung’s Rebuttal Brief at 10, footnote 17.

Petitioner also argues that record evidence provided by Hyosung indicates that many of the accessories were not shipped to Korea prior to the exportation of the LPT.²⁹² Petitioner argues that evidence submitted by Hyosung in its November 3, 2016, submission indicates that Hyosung purchases accessories long after it ships the main LPT to the United States and that some of the revenues listed on the third-party invoices are for installation services in the United States.²⁹³ Petitioner lists a number of sales and the associated third-party invoices in support of its contention.²⁹⁴ According to Hyosung, these accessories are received by Hyosung and attached to the main body of the LPT prior to shipment to the United States.²⁹⁵ Hyosung states that the unrelated third party, which sells the accessories to Hyosung, may subsequently invoice Hyosung long after the shipment of the accessory to Korea, its attachment to the LPT, and the LPT's shipment to the United States.²⁹⁶ Hyosung argues that the invoices in question show that the accessories were shipped first to Korea, and that the included bills of lading indicate that the accessories traveled with the main LPTs from Korea to the United States.²⁹⁷ We have examined the third-party invoices which Hyosung submitted. In certain instances, we agree with Hyosung that the bills of lading or other documents indicate that the accessories in question were shipped with the main LPT and that the third party issued the invoice to Hyosung at a later date.

However, for certain sales, we find that the third-party invoices indicate that accessories were shipped directly to the U.S. customer well after the shipment of the LPT to the United States.²⁹⁸ We agree with Petitioner that these accessory items are not subject merchandise, as record evidence indicates that they were not shipped with the LPT at the time of exportation to the United States. Therefore, pursuant to section 776(a)(2)(D) and section 776(b)(4) of the Act, as facts available, we are deducting the cost of these invoices from the NET_GRSUPRU for the appropriate sales.²⁹⁹

Petitioner also argues that these third-party invoices include items for service-related expenses and contend that these services occurred in the United States after exportation of the LPTs from Korea.³⁰⁰ Petitioner also states that some of the expenses used in the calculation of GRSUPR3U do not have supporting documentation or invoices to support the reported "additions to price."³⁰¹ Petitioner further asserts that Hyosung, thus, included service-related expenses in the GRSUPR3U field as part of the reported price for accessories and in support of the reported

²⁹² See Petitioner's Case Brief at 12-14.

²⁹³ *Id.*

²⁹⁴ *Id.*, at 13.

²⁹⁵ See Hyosung's November 3, 2016, Supplemental Questionnaire Response at 5. See also Petitioner's Case Brief at 12.

²⁹⁶ See Hyosung's Rebuttal Brief at 13-14, citing to Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic Korea: Hyosung Fifth Supplemental Questionnaire Response -- Question 9.c.," dated November 10, 2016 (Hyosung's November 10, 2016, Supplemental Questionnaire Response) at Exhibit S5-22.

²⁹⁷ *Id.*

²⁹⁸ See Hyosung's November 10, 2016, Supplemental Questionnaire Response at Exhibit S5-22. See also Petitioner's Case Brief at 17-18.

²⁹⁹ See Hyosung Final Analysis Memorandum for additional information regarding this programming change.

³⁰⁰ See Petitioner's Case Brief at 14-16.

³⁰¹ *Id.*

prices charged to the U.S. customer.³⁰² Petitioner contends that the Department should thus deduct these expenses from the reported U.S. prices.³⁰³ In reply, Hyosung indicates that the invoices in question refer to expenses associated with the purchase and installation of the accessories onto the LPT in Korea, and notes that both the “bill to” and “ship to” fields refer to Hyosung in Korea.³⁰⁴ Hyosung states that the documentation clearly indicates that the items invoiced are accessories, and that the expenses for “installation and commissioning” mentioned on these invoices do not refer to unreported installation expenses in the United States.³⁰⁵

After examining the evidence in Exhibit S5-22 of Hyosung’s November 10, 2016, submission, we agree with Hyosung that these invoices reference accessories and services related to the installation of the accessories in Korea. We disagree with Petitioner that the aforementioned installation expenses refer to activities undertaken in the United States. Moreover, the expenses incurred by Hyosung in the acquisition and installment of accessories do not impact the reported gross unit price. Rather, they affect the reported COM. We agree with Hyosung that “{t}he costs incurred in acquiring material inputs are considered part of the cost of materials”³⁰⁶ and are thus do not find that additional adjustments are necessary, other than noted below.

Petitioner also notes that, for one sale, the underlying invoices for the acquisition cost of an accessory indicates that the part was shipped to a third country.³⁰⁷ Hyosung, in its rebuttal, admits to the discrepancy and suggests a reduction to COM.³⁰⁸ We agree that an adjustment to COM is warranted, and are subtracting the reported invoice for the accessory from COM.³⁰⁹

In addition, Petitioner states that Hyosung did not provide invoices for freight expenses between the third-party unaffiliated vendors and Hyosung.³¹⁰ Hyosung argues that the Department did not request these invoices.³¹¹ We agree with Hyosung, as the Department’s supplemental questionnaire of October 7, 2016, at question 9, did not request freight invoices for accessories from the third parties to Hyosung. We note that the question of freight costs for acquisition of the accessories from third-party vendors is again an issue of the proper COM, and does not call into question the sales revenues reported in the gross unit price.

Petitioner further states that Hyosung double-counted freight reported for acquiring certain accessories.³¹² Hyosung responds that it properly booked such freight expenses.³¹³ As we noted, the Department did not request the invoices for freight of accessories from third-party suppliers to Hyosung, and that this is an issue of the proper reporting of COM. As we find that Hyosung

³⁰² *Id.*

³⁰³ *Id.*

³⁰⁴ *See* Hyosung’s Rebuttal Brief at 14-15.

³⁰⁵ *Id.*

³⁰⁶ *Id.*, at 11.

³⁰⁷ *See* Petitioner’s Case Brief at 16.

³⁰⁸ *See* Hyosung’s Rebuttal Brief at 15-16.

³⁰⁹ *See* Hyosung Final Analysis Memorandum for additional information regarding this programming change.

³¹⁰ *See* Petitioner’s Case Brief at 18-19.

³¹¹ *See* Hyosung’s Rebuttal Brief at 16.

³¹² *See* Petitioner’s Case Brief at 19-20.

³¹³ *See* Hyosung’s Rebuttal Brief at 17.

has not misreported COM, other than the instances specifically noted, these issues do not call into question the accuracy of Hyosung's reported COM or sales revenue in the gross unit price.

Petitioner states that Hyosung did not, in some instances, provide final invoices from the third-party suppliers.³¹⁴ In response, Hyosung indicates that the Department requested sample documentation demonstrating the price paid for accessories, and that Hyosung cooperated with the request by providing pro-forma invoices whose amounts tied to the costs reported by Hyosung.³¹⁵ Thus, we find that Hyosung provided the requested information. This is also an issue of the proper reporting of COM and does not call into question Hyosung's reported sales revenue in the gross unit price.

Petitioner states that there are significant differences across sales between the reported COM and the reported U.S. sales prices.³¹⁶ Petitioner argues that these differences are due to different allocation methodologies employed by Hyosung to report GRSUPR1U, GRSUPR2U, and GRSUPR3U, and that Petitioner's analysis shows that Hyosung's "{r}eported sales prices (revenues) for spare parts and accessories are totally unrelated to the cost of manufacture (COM) for the same spare parts and accessories."³¹⁷ Petitioner avers that these differences warrant the use of adverse facts available.³¹⁸ Hyosung argues that the calculation and reporting of GRSUPR1U, GRSUPR2U, and GRSUPR3U is "{a}n artificial exercise at best" and that the important reported figure is NET_GRSUPRU, on which U.S. Customs and Border Protection (CBP) will assess dumping duties.³¹⁹ Hyosung states that it explained its methodology for calculating GRSUPR1U, GRSUPR2U, and GRSUPR3U and that any differences for COM and sales revenues resulting from the different allocation methodologies does not change the fact that the U.S. customer paid the combined gross unit price charged by Hyosung.³²⁰ We agree with Hyosung that the allocation methodologies used to calculate the segregated GRSUPR1U, GRSUPR2U, and GRSUPR3U values do not call into question the reconciliation of the reported total sales values to the reported financial statements, because the reported total gross unit prices reconcile to HICO America's audited financial statements.

Comment 10: Hyosung Misreported the Physical Characteristics for Certain Sales

Petitioner's Comments:

- For certain sales, the physical characteristics of the sale, as specified in the purchase order, do not conform to the reported sales characteristics, as reported by Hyosung to the Department.³²¹

³¹⁴ See Petitioner's Case Brief at 21-22.

³¹⁵ See Hyosung's Rebuttal Brief at 17.

³¹⁶ See Petitioner's Case Brief at 22-23.

³¹⁷ *Id.*

³¹⁸ *Id.*, at 25.

³¹⁹ See Hyosung's Rebuttal Brief at 17-18.

³²⁰ *Id.*

³²¹ See Petitioner's Case Brief at 25.

