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Remand (Slip Op. 19-105)
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Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States and ABB Inc.
Court No. 18-00066, Slip Op. 19-105 (CIT August 5, 2019)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

SUMMARY

The Department of Commerce (Commerce) prepared these final results of redetermination in accordance with the opinion and remand order of the U.S. Court of International Trade (CIT or the Court) issued on August 15, 2019, in *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States and ABB Inc.*, Consol. Court No. 18-00066, Slip Op. 19-105 (CIT 2019) (*Remand Order*). These final remand results concern the final results in the antidumping duty (AD) administrative review (AR) of large power transformers from the Republic of Korea (Korea), and the period of review (POR) August 1, 2015 through July 31, 2016.[1]

In the underlying review, Commerce assigned both Hyundai[2] and Hyosung[3] a final dumping margin of 60.81 percent based on total facts available with an adverse inference.[4] As a result, Commerce also assigned a final dumping margin of 60.81 percent to the non-selected respondents in the administrative review (including Iljin Electric Co., Ltd. (Iljin)).[5] In the

[1] *See Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015-2016*, 83 FR 11679 (March 16, 2018) (*Final Results*), and accompanying Issues and Decision Memorandum (IDM).
[2] Hyundai Heavy Industries Co., Ltd. (HHI) and Hyundai Corporation, USA (Hyundai USA) (collectively, Hyundai).
[3] Hyosung Corporation and HICO America Sales and Technology, Inc. (HICO America) (collectively, Hyosung).
[4] *See Final Results*, 83 FR at 11679.
[5] *Id*. at 11680.

Remand Order, the Court directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences for both Hyundai and Hyosung. For Hyundai, the Court directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences with respect to Hyundai's failure to provide information on accessories, Hyundai's failure to report home market gross unit prices properly, and Hyundai's failure to disclose an affiliated sales agent. For Hyosung, the Court directed Commerce to further explain or reconsider its reliance on total facts available with adverse inferences with respect to Hyosung's failure to report service-related revenues contained on order acknowledgement forms (OAFs), failure to report certain discounts and rebates, and failure to explain the use of one invoice for multiple sales across multiple administrative reviews. In accordance with the *Remand Order*, Commerce reconsidered its findings regarding Hyundai's failure to provide information on accessories, Hyundai's failure to report home market gross unit prices properly, and Hyundai's failure to disclose an affiliated sales agent, as well as Hyosung's failure to report service-related revenues contained on order acknowledgement forms (OAFs), failure to report certain discounts and rebates, and failure to explain the use of one invoice for multiple sales across multiple administrative reviews.

DISCUSSION

I. Statutory and Regulatory Background

Commerce conducts an AR in accordance with 19 CFR 351.221 under which Commerce sends to appropriate interested parties questionnaires requesting factual information for the review. Commerce's regulation, 19 CFR 351.102(21), defines factual information. For instance, pursuant to 19 CFR 351.102(21)(i), Commerce considers factual information as evidence, including statements of fact, documents, and data submitted either in response to initial and supplemental questionnaires, or, to rebut, clarify, or correct such evidence submitted by any

other interested party Further, and pursuant to section 776 of the Tariff Act of 1930, as amended (the Act), when a party provides less than full and complete facts needed to make a determination, Commerce must fill in the gaps with facts otherwise available.

Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified.

Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available. In doing so, and under the TPEA,[6] Commerce 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 Commerce's request for information.[7] In addition, the Statement of Administrative Action accompanying the Uruguay Round Agreements Act (SAA) explains that Commerce 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."[8] Further, affirmative

[6] *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, Commerce 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).

[7] *See* section 776(b)(1)(B) of the Act; TPEA, section 502(1)(B).

[8] *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).

evidence of bad faith on the part of a respondent is not required before Commerce may select information based upon the application of an adverse inference.[9] It is Commerce's practice to consider, in employing adverse inferences, the extent to which a party may benefit from its own lack of cooperation.[10]

Further, section 776(b)(2) of the Act states that Commerce, 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 AR, or other information placed on the record.[11] In selecting a rate based on adverse fact available (AFA), Commerce 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.[12]

When using facts otherwise available, section 776(c) of the Act provides that, in general, where Commerce 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 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.[13] The SAA clarifies that "corroborate" means that Commerce will satisfy itself

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[9] *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); and *Preamble*, 62 FR at 27340.

[10] *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 Preliminary Decision Memorandum (PDM) 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).

[11] *See also* 19 CFR 351.308(c).

[12] *See* SAA at 870.

[13] *Id*.

that the secondary information to be used has probative value.[14] To corroborate secondary information, Commerce will, to the extent practicable, examine the reliability and relevance of the information to be used.[15]

Finally, under section 776(d) of the Act, Commerce 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.[16] The Act also makes clear that when selecting an AFA margin, Commerce 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.[17]

II. Factual Background

On October 14, 2016, in accordance with 19 CFR 351.221(c)(1)(i), Commerce published a notice of initiation of the administrative review of the antidumping duty order on LPTs from Korea, identifying, among others, Hyundai, Hyosung, and Iljin as companies subject to the review. Commerce subsequently selected Hyosung and Hyundai as mandatory respondents for individual review.

On September 7, 2017, in the *Preliminary Results*, Commerce determined that both Hyosung and Hyundai failed to cooperate and act to the best of their abilities to provide Commerce with necessary requested information and, therefore, impeded the review by

[14] *Id.*; *see also* 19 CFR 351.308(d).
[15] *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).
[16] *See* section 776(d)(1)-(2) of the Act.
[17] *See* sections 776(d)(3)(A) and (B) of the Act.

preventing Commerce from calculating an accurate antidumping duty margin.[18] On March 9, 2018, Commerce issued the Final Results, determining final dumping margins of 60.81 percent for Hyosung and Hyundai based on the application of total AFA. Commerce's decision to apply total AFA to Hyosung was based on three findings: (1) Hyosung failed to report service-related revenues contained on OAFs; (2) Hyosung failed to explain the use of one invoice for multiple sales across multiple administrative reviews; and, (3) Hyosung failed to report certain discounts and rebates. With respect to Hyundai, Commerce's decision to apply total AFA was based on three findings: (1) Hyundai failed to provide the prices and costs for "accessories"; (2) Hyundai understated its home market gross unit prices by inconsistently reporting an identical component in different sales as foreign like product and non-foreign like product; and, (3) Hyundai failed to report an affiliated sales agent. Both Hyosung and Hyundai challenged Commerce's determinations to rely on total AFA and the rationales that Commerce relied upon as support.

In the Remand Order, issued on August 5, 2019, the Court directed Commerce to explain further or reconsider the bases for applying total AFA with respect to Hyosung's failure to report separately service-related revenues, Hyosung's overlapping invoice, and Hyosung's failure to report certain price adjustments and discounts. The Court found that Commerce's findings that Hyosung failed to separately report service-related revenues and failed to act to the best of its ability were unsupported by substantial evidence. The Court also held that Commerce's decision that Hyosung "withheld requested information {on multiple sales contained in one invoice} and otherwise impeded the review" was not discernable based on Commerce's explanation.

[18] *See Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2015-2016*, 82 FR 172 (August 14, 2017) (*Preliminary Results*), and accompanying PDM.

Therefore, the Court directed Commerce to support its decision with a reasonable explanation that is based on record evidence. The Court further found that Commerce's finding that Hyosung "failed to provide requested information on relevant discounts and price adjustments" was supported by substantial evidence. However, the Court held that Commerce's finding that Hyosung failed to act to the best of its ability was not supported by substantial evidence; thus, the Court directed Commerce to reconsider this issue and determine whether the application of an adverse inference is supported by substantial evidence. Thus, the Court directed Commerce to reconsider and/or further explain its conclusions to use total AFA on remand.