- Because all material terms of sale, including (and especially) the technical specifications of the LPT, are reduced to writing in the LPT industry, Hyosung’s unsupported and undocumented allegation of a post-sale change in the material terms of the order must be rejected.³²²
- The Department’s practice is to rely on documentation maintained in the ordinary course of business to establish prices and costs.³²³ Absent other documentary evidence to support Hyosung’s claims, the conflict between the purchase order and the data reported in the sales listing is unresolved, and the Department should not rely on the data in the sales response.³²⁴
- Hyosung’s rebuttal that the Department “thoroughly verified the accuracy of Hyosung’s reporting methodology in the underlying investigation” is not germane in this segment.³²⁵

Hyosung’s Rebuttal Comments:

- Hyosung sometimes modifies purchase orders without formally including the information in an amended purchase or change order. Petitioner has raised this issue before and Hyosung explained relevant contract changes to the Department.³²⁶

Department’s Position:

As noted in Comment 9 above, we find that record evidence supports Hyosung’s reconciliation of the reported sales values to its financial statements. Thus, for the sales in question, the record reflects that the U.S. customer paid Hyosung for the LPTs in question.

With respect to the changes in the purchase order, we note that in the instant case the Department has changed the date of sale from the purchase order date to the date of shipment for Hyosung.³²⁷ We adopted the new date of sale for this administrative review because evidence on the record indicates that material changes in the terms of sale occur up to and including the shipment date.³²⁸

The Court of International Trade (CIT) has upheld the Department’s discretion in changing the date of sale according to when the material terms of sale are established.³²⁹ Indeed, the CIT

³²² *Id.*, at 26.

³²³ See, e.g., *Certain Frozen Fish Fillets from the Socialist Republic of Vietnam: Final Results of Antidumping Duty Administrative Review and New Shipper Review: 2011-2012*, 79 FR 19053 (April 7, 2014), and accompanying Issues and Decision Memorandum at Comment 5.

³²⁴ See Petitioner’s Case Brief at 26-27.

³²⁵ *Id.*, at 27-29. See also *Essar Steel v. United States*, 678 F.3d 1268, 1277 (Fed. Cir. 2012) (citing *Zenith Elecs. Corp. v. United States*, 988 F.2d 1573, 1583 (Fed. Cir. 1993)).

³²⁶ See Hyosung’s Rebuttal Brief at 18.

³²⁷ For a discussion of the date of sale, see Comment 17.

³²⁸ *Id.*

³²⁹ See *Sahaviriya Steel Industries Public Company Limited v. United States*, Court No. 09-00229, Slip Op 10-68 (CIT 2010) (SSI).

stated that the Department’s interpretation of the material terms of sale “{h}as evolved to include price, quantity, delivery terms and payment terms.”³³⁰ We find that the change in the reported product characteristic cited by Petitioner constitutes a change in the material terms of sale. Thus, the specifications on the original purchase order are not the final document that establishes the product specifications. Hyosung states that it reported the COM for this sale reflecting the change in the physical specification cited by Petitioner.³³¹ Hyosung also states that there can be changes to the material terms of sale without a written request from the customer.³³² There is thus no record evidence to suggest that Hyosung’s reported physical characteristics are incorrect. Therefore, we have declined to make any adjustments to the reported control numbers.

Comment 11: Hyosung Failed to Reconcile Its Reported U.S. Sales Data to Its Normal Books and Records

Petitioner’s Comments:

- With regard to reporting irregularities for certain sales, Hyosung’s apparent attempt to shift the responsibility of noncompliance with U.S. GAAP to the independent auditors must be rejected by the Department, particularly where Hyosung has a prepared and submitted a document that deviates from the audited financial statements.³³³
- The exclusion of revenue for certain sales, and the double-counting of another, discredits the reliability of Hyosung’s sales reconciliation.³³⁴
- Hyosung increased the reported price for a U.S. sale which was previously reported to the Department.³³⁵
 - The claimed “uniqueness” with respect to Hyosung’s assigned project number and serial number must be questioned.³³⁶
 - The increases to gross unit price engineered by Hyosung via added spare parts and accessories may not be accurately reported because the additional sales of the physical goods (parts and accessories) may not be related to the sales of the subject LPTs.³³⁷
 - The reported additions to gross unit prices of the “service-related revenue” cannot be confirmed, because the added revenue cannot be connected to the underlying expenses recorded in the ledger, as incurred by Hyosung, for specific selling activities.³³⁸

³³⁰ *Id.* at 34.

³³¹ *See* Hyosung’s Rebuttal Brief at 18.

³³² *Id.* at 19.

³³³ *See* Petitioner’s Case Brief at 29-30.

³³⁴ *Id.*, at 31-32.

³³⁵ *Id.*, at 32-40.

³³⁶ *Id.*, at 39-40.

³³⁷ *Id.*, at 40.

³³⁸ *Id.*, at 40.

- Hyosung’s U.S. sales data do not reconcile to the normal books and records of the company, without introducing post-sale adjustments which are inconsistent with U.S. GAAP and contradict Hyosung’s stated reporting methodology for the responses.³³⁹

Hyosung’s Rebuttal Comments:

- Petitioner does not dispute the accuracy and completeness of Hyosung’s reported U.S. sales, nor does Petitioner allege that Hyosung omitted reporting sales or failed to tie all reported prices directly to invoices. These issues, therefore, are irrelevant.³⁴⁰
- Petitioner’s complaints are based on its misperceptions and misunderstanding of when these transactions are appropriately recorded in HICO America’s accounting records.³⁴¹
- First, there is no basis for rejecting Hyosung’s reported U.S. sales, because Hyosung’s accounting is consistent with its books and records.³⁴²
- Second, rather than having “double counted” one unit in its reconciliation, Hyosung used two project numbers, which Petitioner mistakes to be identical LPTs in its claim that Hyosung’s sales ledger is unreliable.³⁴³
- Third, Petitioner wrongly argues that Hyosung “increased” the reported price for LPT units which the Department already reviewed. Relevant reconciliation materials tie the reported data to Hyosung’s books and records, as required.³⁴⁴

Department’s Position:

We address each of Petitioner’s arguments, and Hyosung’s rebuttals, in order here.

As we mentioned in Comment 9 above, the Department analyzed Hyosung’s reported reconciliation of the reported sales values to the financial statements. We find that the booking of the U.S. sales revenue in 2016 for sales where Hyosung issued the invoices in 2015 is not contrary to GAAP, and that Hyosung properly reconciled its reported sales prices with its financial statements.

Petitioner, in examining Exhibit S5-7 of the November 3, 2016, supplemental questionnaire response, alleges that Hyosung double-counted sales revenue for one LPT sale.³⁴⁵ Petitioner states that there are two entries in the reported reconciliation in Exhibit S5-7 which contain the

³³⁹ *Id.*, at 30.

³⁴⁰ *See* Hyosung’s Rebuttal Brief at 19.

³⁴¹ *Id.*

³⁴² *Id.*, at 20-21.

³⁴³ *Id.* at 21.

³⁴⁴ *Id.* at 23-24.

³⁴⁵ *Id.* at 32-33.

same serial number, arguing that each serial number is a unique LPT sale and, thus, the two entries for one serial number constitute double-counting.³⁴⁶ Petitioner acknowledges a previous response by Hyosung that the two line entries/sales are distinguished by a project number assigned by HICO America, but contends that these project numbers do not appear anywhere in Hyosung's reported U.S. sales database.³⁴⁷ Hyosung responds by stating that Petitioner mistakenly relies on a serial number issued by Hyosung, and not the project number that HICO America assigns to each LPT, in arguing that there is an issue with regard to double-counting.³⁴⁸ Hyosung also notes that the two entries/sales in question occurred during the second period of review of the proceeding, and not the current review period, and explains that this is the reason why the specific project numbers do not appear in the U.S. sales database for this period of review.³⁴⁹ We examined Exhibit S5-7 and found that each reported U.S. sale, encompassing multiple periods of review, contains a unique project number which Hyosung indicates is assigned by HICO America.³⁵⁰ However, multiple sales listed in the exhibit do not have serial numbers assigned to them.³⁵¹ These sales are principally listed as consisting of non-subject merchandise.

Petitioner notes Hyosung's statement that the project number/serial number is listed in the reported databases and links to the CONNUM for purposes of matching reported costs to the sales databases.³⁵² Petitioner also states that the codes that HICO America assigns (referred to by Hyosung as OTR numbers, which Hyosung states are HICO America's unique identifier number for sales³⁵³) were never reported previously by Hyosung.³⁵⁴ Hyosung states that it was not required to report the code³⁵⁵ previously but that the reported numbers allow the Department to link the sales database to the cost database.³⁵⁶ We intend to request more information from Hyosung about the link between serial numbers and OTR numbers in the next administrative review. Regardless, an examination of Exhibit S5-7 indicates that the sales in question are from a previous review. As Hyosung states, the reason these two units appear on the record of this segment of the proceeding is because of the Department's request for Hyosung's sales ledger and to address our request as to whether each sale listed in the sales ledger was in or out of the period of review and whether the sale was of subject or non-subject merchandise.³⁵⁷ Thus, Petitioner does not call into question Hyosung's reconciliation or reporting of sales for this administrative review.

Petitioner also states that its review of Exhibit S5-7 reveals further inconsistencies that render Hyosung's reconciliation unreliable. Specifically, Petitioner indicates that, according to the

³⁴⁶ *Id.*

³⁴⁷ *Id.*

³⁴⁸ See Hyosung's Rebuttal Brief at 21-22.

³⁴⁹ *Id.*, at 22.

³⁵⁰ See Hyosung's November 3, 2016, Supplemental Questionnaire Response at S5-7.

³⁵¹ *Id.*

³⁵² See Petitioner's Case Brief at 32, referencing Hyosung's Section B-D Response at D-4.

³⁵³ See Hyosung's Rebuttal Brief at 21.

³⁵⁴ See Petitioner's Case Brief at 32.

³⁵⁵ Hyosung refers to this as an "OTR" code. See Hyosung's Rebuttal Brief at 21-22.

³⁵⁶ See Hyosung's Rebuttal Brief at 21-22.

³⁵⁷ *Id.* at 22.

figures presented in Exhibit S5-7, Hyosung increased its price for a U.S. sale from the second administrative review.³⁵⁸ According to Petitioner, figures in Exhibit S5-7 indicate that the sale in question saw an increase in the booked gross unit price of nearly 7 percent.³⁵⁹ Petitioner notes that the sale in question was part of a purchase order along with two sales reported in the instant administrative review period.³⁶⁰ Petitioner notes that there is no documentation on the record regarding changes of price from the purchase order, and contends that if the reconciliation in the previous review is wrong, then the reconciliation for this review is likely to be wrong, as well.³⁶¹ Hyosung, however, states that the shipment of an LPT to the United States “{d}oes not necessarily mean that all aspects of the transaction have been finalized within the Department’s specified reporting periods.”³⁶² Hyosung further states that the price change is simply a change to the purchase orders and is reflected in the invoices issued to the customer.³⁶³ Hyosung states that the final changes for the sale in question occurred in 2015, and were booked at that time.³⁶⁴

We find that the change in price for the sale identified by Petitioner does not undermine the reconciliation for the instant administrative review. The sale in question occurred during the previous administrative review period and does not affect the calculation of dumping margins in this instant review. A company’s reconciliation of sales ledgers to financial statements is a snapshot in time. The final revenue from a sale may change after the end of a fiscal year, for reasons such as warranty claims, credit or debit notes, or other issues, and it is not unusual for such changes to be identified each year in reconciliations. Thus, we do not find that the adjustment to one sale from a previous administrative review period, in the current review period reconciliation, indicates that the reconciliation provided by Hyosung is unreliable.

Petitioner also claims that Hyosung reported increased prices for other U.S. sales that were reviewed in previous administrative review periods, and that such an increase calls into question the overall reconciliation provided by Hyosung.³⁶⁵ Petitioner notes that multiple entries in the sales ledger in Exhibit S5-7 under the same OTR have different or no serial numbers.³⁶⁶ Petitioner notes that the sum of all four of these lines equals the reported gross unit price in the previous review. Petitioner questions the accuracy of the previously reported NET_GRSUPRU and service-related freight revenue because the values of each of these four lines are different than the previously reported gross unit price (GRSUPRU) and service-related revenue.³⁶⁷ In reply, Hyosung claims that the line items in question sum to the figure for the gross unit price reported in the previous administrative review, that the reported figures tie to Hyosung’s books and records, and that it properly segregated and reported expenses and costs for this sale.³⁶⁸

³⁵⁸ See Petitioner’s Case Brief at 34-35.

³⁵⁹ *Id.*

³⁶⁰ *Id.*, at 34.

³⁶¹ *Id.*, at 35.

³⁶² *Id.*

³⁶³ *Id.*, at 24.

³⁶⁴ *Id.*, at 23.

³⁶⁵ See Petitioner’s Case Brief at 38-40.

³⁶⁶ *Id.*

³⁶⁷ *Id.*

³⁶⁸ See Hyosung’s Rebuttal Brief at 24-25.

As both parties note, this sale occurred during the previous administrative review period. Petitioner contends that the changes to the previously reported price may be due to non-subject merchandise, or that it is impossible to identify properly any service related revenues. Despite these concerns however, we are unable to conclude from the record evidence that the reported sales prices, service-related revenues, or COM are otherwise inaccurate. With regard to this issue, Hyosung has presented evidence on the record reconciling the reported gross unit prices for this instant review to the financial statements covering this instant review. We are thus unable to conclude that sufficient record evidence exists to support Petitioner's allegation that changes in the prices for previously reviewed sales would call into question the sales ledger and reconciliation for the instant administrative review.

Comment 12: Hyosung's Reported Increases to U.S. Prices Are Not Supported by Sales Documentation Generated in Its Normal Course of Business

Petitioner's Comments:

- Hyosung failed to provide documentary support for the reported increases to U.S. sales prices.³⁶⁹
- The price increases after the date of purchase order/sales contract are not supported by records maintained by Hyosung, including commercial invoices to the U.S. customers.³⁷⁰
- Other information on the record discredits the reliability of Hyosung's reported U.S. sales data.³⁷¹
- Hyosung failed to support the increases to U.S. sales through service-related revenues.³⁷²

Hyosung's Rebuttal Comments:

- Hyosung provided the Department with full sets of invoices, purchase orders, and other documents generated in the normal course of business in response to the Department's requests for information and documentation in this review.³⁷³
- First, Hyosung fully documented its reported prices with respect to certain U.S. sequence numbers that Petitioner raises in its case brief.³⁷⁴

³⁶⁹ See Petitioner's Case Brief at 41-46.

³⁷⁰ *Id.*, at 46-52.

³⁷¹ *Id.*, at 52-55.

³⁷² *Id.*, at 55-56.

³⁷³ See Hyosung's Rebuttal Brief at 25.

³⁷⁴ *Id.*, at 27-30.

- Second, Hyosung accurately reported and documented all changes to the price and terms of sale following the initial purchase order. Petitioner does not support its numerous claims that Hyosung omitted certain invoices.³⁷⁵
- Third, and with respect to service related revenues, Hyosung’s reporting and documentation supports both Hyosung’s reconciliation and the reported gross unit prices, inclusive of all service related revenues. Petitioner’s argument is nothing short of a claim that Hyosung has fabricated its entire U.S. sales reporting to the Department.³⁷⁶

Department’s Position:

Petitioner states that Hyosung is artificially raising U.S. prices through either the addition of sales of spare parts and accessories or through the addition of revenue earned on services provided to its U.S. customer.³⁷⁷ Petitioner, therefore, argues that the changes in either the sales prices or the service-related revenues should not be accepted for a number of reasons. First, Petitioner argues that there are a number of changes for freight and sales revenues after the initial purchase order date, which are unsupported by documentation on the record.³⁷⁸ Second, Petitioner claims that the commercial invoices issued by Hyosung are unreliable, as they are not sequential.³⁷⁹ Third, some of the commercial invoices issued by Hyosung show incorrect amounts due from the U.S. customer.³⁸⁰ Fourth, the reported warehouse expenses and storage revenue are incorrect.³⁸¹ Fifth, Petitioner states that there are unresolved discrepancies in the reported payment amounts for U.S. sales.³⁸² Finally, Petitioner claims that the value of previously alleged missing sales that were not recorded in Hyosung’s 2015 financials and sales ledgers are nearly the same as service-related revenues listed in Exhibit S5-7 of the November 3, 2016, supplemental response, and, thus, the reported U.S. sales data are unreliable.³⁸³

To address these issues, we have divided them into subcategories, discussed below.

1. Freight and Sales Revenues Are Not Supported by the Record

Concerning the changes in prices and expenses reported by Hyosung in comparison to the figures listed on the purchase orders/sales contracts, as explained in Comment 17, we have changed the date of sale from the purchase order date to shipment date, as we found that the material terms of sale can and do change after the purchase order date and up to the shipment date. The regulation governing date of sale determinations, 19 CFR 351.401(i), states the following:

In identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or

³⁷⁵ *Id.*, at 30-36.

³⁷⁶ *Id.*, at 36.

³⁷⁷ *See* Petitioner’s Case Brief at 41.

³⁷⁸ *Id.*, at 42-46.

³⁷⁹ *Id.*, at 47-49.

³⁸⁰ *Id.*, at 49-52.

³⁸¹ *Id.*, at 52-53.

³⁸² *Id.*, at 53-55.

³⁸³ *Id.*, at 55-56.

producer's records kept in the ordinary course of business. However, the Secretary may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.

The regulation states that while the date of invoice is the preferred date of sale, the Department will consider a different date if it is satisfied that the material terms of sale are established on a date other than the invoice date. For this segment of the proceeding, with respect to Hyosung, the Department finds that the material terms of sale are not established at the time of the purchase order, or indeed at the date of the invoice if that date is prior to the date of the shipment. Again, as explained in Comment 17, record evidence indicates that the material terms of sale can and do change up to the date of the shipment.