In addition, in its Remand Order, the Court held that Commerce's determination that Hyundai withheld information regarding accessories and failed to the cooperate to the best of its ability was unsupported by substantial evidence, as it indicated that Commerce found Hyundai's reporting with respect to accessories was reasonable in the remand determination in the 2014-15 administrative review. The Court also held that substantial evidence supported Commerce's determination that the record was unclear as to whether Hyundai properly reported home market prices after revisions to the initial purchase contract. The Court stated however, that this issue appeared to be linked to Commerce's treatment of accessories because Commerce concluded that it could not determine whether the parts affecting the later purchase contracts were foreign like product, non-foreign like product, or "accessories." Thus, the Court directed that Commerce must clearly explain the basis for its finding and the extent to which the finding supports the use of facts available, with or without an adverse inference. Lastly, the Court found that substantial evidence did not support Commerce's finding that Hyundai failed to disclose its affiliation with a U.S. sales agent. The Court concluded that the record was unclear whether the "sales agent" referred to Individual X or Company Y. The Court held that Commerce did not identify

evidence to support its affiliation finding under the statute. The Court also found that Commerce did not address Hyundai's arguments in its case brief, with respect to this affiliation issue, in our final determination. Given that the three collective findings supported Commerce's decision to apply total AFA to Hyundai, the Court directed Commerce to reconsider its basis for the application of total AFA to Hyundai.

Draft Results of Redetermination Pursuant to Remand

Commerce released its Draft Remand Redetermination on November 21, 2019, and invited comments from interested parties.[19] ABB, Hyundai, Hyosung, and Iljin submitted comments on December 5, 2019.[20]

Final Remand Results

As described by the Federal Circuit, application of AFA is a two-part test.[21] First, Commerce shall use "facts otherwise available" if a party:

> (A) withholds information that has been requested by {Commerce} . . . ,
>
> (B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested . . . ,
>
> (C) significantly impedes a proceeding . . . , or
>
> (D) provides such information but the information cannot be verified....[22]

[19] *See* Draft Results of Remand Determination: Hyundai Heavy Industries, Co. Ltd. v. United States and ABB Inc., Court No. 18-00066, Slip Op. 19-105 (CIT August 5, 2019) (Draft Remand Redetermination).
[20] *See* ABB's Letter, "Large Power Transformers from the Republic of Korea – Petitioner's Comments on the Draft Remand Redetermination," dated December 5, 2019 (Petitioner's Comments); *see also* Hyundai's Letter, "Large Power Transformers from South Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated December 5, 2019 (Hyundai's Comments); *see also* Hyosung's Letter, "Large Power Transformers from Korea: Comments on Draft Remand Redetermination," dated December 5, 2019 (Hyosung's Comments); *see also* Iljin's Letter, "Large Power Transformers from Korea – Comments on Draft Remand Redetermination (Slip Op. 19-105)," dated December 5, 2019 (Iljin's Comments).
[21] *See Mueller Commercial de Mex., S. de R.L. de C.V. v. United States*, 753 F. 3d 1227, 1231–32 (Fed. Cir. 2014); *Nippon Steel Corp. v. United States*, 337 F. 3d 1373, 1381 (Fed. Cir. 2003) (*Nippon Steel*).
[22] *See* 19 U.S.C. § 1677e(a)(2).

In using facts otherwise available, Commerce must fill gaps in the record if it has received less than the full and complete facts needed to make a determination because a party has failed to provide requested information within the deadline for submission.[23]

Next, in selecting from the available facts, Commerce may select facts based on an adverse inference, if the party "has failed to cooperate by not acting to the best of its ability to comply with a request for information."[24] A respondent fails to cooperate to the best of its ability when it fails "to do the maximum it is able to do."[25] In determining whether a party has failed to do the maximum it is able to do, Commerce first "make{s} an objective showing that a reasonable and responsible importer would have known that the requested information was required to be kept and maintained under the applicable statutes, rules, and regulations."[26] Further, motivation or intent is not taken into consideration when applying the "best of its ability" standard.[27]

Depending on the severity of a party's failure to respond to a request for information and failure to cooperate to the best of its ability, Commerce may select either partial or total AFA. Generally, the "use of partial facts available is not appropriate when the missing information is core to the antidumping analysis and leaves little room for the substitution of partial facts without undue difficulty."[28] Where there are "pervasive and persistent deficiencies that cut across all aspects of the data," all of the reported information may be unreliable, making a total AFA application appropriate.[29]

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[23] *See Nippon Steel*, 337 F. 3d at 1381.
[24] *See* 19 U.S.C. § 1677e(b).
[25] *See Nippon Steel*, 337 F. 3d at 1382.
[26] *Id.*
[27] *Id.* at 1383.
[28] *See Mukand, Ltd. v. United States*, 767 F. 3d 1300, 1308 (Fed. Cir. 2014).
[29] *See Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F. 3d 1333, 1348 (Fed. Cir. 2011) citing *Steel Auth. of India, Ltd. v. United States*, 25 CIT 482, 487–88, 149 F. Supp. 2d 921, 928–29 (2011).

Hyosung

Order Acknowledgement Forms

In its *Remand Order*, the Court stated that "{i}n AR3,[30] the court held that Commerce may not rely on internal {company} communications, absent any evidence of communication with the unaffiliated customer, to find that there were additional service-related revenues and expenses that {a company} failed to report."[31] With respect to the OAFs, the Court stated that "{w}hile Commerce acknowledged that the OAF is "an internal budgeting document" between Hyosung and HICO America that is not "exchanged between Hyosung and its customer(s)," Commerce nevertheless found that the OAF is "part of the sales process and clearly based on sales documentation between Hyosung and its customer."[32] The Court additionally stated that "{t}he evidence upon which Commerce relied does not support a finding that the services that appeared in the OAF, an internal budgeting document, were separately negotiable with the customer."[33] The Court concluded that "{a}bsent substantial evidence to support a finding that Hyosung's provision of the services identified in the OAF was separately negotiable with the unaffiliated customer, Commerce lacked a legal basis to reduce the gross unit price and fault Hyosung for failing to report this information."[34] The Court remanded the issue to Commerce, stating that "Commerce may not rely on the OAFs to apply its capping methodology to service-related revenues and must reconsider its determination to use total facts available with an adverse inference with respect to Hyosung."[35]

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[30] The August 1, 2014 through July 31, 2015, administrative review. *See Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014–2015*, 82 FR 13432 (March 13, 2017) (*AR3 Final Results*).
[31] *See Remand Order* at 21, citing *ABB Inc. v. United States ("ABB II")*, 42 CIT __, 355 F. Supp. 3d 1206 (2018), *reconsideration denied*, 43 CIT __, 375 F. Supp. 3d 1348 (2019).
[32] *Id*.
[33] *Id*.
[34] *Id.* at 22-23.
[35] *Id*. at 23.

We have reconsidered our determination with respect to the OAFs and the application of total AFA. Based on the Court's ruling on the relevance of the OAFs in ABB II, we are compelled to find in this remand that Hyosung's OAFs are internal company documentation that cannot be used as the basis for the application of Commerce's capping methodology. Therefore, we do not find that total AFA should be applied to Hyosung based on Hyosung's failure to report the service-related revenues reflected in the OAFs.

One Invoice for Multiple Sales

In the Draft Remand Redetermination, we found that the record did not provide an explanation as to how one invoice can be used as support for [ ] LPTs sales over two periods of review, but contain line items for a total of only [ ] LPTs. This discrepancy called into question the accuracy of Hyosung's reported quantity and value and resulted in a total AFA finding for the original results and the draft remand results. For these final results of redetermination, as explained below, we are reversing our decision and find that the issue of one invoice for multiple sales no longer constitutes grounds for the application of total adverse facts available because Hyosung, relying on record evidence, has explained how the invoice does reflect all the sales at issue.