Hyosung states that the final commercial invoices to the U.S. customers reflect “{t}he final price, inclusive of all transaction elements for a number of U.S. sales, {sic} including all invoices for which Hyosung invoiced separate line items for revenue items.”³⁸⁴ Hyosung also notes that language in a purchase order cited by Petitioners includes the statement that “{o}rders can also be changed without a revised purchase order.”³⁸⁵ Our examination of the record evidence indicates that Hyosung has provided copies of the commercial invoices for its reported U.S. sales, which include the material terms of sale, and that said material terms of sale are often different than those initially discussed in the purchase orders/sales contracts.³⁸⁶ Hyosung states that actual changes from the purchase order are reflected in the invoices issued to the customer,³⁸⁷ and that Hyosung sometimes modifies purchase orders without formally including the information in an amended purchase order or change order.³⁸⁸ Hyosung has explained a number of changes that also relate to reported service expenses and revenues.³⁸⁹ For our purposes, the Department's date of sale analysis determines when the final material terms of sale are established. As stated above, our regulations establish a preference for invoice date as the date of sale. It is immaterial that changes in the material terms of sale from a purchase order date to the invoice date are not always in written form, so long as the final terms of sale are clearly established and documented by the invoice or shipment dates.

Petitioner states that, irrespective of the Department's regulation concerning date of sale and the Department's decision in the *Preliminary Results* to use invoice date as date of sale, the purchase order/sales contract is important in establishing the essential price and other terms of sale.³⁹⁰

³⁸⁴ See Hyosung's Rebuttal Brief at 26.

³⁸⁵ *Id.* at 27.

³⁸⁶ Petitioner provides such examples of changes from the purchase order date to the final invoice date at 42 through 44 of Petitioner's Case Brief. See also Comment X below. Hyosung also responded to Petitioner's claims and provided evidence to document changes. See Hyosung's Rebuttal Brief at 26-27.

³⁸⁷ See Hyosung's Rebuttal Brief at 24.

³⁸⁸ *Id.* at 19.

³⁸⁹ See Hyosung's Rebuttal Brief at 28-30.

³⁹⁰ See Petitioner's Case Brief at 45.

Petitioner cites *Circular Welded Pipe from Thailand*³⁹¹ and states that the Department “{e}xpressly found that it is appropriate to give meaning to the contract terms between the exporter and the purchaser as terms of sale” and that the aspects of the sales contracts specifying the amounts for freight revenue must be given meaning as a material term of sale.³⁹² However, in *Thai Pipe* the Department specifically found “{t}hat the material terms of sale were established at the time of contract.”³⁹³ This is the opposite of our finding in this proceeding where we find that the material terms of sale were *not* established at the time of contract. Thus, we do not find that changes in the material terms of sale subsequent to the purchase order date undermine Hyosung’s reported sales and expenses.³⁹⁴

2. *Hyosung’s Commercial Invoices Are Not Reliable*

Concerning the issue of sequential invoices, Petitioner lists a number of reported U.S. sales and states that Hyosung did not provide a complete set of commercial invoices for these sales.³⁹⁵ Hyosung stated in response that it provided all of the requested invoices in Exhibit S5-5 of the November 3, 2016, supplemental questionnaire response.³⁹⁶ Hyosung further states that Petitioner did not identify any instances where the reported invoices did not reconcile to the reported price and revenue amounts.³⁹⁷ Hyosung explained that the reason for the non-sequential invoices is that the invoices are not generated automatically by the accounting system, but are, rather, entered manually by HICO America’s staff and that the staff skipped numbers/letters which would have been sequential.³⁹⁸ Hyosung also states that Petitioner’s claim that Hyosung withheld invoices “{m}akes no sense in its face. The logical conclusion to be drawn from allegedly withholding invoices is that Hyosung would have *underreported* its sales amounts. It is clear that Hyosung would have no incentive to do so.”³⁹⁹ As stated previously, we are accepting Hyosung’s reconciliation of the reported U.S. sales to the sales ledger and the audited financial statements and find it to be reliable. As we cannot conclude from the record evidence that there should be sequential invoices, we are unable to conclude that Hyosung failed to report certain invoices.

3. *Hyosung’s Commercial Invoices Show Incorrect Amounts*

In addition, Petitioner asserts that the amounts listed on the invoices (as reported in Exhibit S5-5) do not match the amounts Hyosung listed in the invoice summary worksheets in Exhibit S5-7 of the November 3, 2016, submission.⁴⁰⁰ Hyosung notes that the differences in the listed subtotals

³⁹¹ See *Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review; 2011-2012*, 78 FR 65272 (October 31, 2013), and accompanying Issues and Decision Memorandum at Comment 5(*Thai Pipe*).

³⁹² See Petitioner’s Case Brief at 45.

³⁹³ See *Thai Pipe*, Issues and Decision Memorandum at Comment 5.

³⁹⁴ For further discussion of date of sale, see Comment 17.

³⁹⁵ See Petitioner’s Case Brief at 47-49.

³⁹⁶ See Hyosung’s Rebuttal Brief at 30.

³⁹⁷ *Id.*

³⁹⁸ *Id.* at 30-31.

³⁹⁹ *Id.* at 31, footnote 71.

⁴⁰⁰ See Petitioner’s Case Brief at 49-52.

on the invoices in question occurred because the invoices in question were generated after the customer had paid the invoice.⁴⁰¹ Hyosung further states that the line item details in the invoices reflect the correct amounts.⁴⁰² We have examined the invoices at issue and find that the record evidence supports Hyosung's explanation of the different invoice values.

4. Hyosung's Reported Warehouse Expenses and Storage Revenue Are Not Correct

Concerning the allegation that Hyosung did not report the correct storage and/or warehouse revenue for certain sales, Petitioner alleges that record evidence indicates that certain LPTs were stored at, or by, HICO America and that the expenses associated with this storage are unreported.⁴⁰³ Petitioner notes Hyosung's claims that storage revenue was reported in the field for inland freight revenue, and the associated expenses in the field for U.S. inland freight expense, instead.⁴⁰⁴ Petitioner, thus, argues that the revenues and expenses are mischaracterized. Hyosung restates its previous explanation that it reported these revenues and expenses in the fields involving U.S. freight, because the services were actually rendered by a U.S. inland trucking service company that included the expense in its invoice to HICO America.⁴⁰⁵ Thus, according to Hyosung, the reported revenues and expenses are reported in the correct fields. We intend on requesting further information from Hyosung regarding the reported expenses in the next administrative review. Nevertheless, we are unable to conclude here from the record evidence that LPTs were stored at or by HICO America.

5. Hyosung's Reconciled U.S. Sales Database Is Reliable

With respect to the reliability of the reported U.S. sales data, we noted in Comment 9 that the Department is satisfied that Hyosung reconciled the reported U.S. sales database with the sales ledger and the audited financial statements.

With respect to the purported payment discrepancies, Hyosung states that the differences are due to sales taxes which are recognized in the payment amounts in the U.S. sales listing, but not included in the reconciliation materials.⁴⁰⁶ Hyosung provides screen captures of invoices (previously submitted) showing tax amounts that link the reported payment amounts to the reported sales values and ledger reconciliations.⁴⁰⁷ As noted above, we are accepting, after careful examination, Hyosung's reported U.S. sales values and the reconciliation of these and the sales ledger to the audited financial statements, and find that Hyosung adequately explained the differences noted by Petitioners with respect to taxes.

Finally, regarding the value of the reported sales that were not booked in 2015 and how this value is similar to reported sales revenues, we again find that Hyosung properly and adequately provided a reconciliation of its reported U.S. sales to its sales ledger and the audited financial statements.

⁴⁰¹ See Hyosung's Rebuttal Brief at 32.

⁴⁰² *Id.*

⁴⁰³ See Petitioner's Case Brief at 52-53.

⁴⁰⁴ *Id.*, at 53.

⁴⁰⁵ See Hyosung's Rebuttal Brief at 29.

⁴⁰⁶ *Id.*, at 33.

⁴⁰⁷ *Id.*, at 33-34.

Comment 13: The Department Should Not Accept Hyosung's Understated Ocean Freight Expenses for U.S. Sales

Petitioner's Comments:

- Hyosung failed to include all ocean transportation-related expenses in calculating the unit international freight reported in field INTNFRU and, therefore, the Department should not rely on Hyosung's reported unit ocean freight.⁴⁰⁸
- Hyosung understated the ocean freight expenses on which the affiliate's mark-up is assessed, and included expenses for partial shipments only.⁴⁰⁹
- Hyosung failed to properly mark up the expenses incurred by affiliated third-party providers.⁴¹⁰

Hyosung's Rebuttal Comments:

- All of Petitioner's arguments regarding ocean freight expenses are based on misunderstandings or mischaracterizations of the record.⁴¹¹
- First, with respect to Petitioner's claim that Hyosung failed to report certain international freight expenses, Hyosung states that it reported the full charges, inclusive of ocean freight and any applicable additional charges, in the reported international freight expense field.⁴¹² Petitioner's complaint that Hyosung did not include all charges is a frivolous claim based on Petitioner's mischaracterization of the applicable invoices.⁴¹³
- Second, Petitioner claims that the fact that there can be differences between the ocean freight expense and revenue amounts indicates that Hyosung's reporting is incorrect.⁴¹⁴ Hyosung argues that these differences are to be expected as the revenue amounts are negotiated as part of the sales transaction with the customer, whereas the freight charges are negotiated with the freight providers. According to Hyosung, there are often timing differences and other considerations which impact the expenses.⁴¹⁵

⁴⁰⁸ See Petitioner's Case Brief at 57-59.

⁴⁰⁹ *Id.*, at 59-66.

⁴¹⁰ *Id.*, at 66.

⁴¹¹ See Hyosung's Rebuttal Brief at 37.

⁴¹² *Id.*, at 37-39.

⁴¹³ *Id.*, at 39.

⁴¹⁴ *Id.*, at 40.

⁴¹⁵ *Id.*

- Third, Petitioner points to the difference in expenses for pairs of transactions and claims that the differences in the expenses between the two are indicative of an error in Hyosung's reporting.⁴¹⁶ Petitioner and the Department are aware that it is disingenuous for Petitioner to suggest that ocean freight should be identical for units shipped at different times, simply because they appear on the same purchase order. Hyosung explained freight charge variations.⁴¹⁷
- Fourth, with respect to Petitioner's claim that Hyosung classified identical expense line items as ocean freight expenses for some transactions and inland freight expenses for other transactions, Hyosung states that it accurately reported and classified its freight charges.⁴¹⁸
- Fifth, with respect to a certain U.S. sequence number, Petitioner claims that Hyosung only included expenses associated with partial shipments. This is an incorrect argument based upon Petitioner either failing to read or mischaracterizing record information.⁴¹⁹
- Finally, Petitioner argues that Hyosung improperly failed to mark up expenses incurred by third-party providers. Hyosung claims this argument lacks merit and that it reported international freight expenses on the basis of the actual amounts incurred.⁴²⁰

Department's Position:

In its Case Brief, Petitioner identifies a discrepancy in one sale between the reported gross unit price and the actual payment amount received.⁴²¹ This difference is the difference that we noted in Comment 9 above. While we explained above that we find that the difference is small and does not otherwise detract from the reported reconciliation, nevertheless, there is no explanation on the record for the discrepancy for the sale. Therefore, pursuant to section 776(a)(2)(D) of the Act, as facts available, the Department is deducting this amount from the sale identified by Petitioner.

With respect to a small number of sales, Petitioner alleges that Hyosung failed to provide evidence on the record of an arm's-length mark up for freight expenses provided by an affiliated transportation company.⁴²² Hyosung responds by stating that the Department did not request that Hyosung provide the freight invoices from the affiliated freight company or the underlying freight invoices from the unaffiliated freight supplier for these particular sales.⁴²³ We disagree with Hyosung and agree with Petitioner. The Department specifically requested information on the freight expense for these sales in its May 18, 2016, supplemental questionnaire at question

⁴¹⁶ *Id.*, at 41.

⁴¹⁷ *Id.*, at 42.

⁴¹⁸ *Id.*, at 43-44.

⁴¹⁹ *Id.*, at 44.

⁴²⁰ *Id.*, at 48.

⁴²¹ *See* Petitioner's Case Brief at 56.

⁴²² *Id.* at 57-58.

⁴²³ *See* Hyosung's Rebuttal Brief at 38.

21a. The Department asked that Hyosung explain “[h]ow the ocean freight amount was determined for {these sequences}, the circumstances under which you charged revenue for ocean freight services, when the amounts were determined, and whether the amount of the ocean freight was included in the entry value for U.S. customs purposes. Please also provide supporting documentation in response to this question.”⁴²⁴ Hyosung responded on June 8, 2016.⁴²⁵ However, the response continued to be deficient, and the Department requested further information on these sales regarding the arm’s-length nature of the transaction between Hyosung and its affiliate.⁴²⁶ The Department also requested information specifically about the arm’s-length nature of Hyosung’s transactions with its affiliate in a separate supplemental questionnaire.⁴²⁷ In response, Hyosung stated that it would provide evidence to show that the transactions between Hyosung and its affiliate were at arm’s length for the sales in question.⁴²⁸ However, Hyosung merely referenced arm’s-length calculations for other sales, and provided no other documentation regarding the sales at issue.

Hyosung states that “[t]he Department did not request that Hyosung provide in its supplemental responses the freight invoices from {the affiliate} to Hyosung, or the freight invoices from the unaffiliated provider.”⁴²⁹ We disagree. Despite the number of supplemental questions and requests for documentation to support the reported expenses, Hyosung did not respond to the Department’s request. Thus, we find that Hyosung failed to cooperate to the best of its ability with respect to these sales. Pursuant to section 776(a)(2)(A) of the Act, as adverse facts available, we are assigning the highest reported ocean freight expense to the sales for which Hyosung did not report the requested information.⁴³⁰

Petitioner also argues that Hyosung failed to report all applicable expenses for these sales.⁴³¹ Because we are applying facts available with an adverse inference for the sales in question, we are not addressing this portion of Petitioner’s argument, as an adverse inference with respect to reported expenses would result in the same remedy. However, Petitioner also argues that Hyosung failed to report expenses related to ocean transportation for other U.S. sales. In response, Hyosung notes that it provided all of the invoices from unaffiliated freight companies to its affiliate, as well as its affiliate’s invoices to Hyosung, for transportation expenses related to sales for which the Department requested said documentation.⁴³² Hyosung provided evidence to indicate that the expenses noted by Petitioner were included in the invoice from the unaffiliated freight companies to Hyosung’s affiliate, but that Hyosung’s affiliate charged a single fee plus a markup that included the freight charges listed by the unaffiliated freight provider.⁴³³ In fact, Hyosung provided an exhaustive summary of the invoices, and the charges contained therein, in its November 3, 2016, supplemental response, including the mark-up percentages charged by the

⁴²⁴ See the Department’s supplemental questionnaire, dated May 18, 2016, at 6.

⁴²⁵ See Hyosung’s June 8, 2016, Supplemental Questionnaire Response at 16.

⁴²⁶ See the Department’s supplemental questionnaire, dated October 7, 2016, at question 1.

⁴²⁷ See the Department’s supplemental questionnaire, dated July 27, 2016, at question 2.

⁴²⁸ See Hyosung’s November 3, 2016, Supplemental Questionnaire Response at 1-2.

⁴²⁹ See Hyosung’s Rebuttal Brief at 38.

⁴³⁰ See Hyosung Final Analysis Memorandum for additional information regarding this programming change.

⁴³¹ See Petitioner’s Case Brief at 58.

⁴³² See Hyosung’s Rebuttal Brief at 38.

⁴³³ *Id.*, at 39.

affiliate to Hyosung.⁴³⁴ Therefore, we disagree with Petitioner that Hyosung failed to report all of the applicable freight expenses and agree with Hyosung that it reported the full charges for the reported international freight expense (except those sales as discussed immediately above) and that the reported expenses are correct as a basis for capping reported freight revenues.

Petitioner notes that there are large differences in reported ocean freight expenses for sales of similar or identical merchandise, or merchandise sold at nearly the same time and, thus, question the accuracy of the reported expenses.⁴³⁵ As noted above, we find that record evidence provided by Hyosung supports Hyosung's reported freight expenses.

Petitioner also argues that Hyosung misreported ocean freight expenses as U.S. inland freight expenses for one of the sales, thereby undermining Hyosung's reported ocean freight expenses.⁴³⁶ We note however, that Hyosung provided evidence to show that the actual expenses are properly classified as U.S. inland freight expenses, which we have reviewed and which we find addresses the issue raised by Petitioner.⁴³⁷

Petitioner argues that Hyosung understated ocean freight expenses by including expenses related to partial shipments.⁴³⁸ Hyosung points to record evidence to demonstrate that there were no partial shipments.⁴³⁹ We have examined the evidence provided by Hyosung, including copies of the invoices and Customs Form 7501 for certain sales, and agree with Hyosung that it did not make partial shipments or report incorrect values for the sales.

Finally, Petitioner argues that the transactions between Hyosung and its affiliated freight provider were not at arm's length.⁴⁴⁰ Record evidence however, indicates that, for the sales for which the Department requested information, Hyosung's affiliated freight provider charged a markup to Hyosung.⁴⁴¹ There is no additional record evidence that the information provided by Hyosung in Exhibit S5-2 fails to demonstrate the arm's-length nature of the transaction. Therefore, based on our analysis of the information provided by Hyosung in Exhibit S5-2, we find that the transactions between Hyosung and its affiliated freight provider were at arm's length.⁴⁴²

⁴³⁴ See Hyosung's November 3, 2016, Supplemental Questionnaire Response at 2-3 and Exhibit S5-2.

⁴³⁵ See Petitioner's Case Brief at 61.

⁴³⁶ *Id.*, at 61-62.

⁴³⁷ See Hyosung's Rebuttal Brief at 43.

⁴³⁸ See Petitioner's Case Brief at 63-66.

⁴³⁹ See Hyosung's Rebuttal Brief at 44-47.

⁴⁴⁰ See Petitioner's Case Brief at 66.

⁴⁴¹ See Hyosung's November 3, 2016, Supplemental Questionnaire Response at Exhibit S5-2.