Unreported Discounts

In its *Remand Order*, the Court recognized that Hyosung failed to provide the requested information regarding relevant discounts and price adjustments.[36] However, the Court further indicated that Commerce's authority to disregard Hyosung's submitted data and instead rely on facts available is subject to 19 U.S.C. § 1677m(d).[37] Thus, the Court states that Commerce did

[36] *See Remand Order* at 27.
[37] *Id*. at 28.

not identify the opportunities provided to Hyosung to remedy deficiencies, and Commerce's decision to apply facts available was therefore unsupported by substantial evidence.[38] The Court ordered that Commerce must reconsider the issue and collect or identify additional information in order to make a determination supported by substantial evidence.[39]

In Commerce's antidumping duty questionnaire, issued on January 5, 2017, Commerce requested that Hyosung report gross unit prices and separately report discounts and other price adjustments for U.S. sales.[40] In its response to section C of Commerce's questionnaire, with respect to discounts, Hyosung stated that it did not grant any discounts.[41] In its response, Hyosung also did not report that there were interest payments.[42] In addition, while Hyosung did report service-related revenue for storage,[43] it stated that there were no warehouse expenses in the United States to report in the variable for USWAREHU.[44]

In its Second Sales Supplemental Questionnaire, Commerce requested information regarding Hyosung's reported storage revenue, and also stated that if HICO America charged customers for storage revenue, to please explain if storage services were provided in the United States.[45] Additionally, Commerce requested complete sales documentation for certain U.S. sales.[46] In response to Commerce's question regarding storage revenue and expenses, Hyosung

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[38] *Id*. at 29.
[39] *Id*. at 30.
[40] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated January 5, 2017 (Antidumping Duty Questionnaire), at C-19 (for the gross unit price), C-20 through C-21 (for discounts), C-17 (for interest penalties), and, generally, C-19 through C-35 (for other sales adjustments).
[41] *See* Hyosung's Letter, "Large Power Transformers from Korea: Sections B-D Questionnaire Responses," dated February 27, 2017 (Hyosung Sections BCD Response), at C-25 through C-26.
[42] *See generally* Hyosung Sections BCD Response.
[43] *Id*. at C-23 through C-24.
[44] *Id*. at C-32.
[45] *See* Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2015-2016: Third Supplemental Questionnaire," dated May 26, 2017 (Second Sales Supplemental Questionnaire), at 10, Question 43.
[46] *Id*. at 13, Question 66. Commerce requested complete sales documentation for SEQUs [ ].

stated that it did in fact incur storage expenses in the United States and reported values for the variable USWAREHU.[47] Hyosung also submitted the sales documentation for certain sales, as requested in the Second Sales Supplemental Questionnaire at Question 43.[48] Hyosung did not report any new variables for discounts or interest.

We subsequently reviewed Exhibit SBC-66, and noted that the commercial invoices for SEQUs [ ] and [ ] both contained line items indicating that Hyosung had in fact granted discounts. These discounts were not reported as part of the Hyosung Supplemental BC Response. In addition, the commercial invoice for SEQU [ ] contained interest charges which were also not reported.

In sum, Commerce requested that Hyosung provide gross unit prices and all sales adjustments in its Antidumping Duty Questionnaire.[49] In response, Hyosung stated that it did not grant discounts, have interest revenue, or U.S. warehousing expenses.[50] In the Second Sales Supplemental Questionnaire, in response to a direct request by Commerce, Hyosung then admitted that it did in fact have U.S. warehousing expenses and reported these.[51] Hyosung also provided sales documentation for certain U.S. sales, but the documentation Hyosung submitted demonstrated that their assertion that they had no discounts was wrong and further demonstrated that Hyosung failed to report interest revenue which was contained on the commercial invoices for certain of those sales.[52]

[47] *See* Hyosung's Letter, "Large Power Transformers from Korea: Third Supplemental Questionnaire Response," dated June 21, 2017 (Hyosung Supplemental BC Response), at 31-32.
[48] *See* Hyosung Supplemental BC Response at 41 and Exhibit SBC-66.
[49] *See* Antidumping Duty Questionnaire.
[50] *See generally* Hyosung Sections BCD Response.
[51] *See* Hyosung Supplemental BC Response at 31-33.
[52] *Id*. at Exhibit SBC-66

Facts Available

Hyosung's initial assertions and representations concerning price adjustments were incorrect. Hyosung initially provided answers which appeared to be complete, and thus did not appear to require further supplemental questions.[53] However, Hyosung's answers were directly contradicted by its own supporting documentation concerning storage; thus, Commerce asked an additional supplemental question. Upon responding to the supplemental question, it then became apparent that Hyosung did not report additional price adjustments. We note that Commerce is not required to send, and respondents are not entitled to receive, an unending number of supplemental questionnaires once the record of the proceeding reveals that the correct information has not been submitted. Given that Hyosung failed to accurately report its sales adjustments, the necessary pricing information is missing from the record. Therefore, Commerce must resort to facts available for the unreported and inaccurate information.

Adverse Inference in Selection of Facts Available

As noted, Hyosung failed to provide complete and accurate information with respect to its sales adjustments in the United States, despite the fact that it possessed the information, but failed to properly report it in response to Commerce's specific requests. Therefore, in accordance with the *Remand Order* and the record findings herein, Commerce finds that the respondent did not act to the best of its ability in providing its response, impeded the review, and accordingly we find that the selection of facts based on adverse inference is warranted.

Accurate reporting of U.S. prices is critical to Commerce's ability to complete meaningful dumping calculations and the missing information makes it impossible for

[53] Commerce is not required to issue multiple supplemental questions if a respondent gives a complete answer which record documentation proves false. Respondents are required to answer the Antidumping Duty Questionnaire completely and if there are apparent deficiencies, Commerce will issue a supplemental questionnaire to resolve such deficiencies. However, if a respondent provides what appears to be a complete answer that is later determined to be false, no deficiency is required before resorting to facts available or adverse facts available.

Commerce to complete such accurate calculations. Under such circumstances, Commerce must resort to total AFA. A respondent must provide Commerce with accurate pricing data in order for Commerce to make accurate adjustments to U.S. prices such that it may accurately compare such U.S. prices to home market sales prices.

Conclusion

On remand, Commerce has found that the OAF's are internal documents which cannot be the basis for an AFA determination for Hyosung. Commerce has also found that record evidence explains how one invoice can cover more than one sale, and we are no longer using that as the basis for total AFA. However, the unreported U.S. price adjustments continue to warrant the application of total AFA for Hyosung's dumping calculations.

Hyundai

Accessories

Commerce requested that Hyundai separately report the prices and costs for "accessories" in the Antidumping Duty Questionnaire.[54] Commerce issued several supplemental questionnaires to understand and analyze Hyundai's reporting of such "accessories." Hyundai repeatedly asserted that Commerce did not define "accessories," and that Hyundai reported accessories consistent with the scope of the antidumping order.[55] The Court found, however, that Commerce did not instruct Hyundai in the questionnaire to identify which parts Hyundai treats as accessories.[56] Upon reexamination of the record, we find that Hyundai's reporting in the underlying review was reasonable based on Commerce's decision in the remand determination for the 2014-2015 administrative review, in which Commerce stated that it agrees

[54] *See* Antidumping Duty Questionnaire at D-1.
[55] *See* Hyundai's March 29, 2017, Request for Clarification; *see also* Hyundai's Letter, "Large Power Transformers from South Korea: Second Sales Supplemental Response," dated June 19, 2017 (SSQ Response), at 21-28.
[56] *See Remand Order* at 38.

with Hyundai that "accessories are components attached to the active part of the LPT and included within the subject merchandise.[57] In accordance with the *Remand Order*, Commerce has reconsidered the issue and further explains below the treatment of "accessories."

We continue to find for this proceeding that defining "accessories," or characterizing parts or components as "accessories," is no longer relevant to Commerce's determination, given that Commerce agrees with Hyundai's interpretation of the term "accessories." As a result, Commerce treats merchandise which constitutes "any other parts attached to, imported with or invoiced with the active parts," as defined in the scope of the order, as subject merchandise, regardless of whether or not such components or parts are referred to as "accessories."[58] Therefore, Commerce agrees with Hyundai's reporting methodology with regard to this particular issue, as Commerce did in the 2014-2015 administrative review remand determination, that "accessories" are components attached to the active part of the LPTs and included within subject merchandise.

In sum, in accordance with the *Remand Order*, Commerce has reconsidered its finding regarding "accessories," and explained that we will treat parts and components as defined by the language in the scope of the order. Thus, the application of AFA with respect to the issue of "accessories" is no longer warranted.