⁴⁴² See Hyosung Final Analysis Memorandum for additional information.

Comment 14: The Department Must Not Accept Hyosung's Reported Cost of Manufacture Data

Petitioner's Comments:

- Review of Hyosung's cost database showed that there are many sales for which Hyosung reported a testing date that was prior to the production completion date.⁴⁴³
- Review of record information shows that there are discrepancies between Hyosung's reported timing of the events and the reported data on the record.⁴⁴⁴

Hyosung's Rebuttal Comments:

- Petitioner presents invalid arguments to claim that Hyosung's reported costs are unreliable.⁴⁴⁵
- Hyosung provided detailed responses to address the Department's concerns regarding reporting of different COMs for LPTs with identical physical CONNUM characteristics and Hyosung's reporting of cost elements for certain LPTs.⁴⁴⁶
- Hyosung has repeatedly demonstrated that its costs are accurate and reconcile to its audited financial statements. The Department verified Hyosung's reporting in prior proceedings. There is, therefore, no basis to reject or modify Hyosung's costs.⁴⁴⁷

Department's Position:

We agree, in part, with Petitioner. We have examined Hyosung's reported costs and have made certain adjustments which are business proprietary in nature. See Hyosung Final Analysis Memorandum⁴⁴⁸ for further information.

Comment 15: Application of Total Adverse Facts Available Is Not Warranted for The Final Results

Petitioner's Comments:

- Hyosung's reported sales and cost data are not reliable for the Department's final margin analysis.⁴⁴⁹ Therefore, application of facts available to Hyosung is warranted in this

⁴⁴³ See Petitioner's Case Brief at 68-69.

⁴⁴⁴ *Id.*, at 69.

⁴⁴⁵ See Hyosung's Rebuttal Brief 48.

⁴⁴⁶ *Id.*, at 48-49.

⁴⁴⁷ *Id.*, at 49.

⁴⁴⁸ See Hyosung Final Analysis Memorandum.

⁴⁴⁹ See Petitioner's Case Brief at 71-72.

review.⁴⁵⁰ The breadth and nature of the problems discovered with Hyosung's response, as discussed above, unquestionably represent a failure by Hyosung to cooperate with the Department to the best of its ability. As such, the Department should apply either total or partial adverse facts available.⁴⁵¹

Hyosung's Rebuttal Comments:

- Hyosung's reporting to the Department is, in all respects, accurate, reasonable, and supported by the record. There is no "necessary information" which "is not available on the record." There are no record gaps to fill and there is no need for the Department to resort to facts available.⁴⁵² Further, Hyosung neither withheld information, significantly impeded the proceeding, nor presented data that were not verifiable.⁴⁵³ Rather, Hyosung's data are complete and accurate. Any minor inconsistencies in the data are not the sort of errors, omissions, or mistakes which rise to the level of AFA. Hyosung's diligent and complete responses demonstrate that Hyosung has put forth its maximum efforts in responding to the Department's requests.⁴⁵⁴ The Department did not inform Hyosung of any deficiencies in Hyosung's response, as required under section 782(d) of the Act.⁴⁵⁵

Department's Position:

We disagree with Petitioner and are using, with certain adjustments, Hyosung's reported sales and cost data. We find that Hyosung has, with certain exceptions which we have corrected, cooperated to the best of its ability and provided reliable information the Department can use in the calculation of accurate antidumping duty margins. We do not find that the application of total adverse facts available is warranted under section 776(a) of the Act, as the necessary information is on the record and there is no evidence (other than certain instances noted above) that Hyosung withheld information requested by the Department such that it justifies the application of total adverse facts available. Additionally, we find that there is no record evidence to indicate that Hyosung, other than certain instances noted above, misreported sales and costs for spare parts and accessories.

⁴⁵⁰ *Id.*, at 72-75.

⁴⁵¹ *Id.*, at 75-79.

⁴⁵² See Hyosung's Rebuttal Brief at 50-51.

⁴⁵³ *Id.*, at 51-52.

⁴⁵⁴ *Id.*, at 53.

⁴⁵⁵ *Id.*, at 53-54.

Comment 16: If The Department Relies On Any Portion of Hyosung’s Data Then Additional Corrections Should Be Made in the Final Results

Petitioner’s Comments:

- The record shows that the level of trade for the home market is at a less advanced stage than the CEP level of trade. The Department should, therefore, deny a CEP offset in the final results.⁴⁵⁶

Hyosung’s Rebuttal Comments:

- The Department’s preliminary analysis that Hyosung was entitled to a CEP offset was consistent with prior segments of this proceeding, correct, and consistent with the underlying law.⁴⁵⁷
- Specifically, the Department correctly concluded that Hyosung’s selling functions performed for home-market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for HICO America.⁴⁵⁸
- Petitioner points to no record evidence that warrants overturning the Department’s settled and long-standing decisions with respect to Hyosung.⁴⁵⁹
- The Department should reject Petitioner’s argument that Hyosung should not receive a CEP offset because its level of trade for the home market selling activities is at a less advanced stage than the CEP level of trade.⁴⁶⁰
- Petitioner’s argument misinterprets the statute, and the Department’s practice on CEP offset makes no mention of the Department’s actual analysis, and does not question the Department’s finding and conclusions from the *Preliminary Results*.⁴⁶¹
- The Department should continue to grant Hyosung a CEP offset, because Hyosung established that its home market sales are established at a level of trade that constitutes a more advanced stage of distribution than the level of trade of the CEP.⁴⁶²
- Consistent with the Department’s record in this review and prior segments of this case, the Department should therefore continue to grant a CEP offset in the final results.⁴⁶³

⁴⁵⁶ See Petitioner’s Case Brief at 79-80.

⁴⁵⁷ See Hyosung’s Rebuttal Brief at 58.

⁴⁵⁸ *Id.*, at 56.

⁴⁵⁹ *Id.*

⁴⁶⁰ *Id.*, at 57.

⁴⁶¹ *Id.*, at 58.

⁴⁶² *Id.*, at 59.

⁴⁶³ *Id.*, at 63.

Department's Position:

We agree with Petitioner and have denied Hyosung's request for a CEP offset in these final results.

In analyzing the respective levels of trade (LOTs) for home market sales and CEP sales, the Department's practice is to "examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer."⁴⁶⁴ If the home market sales are at a different LOT than CEP sales and the difference affects price comparability, as manifested in a pattern of consistent price differences between sales on which normal value is based and home market sales at the LOT of the export transaction, the Department makes a LOT adjustment under section 773(a)(7)(A) of the Act. *See HRS from Romania* at 44824. For CEP sales, if the normal value level is more remote from the factory than the CEP level and there is no basis for determining whether the difference in levels between normal value and CEP affects price comparability, the Department adjusts normal value under section 773(a)(7)(B) of the Act (the CEP offset). *Id.* Substantial differences in selling activities are a necessary, but not sufficient, condition for determining that there is a difference in the stages of marketing. *See* 19 CFR 351.412(c)(2). Some overlap in selling activities will not preclude a determination that two sales are at different stages of marketing. *See id.* It is within this framework that the Department conducts its LOT analysis.

In the preliminary determination, we analyzed the various selling functions Hyosung indicated it performed for sales in the home market versus those performed with respect to its U.S. affiliates for its CEP sales.⁴⁶⁵ We preliminarily determined that "the selling functions performed for home-market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for HICO America" and that "{s}pecifically, we find that Hyosung performed many functions (*i.e.*, sales forecasting, planning, training, engineering services, sales marketing support, market research, technical assistance, warranty services, guarantees, and providing installation services) in the home market to a greater degree than it performed these functions for the U.S. market." From this, we stated "we preliminarily conclude that the normal-value level of trade is at a more advanced stage than the CEP level of trade" and "{f}urthermore, although Hyosung cooperated by providing information to the best of its ability, the available data does not permit us to determine whether a level-of-trade difference affects price comparability in order to permit for a level-of-trade adjustment" and that "to adjust

⁴⁶⁴ *See, e.g., Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 72 FR 44821, 44824 (*HRS from Romania*) (August 9, 2007) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 71357 (December 17, 2007)); *Certain Pasta from Italy: Notice of Preliminary Results and Partial Rescission of Tenth Antidumping Duty Administrative Review*, 72 FR 44082, 44084-85 (August 7, 2007) (unchanged in final results, *Certain Pasta from Italy: Notice of Final Results of the Tenth Administrative Review and Partial Rescission of Review*, 72 FR 70298 (December 11, 2007)); *Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review and Final No Shipment Determination*, 77 FR 63291 (October 16, 2012), Issues and Decision Memorandum at Comment 3.