Understatement of Home Market Gross Unit Prices

Commerce requested in the Antidumping Duty Questionnaire that Hyundai "{p}rovide . . . all sales-related documentation generated in the sales process . . . for a sample sale in the foreign market and U.S. market during the {period of review}."[59] After Hyundai responded to

[57] *See Remand Order* at 39, citing Final Results of Redetermination Pursuant to Court Remand at 9, *Hyundai Heavy Indus. Co., Ltd. v. United States*, No. 17-00054 (CIT 2018).
[58] *Id*. at 10.
[59] *See* Antidumping Duty Questionnaire at A-10.

this initial request, Commerce asked Hyundai to further provide "complete sales and expenses documentation" for five home market sales and five U.S. sales.[60] Commerce additionally requested a breakdown between foreign like product and non-foreign like product, complete with a detailed narrative and supporting documentation.[61] However, Commerce found that Hyundai "improperly reported its home market gross unit prices" because Hyundai used values from an initial contract, despite later revisions that identify different values.[62] Hyundai asserted that the revisions to the original contract related to a part that is non-foreign like product, and thus did not affect the gross unit prices of foreign like product.[63] Commerce found the record to be ambiguous, calling into question Hyundai's consistent treatment and reporting of merchandise under consideration.[64] The Court found that substantial evidence supported Commerce's finding that the record was unclear as to whether Hyundai properly reported home market prices, but because the issue appeared to be linked to the issue of "accessories," the Court deferred ruling on the issue and directed Commerce to clearly explain to what extent this finding supported the use of total AFA.[65] As discussed below, in accordance with the *Remand Order*, Commerce finds that its determination that Hyundai understated its home market gross unit prices due to its inconsistent treatment of merchandise under consideration warrants total AFA.

Facts Available

Commerce's application of facts available to Hyundai with respect to its reporting of home market gross unit prices is appropriate and supported by the weight of the evidence on the

[60] *See* Commerce's Letter, "Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: Second Sales Supplemental Questionnaire," dated May 19, 2017 (SSQ), at 13.
[61] *Id*. at 10-11.
[62] *See Preliminary Results* PDM at 18.
[63] *See* Hyundai's Letter, "Large Power Transformers from South Korea: Resubmission of Post-Preliminary Comments," dated October 5, 2017, at 4-5.
[64] *See Final Results* IDM at 15-16.
[65] *See* Remand Order at 42.

record. Hyundai's reporting of its home market gross unit prices, inclusive of the price of within-scope parts, has been an issue in other administrative segments under this order. For instance, in the Court's decision regarding the 2014-2015 administrative review, the Court found that Commerce's application of total AFA with respect to Hyundai's failure to properly report home make market sales was supported by substantial evidence.[66] In that review, Commerce had concerns regarding Hyundai's failure to properly report home market gross unit prices after record evidence demonstrated that Hyundai had reported the same part differently, depending on the market. In that review, Hyundai never acknowledged nor addressed its contradictory treatment of the part in question.[67]

In this remand proceeding, Hyundai did not use amended contract values in reporting its home market sales prices, arguing that the changes to the contract values between the initial and revised contracts were related to a non-subject part. However, the part was clearly identified as subject merchandise in the home market sample sales and expense documentation.[68] By not treating this part consistently in its home market sales reporting, Hyundai has understated its home market prices for those sales in which it treated the part as non-subject. However, we only have the sample sales documentation for five home market sales on the record; therefore, we do not have the documentation to determine the accuracy of the sales prices for all of the other home market sales. Therefore, Commerce must to resort to facts available for the unreported information.

Adverse Inference in Selection of Facts Available

Hyundai had the opportunity to provide complete and accurate information with respect to its reporting of home market gross unit prices, and indeed, as the sample sales documentation

[66] *See Hyundai Heavy Indus., Co. v. United States*, 332 F. Supp. 3d 1331, 1345 (CIT 2018).
[67] *Id.*
[68] *See* SSQ Response at Exhibit 94.

demonstrates, possessed the information, but failed to provide such information to Commerce. Therefore, Commerce finds that Hyundai did not act to the best of its ability and impeded Commerce's conduct of the review; accordingly, the use of adverse inference is warranted in selecting from the available facts.

The Court has found that the use of total AFA is appropriate when the respondent's conduct undermines the credibility and reliability of the data overall.[69] Because of the severity of Hyundai's failure to report home market gross unit prices inclusive of subject parts, Commerce accordingly has determined it appropriate to continue to apply total AFA. Accurate home market price data is central to the calculation of a dumping margin. The effect of the inaccurate reporting identified above extends beyond the omitted information because Commerce cannot make an accurate comparison between the home market sales and the U.S. sales in order to calculate an accurate dumping margin. Because Hyundai submitted incomplete and unreliable gross unit prices, Commerce cannot reasonably calculate a dumping margin based on those reported prices with any expectation of an accurate or meaningful result. Therefore, Commerce finds it appropriate under these circumstances to apply total AFA to Hyundai's margin calculations.

Based on the above, Commerce has properly resorted to total AFA to determine Hyundai's dumping margin in this review.

In addition, the Court instructed Commerce to explain whether the "accessories" issue is intertwined with the under reporting of home market sales prices. In response, we note that the "accessories" issue is distinct and separate from the part that is involved in the home market

[69] *See Papierfabrik August Koehler SE v. United States*, 7 F. Supp. 1304 (2014).

price reporting. Therefore, the "accessories" issue does not impact the issue regarding the under reporting of home market sales.

Affiliation with a U.S. Sales Agent

In the underlying review, Commerce found that Hyundai failed to disclose its affiliation with a U.S. sales agent.[70] As we described in the underlying review, the sales agent in question used a title and division of Hyundai, as well as an email address that appeared to belong to Hyundai.[71] In addition, the petitioner provided publicly-available information which indicated that Hyundai and the sales agent shared the same address.[72] However, the Court held that substantial evidence did not support our finding that Hyundai failed to report an affiliated sales agent.[73] We issued a supplemental questionnaire to Hyundai during the review regarding the sale agent's address and potential affiliation, and the Court found in the *Remand Order* that Hyundai answered our questions regarding affiliation and provided the address of the sales agent, which differed from Hyundai's address.[74] The Court also found that Commerce did not address Hyundai's arguments in its case brief in our final determination.[75] In accordance with the *Remand Order*, Commerce has reconsidered its determination that Hyundai was affiliated with a sales agent pursuant to sections 19 USC 1677(33)(D) and (E).

Upon reconsideration, Commerce determines that Hyundai did not fail to report its affiliation with the sales agent in question. As Hyundai identified in its case brief, Hyundai supplied a "Sales Representative Agreement" in which Hyundai permitted the sales agent to use

[70] *See Final Results* IDM at 18.
[71] *Id*. at 19.
[72] *See* SSQ at 30.
[73] *Id.*; *see also* SSQ Response at 81.
[74] *See* SSQ at 30; *see also* SSQ Response at 81.
[75] *See Remand Order* at 45; *see also* Hyundai's Letter, "Large Power Transformers from Korea: Hyundai's Case Brief," dated October 12, 2017 (Hyundai's Case Brief).

Hyundai's title and division.[76] Specifically, Hyundai granted the sales agent "[

].”[77] Thus, we agree with Hyundai that the use of Hyundai's [ ] does not indicate that Hyundai failed to disclose its affiliation with the sales agent in question.

Further, as the Court cited, Hyundai answered our questions with respect to its affiliation with the sales agent and provided documentary evidence regarding the sale agent's correct address, which differed from Hyundai's address.[78] Commerce also finds that even if the sales agent shared an email address owned by Hyundai, it has no bearing on whether the sales agent is affiliated with Hyundai based on the particular facts on this record. Thus, based on the aforementioned reasons, Commerce agrees that Hyundai properly did not fail to identify the sales agent as an affiliated party pursuant to the statute.

As discussed above, in accordance with the *Remand Order*, Commerce has reconsidered and further explained its finding regarding whether Hyundai failed to report an affiliated sales agent. Commerce also addressed Hyundai's arguments that it raised in its case brief. As a result, we did not rely on this issue as a basis of our application of total AFA to Hyundai.

Conclusion

While the "accessories" and "sales agent" issues are no longer included in Commerce's total adverse facts available finding for Hyundai, Hyundai's understatement of home market prices by inconsistently treating a certain part as subject merchandise for certain sales and non-

[76] *See* Hyundai's Case Brief at 44-45.
[77] *Id*.
[78] *Id*. at 45 (citing Hyundai's Letter, "Large Power Transformers from South Korea: Response to Supplemental Section A Questionnaire," dated May 3, 2017, at Attachment SA-26).

subject for other home market sales, undermines Commerce's ability to calculate an accurate margin for Hyundai, justifying, as described above, the use of total adverse facts available for Hyundai's margin calculation.

DISCUSSION OF COMMENTS

Use of Total AFA Rate for Non-Selected Respondents

Iljin's Comments

- Iljin argues that Commerce should not base the margin for non-examined respondents on a total AFA rate.[79]
- Iljin states that, in this case, there is no basis for concluding that Iljin failed to cooperate with Commerce's proceedings. As a result, Iljin contends that the adverse facts available margin assigned to the two mandatory respondents is not in any way reasonably reflective of potential dumping margins for Iljin.[80]
- Iljin asserts that Commerce must assign a dumping margin to the unexamined respondents that is "reasonably reflective of potential dumping margins" for those companies.[81]
- Iljin believes that the AFA rate assigned to Hyundai and Hyosung cannot serve as a reasonable basis for its assigned rate given decisions by the Court of Appeals for the Federal Circuit on cases with similar fact patterns.[82]
- Iljin maintains that Commerce may not assign it a dumping margin based on the assumption that it would have refused to cooperate in the review.[83]
- Iljin states that there is no evidence that it was uncooperative in this case. Rather, Commerce did not select Iljin as a mandatory respondent due to its workload, and Commerce's practice of not reviewing voluntary responses in other cases meant that it would have been futile for Iljin to provide a questionnaire response.[84]
- Iljin contends that, in the absence of evidence that it was uncooperative, the deterrence that might justify applying a punitive AFA rate to Hyundai and Hyosung does not exist with respect to Iljin.[85]
- Iljin argues that the AFA rate applied in this case is not appropriate because it is less contemporaneous than the rates calculated for cooperative respondents in previous reviews.[86]

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[79] *See* Iljin's Letter, "Large Power Transformers from Korea – Comments on Draft Remand Redetermination (Slip Op. 19-105)," dated December 5, 2019, at 2.
[80] *Id.*
[81] *Id.* at 2-4 (citing *Albemarle Corp. v. United States*, 821 F. 3d 1345, 1352 (Fed. Cir. 2016)).
[82] *Id.* at 4.
[83] *Id.*
[84] *Id.* at 4-5.
[85] *Id.* at 5-6.
[86] *Id.* at 6.

- Iljin suggests the choice of potential dumping margins for Iljin is between the six-year-old allegation from the petition that has been used as AFA for Hyundai and Hyosung, or the more recent rates from the reviews that have subsequently been conducted.[87]
- Iljin states that Commerce has consistently held that Iljin should be assigned the same dumping margin as examined respondents that cooperated with Commerce's reviews.[88]
- Iljin argues that there is no reason to believe that its actual sales during the fourth review period were more similar to a six-year-old allegation from the original petition in this case than to the more recent information relied upon in the first, second, and third reviews.[89]
- Finally, Iljin argues that, if Commerce continues to apply AFA to both Hyundai and Hyosung, it must apply the most recent rate applied to Iljin (*i.e.*, the 2.99 percent dumping margin applied to Iljin in the third review) as the dumping margin for Iljin's sales during the fourth review.[90]

Commerce's Position:

Commerce continues to find that the margin for non-selected respondents should be based on the average of the margins applied to the mandatory respondents. In the instant case, the average rate applied to Iljin is the total AFA rate. As stated in section 735(c)(5)(A)-(B) of the Act, SAA, and upheld in *Albermarle*, Commerce may use the average of two AFA margins in assigning the rate to non-selected respondents.[91] We believe that this is a reasonable method and the expected method of calculating such a margin, as set forth in the SAA.[92] We also find, consistent with *Bestpak*, that the statute and the SAA allow Commerce to use AFA rates in calculating a margin for a non-selected company.[93]

Iljin argues that Commerce should assign a dumping margin to the unexamined respondents that is "reasonably reflective of potential dumping margins" for those companies. When Commerce cannot individually review all of the companies which requested a review, the

[87] *Id.* at 6-7.
[88] *Id.* at 7.
[89] *Id.* at 7-8.
[90] *Id.* at 8.
[91] *See* section 777A(c)(2) of the Act; *see also* SAA at 873; *see also* section 735(c)(5) of the Act; *see also* section 735(c)(5)(A) of the Act; *see also* section 735(c)(5)(B) of the Act; *see also see also Albemarle Corp. v. United States*, 821 F. 3d 1345 (Fed. Cir. May 2, 2016).
[92] *See* SAA at 873.
[93] *See Yangzhou Bestpak Gifts & Crafts Co., Ltd., v. United States*, 716 F. 3d 1370, 1378 (Fed. Cir. May 20, 2013).

statute provides that Commerce may individually review less than all of the review requesters. However, the margins for the mandatory respondents are reasonably reflective of its potential dumping margin for companies which request a review and are not individually investigated. In this case, both mandatory respondents received a total AFA rate. As a result, it is appropriate to apply that same rate to the companies which requested a review but were not individually reviewed. Thus, we find it reasonable to apply the same rate to Iljin as we applied to the mandatory respondents.

Understatement of Home Market Gross Unit Prices

Petitioner's Comments

- ABB urges Commerce to further explain that there are two examples in the record evidence specifically supporting the conclusion that Hyundai's home market gross unit prices are understated. Commerce identified both examples in the *Final Results*, and they should be reiterated in the final remand redetermination to clarify Commerce's findings for the Court.[94]
- ABB states that, in both instances, Hyundai understood its obligation to report gross unit price to include all subject merchandise, yet its reporting reveals inconsistencies that cannot be reconciled.[95]
- ABB argues that Commerce should include both of these reporting inconsistencies in the final remand redetermination as reasons to conclude that Hyundai's home market gross unit prices are unreliable and unusable.[96]

Hyundai's Comments

- Hyundai agrees with Commerce's findings with respect to "accessories" and the U.S. sales agent. However, it believes Commerce's findings with respect to "the part" are not supported by substantial evidence and, therefore, the application of total AFA is not in accordance with law.[97]
- Hyundai notes that a decision by Commerce that fails to consider significant evidence to support an alternative conclusion is unsupported by substantial evidence. It argues that rationale applies here given that the CIT stated only that substantial evidence supported Commerce's finding of ambiguity with respect to Hyundai's designation of the part in

[94] *See* Petitioner's Letter, "Large Power Transformers from Korea – Petitioner's Comments on the Draft Remand Redetermination," dated December 5, 2019 (Petitioner's Comments), at 22.
[95] *Id.* at 26.
[96] *Id.* at 27.
[97] *See* Hyundai's Letter, "Large Power Transformers from South Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated December 5, 2019 (Hyundai's Comments), at 3.

question – not a finding that the part was, as Commerce concluded in the *Draft Remand*, subject merchandise.[98]