⁴⁶⁵ *See* Hyosung Preliminary Analysis Memorandum at 4-5.

for differences in any levels of trade between the home and U.S. markets, we have preliminarily applied a CEP offset to normal value, in accordance with section 773(a)(7)(B) of the Act.”⁴⁶⁶

Petitioner asks that the Department revise its analysis to consider its allegation that Hyosung’s home market is at a less advanced stage of trade because Hyosung kept completed LPTs destined for the United States in inventory for long periods of time.⁴⁶⁷ The maintenance of the finished LPTs in inventory resulted in a large calculated direct inventory carrying cost, which Petitioner notes is not deducted from the U.S. sales price by the Department.⁴⁶⁸ Hyosung argued in rebuttal that the Department should not make a determination on the level of trade based on one selling function, but on a range of selling functions which Hyosung reported to the Department.⁴⁶⁹ Hyosung then lists a number of the selling functions previously reported and insists that in all cases, it provides these selling functions at a higher level of activity in the home market than it provides to HICO America.⁴⁷⁰ We agree with Hyosung that a full comparison of all selling activities is the proper basis for determining the level of trade between the comparison market and the U.S. market. Petitioner’s reliance on the relevance of “selling expenses” (in this case, the expenses related to inventory carrying costs, as captured in the field DINCARU) as an indicator of “selling functions” is inappropriate with respect to the total LOT analysis because it assumes that the expense data reported by Hyosung are an accurate depiction of the level of intensity in which the selling activities are performed.

The Department’s focus on selling activities rather than selling expenses is supported by the statute, which specifies that a difference in LOTs “involves the performance of different selling activities.”⁴⁷¹ The SAA also specifies that “Commerce will grant such {LOT} adjustments only where: (1) there is a difference in the level of trade (i.e., there is a difference between the actual functions performed by the sellers at the different levels of trade in the two markets); and (2) the difference affects price comparability.”⁴⁷² Finally, the Department’s regulations similarly follow the language in the statute, specifying that we will determine that sales are made at different LOTs if they are made at different marketing stages or their equivalent.⁴⁷³ Thus, the Department’s analysis of selling activities/functions is grounded in the statute and regulations.

Although the Department does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves.⁴⁷⁴ The Department believes that a strict reliance on the amounts of the reported selling expenses is not a reliable measure of the relative levels of intensity in which each selling activity is performed. Performance of a selling activity at the same level of intensity in two markets could, in theory, incur very different expenses.

⁴⁶⁶ *Id.*

⁴⁶⁷ See Petitioner’s Case Brief at 79-80.

⁴⁶⁸ *Id.*

⁴⁶⁹ See Hyosung’s Rebuttal Brief at 57.

⁴⁷⁰ *Id.*, at 58-63.

⁴⁷¹ See 19 U.S.C. § 1677b(a)(7)(A).

⁴⁷² See Uruguay Round Agreements Act, Statement of Administrative Action, H.R. Doc. No. 103-316, vol. 1, p. 829, reprinted in 1994 U.S.C.C.A.N. 3773, 4168.

⁴⁷³ See 19 C.F.R. § 351.412(c)(2).

⁴⁷⁴ See *Notice of Final Determination of Sales at Less Than Fair Value: Stainless Steel Bar from Italy*, 67 FR 3155 (January 23, 2002) and accompanying Issues and Decision Memorandum at Comment 37.

Additionally, expenses in a particular field might be allocated to a variety of selling activities. One cannot tell from the relative expenses incurred the degree to which a selling activity was actually performed.

The CIT has also expressed concerns with using a purely quantitative analysis.⁴⁷⁵ In *Prodotti*, the respondent reported ten customer categories in its home market as the basis for identifying sales at different LOTs in the chain of distribution. Rather than adopt the respondent's grouping, the Department developed a methodology to analyze the various selling functions of a particular seller by assigning a ranking factor (*i.e.*, high, medium, low) to a selling function solely based upon the number of observations for which a direct expense associated with the selling function actually occurred. The Department explained that this particular analysis did not determine the final LOT, but that it instead used a more general qualitative approach.⁴⁷⁶ Noting that "the court questions the usefulness of this quantitative analysis for any purpose, {the respondent} has not explained how the analysis adversely affected the margin other than to state that the analysis was 'distorted,'" the CIT declined to remand on the issue.⁴⁷⁷

The CIT has also addressed the issue within the context of other antidumping duty orders.⁴⁷⁸ The CIT stated that "the focal point of Commerce's LOT adjustment analysis is on the *selling activities* performed in each market."⁴⁷⁹ "If Commerce . . . in reviewing an administrative determination, were to narrow the focus of its LOT analysis to selling expenses, it could act contrary to law and cause misleading results. Expenses do not necessarily translate directly into activities, nor do they capture the intensity of the activities. Moreover, expenses related to several selling activities may fall under a single expense field."⁴⁸⁰

It is the Department's standard practice to conduct a LOT analysis of selling activities for CEP sales under 19 CFR 351.412(c)(1) after deducting the selling expenses for CEP sales under section 772(d) of the Act.⁴⁸¹ Under section 772(d) of the Act, selling expenses incurred by Hyosung in support of its sales to HICO America are not deducted. Thus, to the extent that activities related to such expenses are performed by Hyosung in support of Hyosung's sales to its affiliate HICO America, the Department has included them in the CEP LOT. The Department will not consider selling activities provided by Hyosung to unaffiliated U.S. customers, in support of HICO America's sales, as these are associated with the selling expenses that must be deducted under section 772(d) of the Act, regardless of their location in the reported expense fields.

⁴⁷⁵ See *Prodotti Alimentari Meridionali, S.R.L. v. United States*, 26 CIT 749, 754 (Ct. Int'l Trade 2002) ("*Prodotti*").

⁴⁷⁶ *Id.*, at 753-754.

⁴⁷⁷ *Id.*, at 754.

⁴⁷⁸ See, e.g., *Alloy Piping Products, Inc., et al v. United States*, 33 CIT 1589 (Ct. Int'l Trade 2009).

⁴⁷⁹ *Id.*, at 9.

⁴⁸⁰ *Id.*, at 13.

⁴⁸¹ See, e.g., *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Preliminary Results of the Antidumping Duty Administrative Review*, 71 FR 62082, 62084 (October 23, 2006) (unchanged in final results, *Certain Hot-Rolled Carbon Steel Flat Products from Romania: Final Results of Antidumping Duty Administrative Review*, 72 FR 18204 (April 11, 2007) ("For CEP sales, we consider only the selling activities reflected in the price after the deduction of expenses and CEP profit under section 772(d) of the Act"); see also 19 C.F.R. § 351.412(c)(1)(ii).

In conducting our analysis for this proceeding, we examine four broad categories of selling functions that the Department has sometimes used in such analysis (sales and marketing activities, inventory maintenance and warehousing, freight and delivery, and warranty and technical support) as well as all information and other arguments provided regarding the question of whether Hyosung's home market sales are at a more advanced level of trade than the CEP sales. Such an analysis, we conclude, confirms that the home market and CEP sales are at similar levels of trade.

In its rebuttal brief, Hyosung provided an analysis of ten selling functions.⁴⁸² However, in its Section A questionnaire response, Hyosung reported seventeen selling functions, and divided these into the four broad categories listed below.⁴⁸³ Our analysis will examine all seventeen of the reported selling functions, by these categories.

Sales and Marketing Activities

Of the claimed seventeen selling functions, those which would be classified under "sales and marketing activities" would be sales forecasting, sales personnel training, advertising, sales promotion, packing, order input/processing, sales marketing support, market research, pay commissions, and repacking. In our *Preliminary Determination*, we generally compared all of the selling functions performed in both the home market and to HICO America in the United States, and preliminarily concluded that the two levels of trade were at different levels.⁴⁸⁴ No additional argument was presented since the preliminary determination with respect to those selling functions. However, in light of Petitioner's arguments with respect to inventory carrying, we have examined each of the reported selling functions for each market.

Within the sales and marketing category, Hyosung reported that the packing and order input/processing selling functions were the same for both markets, and that both were performed at a "high" rate of service.⁴⁸⁵ Hyosung reported that it only performed repacking for sales to HICO America.⁴⁸⁶ Our examination of these selling functions indicates that, in general, the packing and repacking functions are similar functions and that the provision of "packing" services (which includes repacking) to HICO America is higher than those services provided to home market customers.⁴⁸⁷

With respect to sales forecasting, Hyosung claims that the collection of market intelligence is compensated through the payment of commissions.⁴⁸⁸ At the same time, Hyosung claims that

⁴⁸² See Hyosung's Rebuttal Brief at 60-62.

⁴⁸³ See Letter from Hyosung to the Department of Commerce, "Large Power Transformers from the Republic of Korea: Section A Questionnaire Response," dated December 30, 2015 (Hyosung's Section A Response) at Exhibit A-14.

⁴⁸⁴ See Hyosung Preliminary Analysis Memorandum at 4-5.

⁴⁸⁵ See Hyosung's Section A Response at Exhibit A-14.

⁴⁸⁶ *Id.*

⁴⁸⁷ See Hyosung Final Analysis Memorandum for a more detailed discussion of our analysis.

⁴⁸⁸ See Hyosung's Rebuttal Brief at 60.

the payment of commissions rests with Hyosung.⁴⁸⁹ As noted in Comment 6, we determine that the commission for U.S. sales is paid by HICO America. However, based on Hyosung's arguments and record evidence, we cannot be certain that Hyosung does not play any part in the provision of sales forecasting for HICO America.⁴⁹⁰ Record evidence indicates that there are no commissions in the home market.⁴⁹¹ Thus, to the extent that Hyosung plays a role in the management of commissions for HICO America, this would constitute a more advanced stage of trade than to the home market.