- Hyundai contends that the evidence cited by Commerce in the *Draft Remand* does not amount to "more than a mere scintilla" and is "the only buttress upholding" Commerce's conclusion that the part is subject merchandise.[99]
- Hyundai maintains that its affirmative statements regarding the correct treatment of each of the items for SEQH 52 and 53, which were supported by a certification of accuracy signed under the threat of criminal sanctions with respect to materially false statements, were direct, credible evidence.[100]
- Hyundai asserts that Commerce relied solely on circumstantial evidence to conclude in the *Draft Remand* that the part was "clearly identified as subject merchandise." It argues that a single piece of circumstantial evidence, standing alone, cannot reasonably be considered to negate the direct evidence provided in Hyundai's certified statements.[101]
- Hyundai argues that if Commerce intends to consider circumstantial evidence regarding the part, it must consider all such evidence and not rely on ABB's claims regarding the way in which the part was categorized in one instance. Hyundai contends that, when considered in its entirety, the circumstantial evidence supports Hyundai's direct statement that the part in question was non-subject merchandise.[102]
- Hyundai lists six pieces of evidence which it believes contradict Commerce's conclusion that the part was clearly identified as subject merchandise by the way it was categorized. However, Hyundai contends that Commerce has not considered this evidence in the *Draft Remand*, and, therefore, its weighing of the evidence was unreasonable and does not support by substantial evidence the conclusion that the part is subject merchandise.[103]
- Hyundai states that the "sample sales and expense documentation" cited by Commerce in the *Draft Remand* is too general and does not clearly identify which documentation Commerce is referencing.[104]
- Hyundai asserts that, with no change in the record from during the review, there is no basis for Commerce to now find that the part "was clearly identified as subject merchandise."[105]

Commerce's Position:

We continue to find that substantial evidence supports Commerce's finding that Hyundai understated its home market gross unit prices. Substantial evidence has been defined as "such

[98] *Id.* at 5.
[99] *Id.* at 6.
[100] *Id.* at 8.
[101] *Id.* at 8-9 (citing *Draft Remand* at 23).
[102] *Id.* at 9.
[103] *Id.* at 9-12.
[104] *Id.* at 12.
[105] *Id.* at 12-13.

relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[106] The Court upholds Commerce's determinations unless they are "unsupported by substantial evidence on the record, or otherwise not in accordance with law."[107] Further, while Commerce's discretion is in antidumping duty reviews is not unbounded, its discretion is particularly great in the case of uncooperative respondents.[108]

Hyundai argues that substantial evidence only supports the finding of ambiguity with respect to Hyundai's designation of the part in question.[109] However, in the *Final Results*, Commerce concluded that the record was ambiguous because Commerce could not determine whether this part would be an "accessory."[110] Since defining "accessories" or characterizing parts or components as "accessories" is no longer relevant for the purposes of Commerce's determination, we find that the scope language is controlling. We find that a part or component of an LPT is considered "subject merchandise so long as it meets the criteria enumerated in the scope language."[111]

Under the scope language, parts and components that are covered include "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."[112] Pursuant to this classification, a main transformer and parts included in its assembly, or attached to the main body, would be classified

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[106] *See Gallant Ocean (Thailand) Co. v. United States*, 602 F. 3d 1319, 1321 (Fed. Cir. 2010).
[107] *Id*.
[108] *Id*.
[109] *See* Hyundai's Comments at 4.
[110] *See Final Results* IDM at 16.
[111] *See* Final Results of Redetermination Pursuant to Court Remand at 10-11, *Hyundai Heavy Indus. Co., Ltd. v. United States*, No. 17-00054 (CIT 2018).
[112] *See Final Results* IDM at 3.

as subject merchandise. Thus, parts and components listed on sales documentation as part of the main transformer would be subject merchandise unless record evidence supports otherwise.

In the instant case, Hyundai argues that the [ ], hereinafter referred to as Part A, and that the [ ], hereinafter referred to as Part B, are non-subject merchandise.[113] We disagree.. Part A and Part B are identified as part of the "main transformer" and would be deemed subject merchandise.[114] These parts are invoiced with the active parts of the transformer on sales documentation, and the diagram Hyundai provides does not prove that Part A or Part B would not fall under the scope. As for Part A, being "separate" from the main transformer, whether in an electrical diagram or product code, does not disqualify a part from being subject merchandise. Several parts and components are separate from the main body and then attached to the mechanical frame at the installation site. Further, as the petitioner states, no classification system would consider [ ] like Part A, as non-subject merchandise.[115] Additionally, Hyundai confirmed that Part A is subject merchandise in its reporting of another home market sale when it stated that Part A [ ].[116] Besides annotations to the sales documentation provided by Hyundai, substantial record evidence demonstrates that Part A is subject merchandise.

For Part B, Hyundai argues that its project codes, installation prices, and delivery schedule identify Part B as separate from the main transformer, despite the contract listing Part B under the "main transformer." Hyundai thus concludes that Part B is non-subject merchandise. However, the record evidence demonstrates that Hyundai's own records relating to Part B in this

[113] *See* Hyundai's Comments at 6-12.
[114] *See* SSQ Response at Attachment SS-22.
[115] *See* Petitioner's Comments at 23.
[116] *See* SSQ Response at Exhibit 8, page 9.

specific sale are internally inconsistent; many of Hyundai's own record documents for this sale demonstrate that Part B falls within the scope language of the order. Accordingly, Commerce reasonably concluded that Part B is subject merchandise.

In total, Commerce concluded that Hyundai did not report home market gross unit prices inclusive of all subject merchandise. Hyundai inconsistently reported merchandise under consideration, as it had in the 2014-2015 Administrative Review, and did not report later contract amounts to include such merchandise, thereby failing to provide an accurate and reliable home market sales database. Thus, substantial evidence supports Commerce's determination that Hyundai understated its home market gross unit prices.

Application of Total AFA

Petitioner's Comments

- ABB agrees with Commerce's determination in the *Draft Remand* that total AFA is appropriate for Hyundai because Hyundai understated its home market gross unit prices.[117]

Hyundai's Comments

- Hyundai maintains that, even if Commerce believes that Hyundai did not report the gross unit price correctly for SEQH 53, the record contains the information needed to adjust the gross unit price to include the price of the part. Thus, Hyundai argues there is no gap in the record.[118]
- Hyundai asserts that, if Commerce believed there was a gap in the record with respect to whether the part was subject merchandise, it was obligated to issue a deficiency notice and give Hyundai an opportunity to resolve or explain the deficiency before applying FA. Because Commerce has not done so, Hyundai argues it does not have legal justification for using FA.[119]
- Although Hyundai does not believe Commerce has the legal justification for using FA with respect to the gross unit price for SEQH 53, Hyundai argues that, even if it did, the legal justification would extend, at most, to using partial FA.[120]
- Hyundai states that the evidence overwhelmingly demonstrates that the [ ] was not an element of any of the substantial number of other home-market and U.S. sales for which

[117] *See* Petitioner's Comments at 22.
[118] *See* Hyundai's Comments at 13.
[119] *Id.* at 14-16.
[120] *Id.* at 16.

there is documentation on the record. Therefore, it maintains, the evidence shows that this issue does not extend beyond SEQH 53.[121]

- Hyundai argues that its reporting of the part, even if it were incorrect, does not constitute a deficiency meeting the standard for using total AFA stated by the CIT and affirmed by the Court of Appeals for the Federal Circuit.[122]
- Hyundai notes that using total FA under these circumstances is contrary to Commerce's approach in numerous other proceedings as well as CIT precedent.[123]
- Hyundai argues that Commerce has not demonstrated that Hyundai did anything that supports a finding that it failed to act to the best of its ability, aside from allegedly not submitting a small element of the gross unit price for one sale. Further, Hyundai says that the CIT recently ruled against Commerce for using the same reasoning in the first administrative review of the antidumping duty order on *Certain Uncoated Paper from Portugal*.[124]
- Hyundai contends that Commerce did not even request the information that it claims Hyundai failed to provide. Additionally, Hyundai states that the statute does not contemplate the use of AFA – or even FA – for failure to respond to a request Commerce did not make.[125]
- Hyundai claims that Commerce failed to meet its notification obligations and, therefore, Commerce cannot apply an adverse influence with respect to this issue.[126]
- Hyundai urges Commerce to use the information it submitted to calculate a margin and, if necessary, issue a supplemental questionnaire to resolve areas of the record it still believes are ambiguous.[127]

Commerce's Position:

We agree with the petitioner that Commerce should resort to total adverse facts available in this remand. Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot

[121] *Id.*
[122] *Id.* at 17-19.
[123] *Id.* at 20-21.
[124] *Id.* at 21-22.
[125] *Id.* at 22.
[126] *Id.* at 23.
[127] *Id.* at 24.

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

Hyundai argues that because it properly treated Part B as non-subject merchandise, there is no gap in the record.[128] Hyundai further argues that even if Commerce believed there was a gap in the record, the gap is only a small element of the gross unit price for one sale, and Commerce was obligated to provide a deficiency notice and give Hyundai an opportunity to resolve the issue.[129] Hyundai also asserts that there is no gap whatsoever with respect to the gross unit prices for U.S. sales.[130] Hyundai asserts that Commerce had ample time to request clarification during the review, or that Commerce could have requested clarification during the weeks spent on this remand.[131] As a result, Hyundai asserts that the application of total AFA is contrary to Commerce's practice and the Court's precedent.[132]

We disagree with Hyundai that there is no gap in the record. First, Hyundai does not address the gap in the record regarding Part A. Further, as described in the *Final Results* and further explained above, Commerce found that Hyundai reported non-foreign like products inaccurately, inconsistently treated parts from home market sales, and did not accurately report home market gross unit prices inclusive of all subject parts.[133] Without a properly reported sales database inclusive of all subject parts, Commerce cannot determine whether the record evidence is reliable and useable. Because Hyundai did not report the parts consistently and, as

[128] *Id*. at 13.
[129] *Id*. at 14.
[130] *Id*. at 19.
[131] *Id*. at 15.
[132] *Id*. at 20.
[133] *See Final Results* IDM at 15-18.

Hyundai admits, the record does not contain the sales documentation for all sales, Commerce has no basis in the record for determining what those home market gross unit prices should be for the overwhelming majority of its sales. Thus, contrary to Hyundai's claim, there is a gap in its reporting and it is significant.

With respect to Hyundai's argument that Commerce did not notify Hyundai of its deficiency, we disagree.[134] It is the respondent's responsibility to report gross unit prices accurately, in this case inclusive of all subject parts. Hyundai is responsible for explaining and documenting whether these changes were limited to non-subject merchandise, other than merely adding annotations. Hyundai is statutorily obligated to provide accurate and complete responses to Commerce's initial and supplemental questionnaires.[135] Hyundai also had an obligation to be forthcoming regarding any potential discrepancies.[136] Thus, Hyundai had notice to report its gross unit prices accurately and inclusive of all subject parts.

With respect to Hyundai's arguments that Commerce should issue a supplemental questionnaire, we have already explained above that Hyundai's submissions are deficient and Commerce has already afforded Hyundai multiple opportunities to report its gross unit prices accurately.[137] Commerce found that Hyundai had not reported its contract amendments.[138] Hyundai responded that those amendments are for non-subject parts.[139] Further, Commerce issued several supplemental questionnaires regarding sales and expense documentation, as well

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[134] *See* Hyundai's Comments at 4, 6-7.
[135] *Fujian Lianfu Forestry Co. Ltd. v. United States*, 638 F. Supp. 2d 1325, 1340 (CIT 2009) ("A respondent has a statutory obligation to prepare an accurate and complete record in response to questions plainly asked by Commerce.") (quoting *Tung Mung Dev. Co. v. United States*, 25 CIT 752, 758 (2001)).
[136] *See Associated Colombiana de Exportadores de Flores v. United States*, 704 F. Supp. 1114, 1124 (CIT 1989), *aff'd* 901 F. 2d 1089 (Fed. Cir. 1990). ("{P}arties must submit data promptly, and be very clear as to what the data indicates.").
[137] *Id.* at 4.
[138] *See Final Results* IDM at 15 (citing *Preliminary Results* PDM at 18).
[139] *See* Hyundai Case Brief at 38-40.

as requests for complete breakdowns of foreign like product and non-foreign like product.[140] Therefore, Hyundai received multiple questions on this issue. The record, however, does not support Hyundai's responses. Commerce found those parts fell within the plain language of the scope and were subject merchandise and found that Hyundai inconsistently reported them as subject and non-subject.

We find Hyundai's argument that there is no gap in the reported U.S. gross unit prices incorrect.[141] The record does not contain a complete listing of contract amendments and does not contain a complete listing of the parts which should have been included as subject merchandise. From the record evidence it is not possible to ensure that all of the parts were properly reported either as subject or non-subject merchandise. We also disagree with Hyundai that to apply total AFA in this case is contrary to Commerce's approach in administrative proceedings and CIT precedent.[142] The Court has held that total AFA is reasonable when Commerce cannot make comparisons between normal value and U.S. prices to calculate a dumping margin if a respondent has failed to provide certain home market sales data.[143] Without reliable and accurate sales data for the home market, Commerce cannot calculate normal value, and thus, cannot perform comparisons to U.S. prices. Therefore, because of Hyundai's understatement of home market gross unit prices, we find that total AFA is appropriate in the instant case.

Other Hyundai Issues

Petitioner's Comments

- ABB notes that its case brief included six additional reporting issues and urges Commerce to incorporate each of these reasons into the final remand redetermination so

[140] *See* Antidumping Duty Questionnaire; *see also* SSQ.
[141] *See* Hyundai's Comments at 19.
[142] *Id*. at 20-21.
[143] *See Shenzhen Xinboda Industrial Co., Ltd. v. United States*, 180 F. Supp. 3d 1305, 1314 (CIT 2016) (citing *Papierfabrik August Koehler SE v. United States*, 7 F. Supp. 3d 1304, 1314 (CIT 2014)).

as to obviate the need for additional remand proceedings should the Court take issue with Commerce's sole reliance on the misreporting of home market gross unit prices as sufficient to apply total AFA.[144]

Commerce's Position:

We agree with the petitioner that Hyundai's understatement of its home market gross unit is a sufficient basis to apply total AFA to Hyundai without any additional reporting issues, including those additional issues identified by the petitioner in its comments.[145] Petitioner alleges six deficiencies and omissions by Hyundai, including: 1) the failure to report separately negotiated service-related revenues; 2) Hyundai's reported separately negotiated home market revenues cannot be linked to expenses incurred; 3) the failure to translate sales documentation and withholding of requested documents; 4) the unreliability and incompleteness of Hyundai's U.S. sales reporting because of Hyundai's failure to translate certain documentation and withholding of request documents; 5) the withholding of the costs of spare parts; and, 6) the unreliability of Hyundai's reported costs of production.[146] We do not find these issues appropriate for the application of total AFA in the instant case.

We find that Hyundai did not withhold the reporting of service-related revenues and their associated expenses. In the SSQ, we asked Hyundai to "Confirm whether your reported gross unit prices (*i.e.*, fields GRSUPRH and GRSUPRU) are inclusive of all service-related revenues and accessories, but net of spare parts."[147] The manufacturing-related and personnel-related activities that the petitioner identifies are not services performed on subject merchandise. Further, we cannot identify any withholding of service-related revenues and their associated

[144] *See* Petitioner's Comments at 27-31.
[145] *Id*.
[146] *Id*.
[147] *See* SSQ at 11-12.

expense in the record. Thus, we found that Hyundai correctly responded to our question by not including these revenues as "service-related revenues" in the sales database.

We also find that the reported separately-negotiated home market revenues can be linked with individual expense fields. The expenses for the home market sales that the petitioner identifies are recorded under a single project, and documentation on the record demonstrates that Hyundai appropriately combined these installation and supervision expenses.[148] As a result, we find no issue with Hyundai's reporting for this home market sale as the expense fields are reconcilable to the reported separate service revenue.

The petitioner also alleges that Hyundai failed to translate certain sales documentation and withheld certain requested documentation, and as a result, Hyundai's U.S. sales reporting is incomplete and unreliable.[149] We disagree. Hyundai provided a work sheet in response to this allegation in its rebuttal brief, which includes the locations of the sales documentation and translation samples in the record with accompanying explanations.[150] We find that these explanations are sufficient and do not hinder our analysis of the U.S. sales database.

With respect to the petitioner's allegation that Hyundai omitted costs of spare parts, we disagree. Hyundai submitted the costs for spare parts in its cost reconciliation in response to the initial questionnaire.[151] With this information, Hyundai correctly responded to Commerce's request, and Commerce could analyze the allocation of costs between subject LPTs and spare parts.