Concerning advertising and sales marketing support, it appears that these selling functions are performed at a higher level for home market customers than for HICO America, as Hyosung reports.⁴⁹² However, these selling functions are relatively minor for LPTs. Similarly, it appears that sales personnel training is higher for home market sales than sales to HICO America, as HICO America undertakes training for its sales force.⁴⁹³

Thus, there is no basis from the record to conclude that Hyosung performs significantly more "sales and marketing activities for home market sales than for U.S. CEP sales. Of the ten selling functions falling under the classification of "sales and marketing activities," as listed in Exhibit A-14 of Hyosung's Section A response, there is evidence on the record suggesting that sales personnel training, advertising, and sales marketing support were performed more for home market sales. Other selling functions, such as order input/processing, are performed at the same level in both markets. For sales forecasting, the record indicates that there may be a slightly higher level performed for CEP sales than for any home market customers. Finally, for packing services, the record indicates that these services were performed more for CEP sales.

Inventory Maintenance and Warehousing

Petitioner argues that Hyosung provides a higher level of service for CEP sales in terms of inventory maintenance than it does for home market sales.⁴⁹⁴ As we noted above, while the Department does consider selling expenses, it does not consider them to the exclusion of the selling activities themselves. For inventory maintenance, record evidence indicates that Hyosung provides inventory maintenance for both markets.⁴⁹⁵ However, we believe that record evidence, including the reported inventory carrying expense, indicates that Hyosung provides this selling function at a more advanced level than it does in the home market.⁴⁹⁶ Therefore, we conclude that the inventory maintenance and warehousing category is at a less advanced stage for Hyosung's home market than for CEP sales.

⁴⁸⁹ See Hyosung's Case Brief at 16-17.

⁴⁹⁰ See Hyosung Final Analysis Memorandum.

⁴⁹¹ See Hyosung's Section B-D Response at B37 through B-38.

⁴⁹² See Hyosung's Rebuttal Brief at 61.

⁴⁹³ *Id.*

⁴⁹⁴ See Petitioner's Case Brief at 79-80.

⁴⁹⁵ See Hyosung's Rebuttal Brief at 57.

⁴⁹⁶ See Hyosung Final Analysis Memorandum for further discussion.

Freight and Delivery

Of the claimed selling functions, the one that would be classified under freight and delivery is “freight delivery.” Hyosung reported significant selling activities related to freight delivery for both markets.⁴⁹⁷ Therefore, there is no basis for concluding that the level of “freight and delivery” activity performed by Hyosung for its home market sales exceeds that performed by Hyosung for its CEP sales.

Warranty and Technical Support

Of the claimed selling functions, those which would be classified under warranty and technical support are “engineering services,” “technical assistance,” “provide warranty services,” “provide guarantees,” and “provide after-sales services.” For engineering services, Hyosung reports that it provided a lower level of selling function activity for CEP sales than for the home market sales.⁴⁹⁸ For the remaining selling functions in this category, Hyosung reports that it provided no activity or support for the remaining selling functions.⁴⁹⁹ However, our analysis of record evidence indicates that Hyosung provided greater selling activities related to the engineering services, technical services, and after-sales services selling functions than previously reported.⁵⁰⁰

Consequently, there is insufficient basis for concluding that the “warranty and technical support” grouping is characterized by significant differences in selling function activity between home market sales and U.S. CEP sales.

Conclusion

We find that analysis of the relevant selling functions, as classified under the four general categories of selling functions, yields the conclusion that there is no basis for concluding that a significant variation in overall selling activity exists for home market sales versus CEP sales. For all four of those categories—warranty and technical support, freight and delivery, inventory maintenance and warehousing, and sales and marketing activities—there is no basis on the record for concluding Hyosung’s level of selling function activity is greater for home market sales than for CEP sales. Given we found no evidence to suggest that the selling functions performed by the respondent at the CEP level of trade and the home market level of trade are significantly different to warrant a finding that the home market level of trade is at a more advanced stage of distribution than the CEP level of trade, there is no basis for concluding that there are differences in levels of trade between home market sales and CEP sales, and no CEP offset is warranted.⁵⁰¹

⁴⁹⁷ *Id.*

⁴⁹⁸ See Hyosung’s Section A Response at Exhibit A-14.

⁴⁹⁹ *Id.*

⁵⁰⁰ See Hyosung Final Analysis Memorandum for further discussion.

⁵⁰¹ See, e.g., *Silicomanganese from Australia: Final Determination of Sales at Less Than Fair Value*, 81 FR 8682 (February 22, 2016) and accompanying Issues and Decision Memorandum at comment 2.

Comment 17: Date of Sale

No party commented on this issue for these final results.

In the *Preliminary Results*, the Department preliminarily determined the date of sale to be either the date of invoice or the date of shipment, whichever is earlier.⁵⁰² After carefully reviewing all of the information on the record of this segment of the proceeding, we are revising the date of sale for Hyosung to the date of shipment.

Section 351.401(i) of the Department's regulations states that, “{i}n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer's records kept in the ordinary course of business.” The regulation provides further that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.⁵⁰³ As the SAA accompanying the statute explains, the date of sale is the “date when the material terms of sale are established.”⁵⁰⁴ The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.⁵⁰⁵ The Department's interpretation of the material terms of sale has evolved over time, and can include (but is not limited to) price, quantity, delivery terms, and payment terms.⁵⁰⁶ In choosing a date of sale, the Department weighs the evidence presented and determines the significance of any changes to the terms of sale involved.⁵⁰⁷

For this segment of the proceeding, with respect to Hyosung, the Department finds that the material terms of sale are not established at the time of the purchase order, or indeed at the date of the invoice if that date is prior to the date of shipment. Instead, the material terms of sale are established at the date of shipment. In prior segments of this proceeding, we concluded that the date of the initial purchase order was the date upon which material terms of sale had been established between the respondents and their customers.⁵⁰⁸ In keeping with our earlier determinations, Hyosung used the initial purchase order date as the basis for its reporting of the

⁵⁰² See Preliminary Decision Memorandum at 7-8.

⁵⁰³ See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

⁵⁰⁴ See Uruguay Round Agreements Act, Statement of Administrative Action (SAA), H.R. 5110 (H.R. Doc. No. 103-316), reprinted in 1994 U.S.C.C.A.N. 4040, 4153.

⁵⁰⁵ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp from Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams from Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

⁵⁰⁶ See *SSI* at 34.

⁵⁰⁷ *Id.*

⁵⁰⁸ For a full discussion of this determination, see *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) (*LTFV Final Determination*) and accompanying Issue and Decision Memorandum at Comment 1.

dates of sale for both markets in this review.⁵⁰⁹ However, Hyosung acknowledged that the purchase orders it received or issued for home- or U.S.-market sales were subject to revisions.⁵¹⁰ An analysis of the degree and types of changes resulting from these revisions led us to conclude that, for purposes of this review, changes in the material terms of sale take place after the date of the initial purchase order and, thus, we cannot rely on the purchase order date as the date of sale in the current review.⁵¹¹

As a result, we have considered using invoice date or shipment date as the appropriate date of sale. For Hyosung, the company stated that it normally issues a tax invoice to home-market customers at the time that it is preparing to ship a completed LPT unit to the customer.⁵¹² However, for certain home-market sales, Hyosung indicated that it had not yet issued invoices for sales of LPT units that had been shipped to the customer.⁵¹³ For sales in the United States, Hyosung stated that its U.S. affiliate, HICO America, issues an invoice to its U.S. customer once the LPT unit has been shipped to the United States and certain tests have been performed.⁵¹⁴ For home market sales, Hyosung explained that the reported invoice date may be before or after the reported shipment date.⁵¹⁵ Hyosung further explained that, in some cases where the reported invoice date is prior to the shipment date, the reported invoice date does not represent the final invoice to the customer (which Hyosung issued after the shipment date).⁵¹⁶

⁵⁰⁹ See Hyosung's Section A Response at A-32 through A-33 and Hyosung's Section B-D Response at B-21, B-16 and B-17.

⁵¹⁰ See Hyosung's May 9, 2016, Supplemental Questionnaire Response at 8.

⁵¹¹ See Hyosung Final Analysis Memorandum additional discussion.

⁵¹² See Hyosung's Section A Response at A-25.

⁵¹³ See Hyosung's Section B-D Response at B-20; *see also* Hyosung's June 8, 2016, Supplemental Questionnaire Response at 5 and Exhibit S-7.

⁵¹⁴ See Hyosung's Section A Response at A-30.

⁵¹⁵ See Hyosung's June 8, 2016, Supplemental Questionnaire Response at 8 and Exhibits S-10 and S-11.

⁵¹⁶ *Id.*

X: RECOMMENDATION

Based on our analysis of the comments received, we recommend adopting the positions set forth above. If this recommendation is accepted, we will publish the final determination in the investigation in the *Federal Register*.

Agree

Disagree

3/6/2017

X Ronald K. Lorentzen

Signed by: RONALD LORENTZEN

Ronald K. Lorentzen
Acting Assistant Secretary
for Enforcement and Compliance