[148] *See* Hyundai's Letter, "Hyundai Supplemental A Questionnaire Response – Questions 12 and 19," dated May 8, 2017, at Attachment SA-47.
[149] *See* Petitioner's Comments at 30-31.
[150] *See* Hyundai's Rebuttal Brief at Exhibit 1.
[151] *See* Hyundai's Letter, "Large Power Transformers from South Korea: Sections B-D Response," dated February 27, 2017, at Attachment D-14.

Lastly, the petitioner alleges that Hyundai's reported costs of production are unreliable because the record shows that the differences in cost result from timing differences in production rather than differences in physical characteristics and per-unit input costs.[152] We find this allegation to be unsupported. Hyundai provided a worksheet containing the cost elements of these two transformers.[153] Hyundai explained that the later-produced transformer had lower labor costs because there were production efficiencies in producing the later transformer.[154] We find Hyundai's explanation for the discrepancies in lower labor costs reasonable. Petitioners have identified no record evidence to demonstrate that this explanation is inaccurate.

Commerce finds Hyundai's understatement of its home market gross unit prices as a sufficient basis on its own to apply total AFA to Hyundai. Therefore, as explained above, we do not find the additional six issues that the petitioner raised as appropriate bases to apply total AFA in the instant case.

Other Hyosung Issues

Other Record Evidence for Resorting to Total AFA

- ABB states that, in its October 12, 2017 Case Brief for Hyosung, it included six additional, separate grounds for Commerce to rely on total AFA for Hyosung, in addition to the three grounds first cited in the *Preliminary Results.* ABB argues these issues further support the grounds for application of AFA that Commerce has already stated.[155]
- ABB urges Commerce to address all the potential AFA issues ABB has identified in the interests of judicial economy, even if it means requesting a further time extension to file the final remand redetermination with the Court.[156]

Sales Evidence and the Reliability of Hyosung's Entire U.S. Sales Database

- ABB contends that Hyosung's inaccurate reporting of [ ] affected all aspects of Hyosung's reported U.S. sales and entry quantity and value for the record.[157]

[152] *See* Petitioner's Comments at 31.
[153] *See* Hyundai's Letter, "Large Power Transformers from South Korea: Supplemental D Questionnaire Response," dated June 1, 2017, at Attachment SD-8.
[154] *See* Hyundai's Rebuttal Brief at 13.
[155] *See* Petitioner's Comments at 16.
[156] *Id.* at 17.
[157] *Id.* at 18.

- ABB argues that Hyosung's incomplete reporting of sales to [ ] significantly impacted the entire universe of Hyosung's reported U.S. sales and entry data during the POR.[158]
- ABB states that, in the final remand results, Commerce should cite to [

] among its reasons for concluding that it has no faith in the overall "reliability of Hyosung's entire U.S. sales database" and that total AFA is warranted on this basis alone.[159]

Additional Grounds for Applying AFA to Hyosung

- ABB suggests that, for the final remand redetermination, Commerce should also review and comment on other Hyosung issues briefed by ABB and that Commerce considered moot in the *Final Results.*[160]

Commerce's Position:

We address each of the petitioner's issues below.

Mis-Reported Product Characteristics

The petitioner claims that Hyosung mis-reported product characteristics on certain sales, specifically referencing concerns about the reported MVA rating.[161] In its rebuttal brief, Hyosung identified record evidence that sales of [ ] and reported as [ ] unit was [ ].[162] Hyosung provided technical documents showing that the sale in question was recognized in Hyosung's books and records as [ ], that the [ ] and designed to work [ ], and was [

[158] *Id.*
[159] *Id.*
[160] *Id.* at 20-21.
[161] *See* Petitioner's letter, "Large Power Transformers From South Korea; Petitioner's Case Brief for Hyosung," dated October 12, 2017 (Petitioner's Case Brief), at 2, 6-7.
[162] *See* Hyosung's Letter, "Large Power Transformers from Korea: Rebuttal Case Brief of Hyosung Corporation," dated October 19, 2017 (Hyosung Rebuttal Brief), at 8-11.

].[163] Based on this record information, we do not find that Hyosung mis-reported the product characteristics for this sale.

Similarly, the petitioner claims that Hyosung failed to report an LPT with a rating of [ ] MVA.[164] Hyosung provided evidence that the unit in question was actually [ ] MVA units which will operate [ ] substation.[165] Hyosung also provided documentation, including the contract/purchase order and design specifications, indicating that Hyosung sold a unit with [ ] MVA. Based on our examination of record evidence, we do not find that Hyosung mis-reported the product characteristics for this sale. Hyosung has responded to our requests for information on this issue and we have not identified any further discrepancies. Therefore, we do not find this issue to be a basis for the application of adverse facts available.

Circumstances Surrounding Sale to a Specific U.S. Customer

The petitioner raises a number of issues involving a unit sold to customer [ ] which was [ ].[166]

We note that the unit in question was part of a sale of [ ] LPTs to [ ], and that this sale is the same as the sales discussed below in the Overlapping Invoice section. Commerce requested that Hyosung provide extensive information regarding this [ ] sale in its Second Sales Supplemental Questionnaire.[167] Hyosung provided information regarding Commerce's request.[168] In light of our findings detailed in the Overlapping Invoice section, and our examination of the record evidence provided by Hyosung regarding the issue of

[163] *Id*.
[164] *See* Petitioner's Case Brief at 6.
[165] *See* Hyosung Rebuttal Brief at 11-12.
[166] *See* Petitioner's Case Brief at 8-9.
[167] *See* Second Sales Supplemental Questionnaire at Question 64.
[168] *See* Hyosung Sections BCD Response at 40 and Exhibit SBC-65.

the [ ] unit, we find that Hyosung properly reported the number of sales to customer [ ], the payment information, and the necessary information regarding the [ ] unit. As Hyosung has cooperated with our requests for information on this issue and we have identified no further discrepancies, we do not find this issue to be a basis for the application of adverse facts available.

Hyosung's U.S. Sales Agents

The petitioner argues that Hyosung should not have to estimate the names of U.S. commission agents at the time Hyosung filed its section C questionnaire response.[169] The petitioner also expressed concern about the commission agreements as well as changes in the identity of sales agents in Hyosung's supplemental questionnaire responses.[170]

In its rebuttal brief, Hyosung stated that it updated the list of sales agents in Hyosung Sections BCD Response at Exhibit SBC-45.[171] Hyosung further stated that HICO America, its U.S. affiliate, "pays commission fees only after the conclusion of the transaction as envisioned in the sales" and that some commissions had not been paid at the time of the section C questionnaire response.[172] Hyosung also stated that the reason for the estimated sales agents was that customers sometimes change the delivery destination for a sale, and that the new destination may fall into the sales territory of a different selling agent, thus necessitating that a portion of a commission payment go to a different agent.[173] Finally, Hyosung states that the selling agent agreement questioned by the petitioner concerns a selling agent with whom

[169] *See* Petitioner's Case Brief at 10.
[170] *Id*. at 11.
[171] *See* Hyosung Rebuttal Brief at 17.
[172] *Id*. at 17-18.
[173] *Id*. at 18.

Hyosung has a long-standing arrangement and that the agreements submitted on the record are the most recent renewed contracts.[174]

Commerce requested information from Hyosung regarding its commissions and selling agents.[175] Hyosung's responses are the same as those of its case brief. We have examined the record evidence, and find Hyosung to be responsive to our requests for information on this issue. Additionally, we have not identified any further deficiencies with the submitted information. Therefore, we find that Hyosung has been cooperative with respect to this issue and that there is no basis for the application of adverse facts available.

Distorted Product Matches Arising from Incorrect Reporting of Costs

The petitioner asserts that Hyosung used 'non-traditional' cost accounting systems to manipulate variable and fixed costs.[176]

We disagree with the petitioner's assertion that record evidence demonstrates that Hyosung misreported its production costs by shifting production costs across products to create distorted product matches.[177] As an initial matter, we note that, the petitioner's comments on our Draft Results of Redetermination reference its case brief in the underlying administrative review which, in turn, references its submission dated July 18, 2017 and does not address either Hyosung's supplemental questionnaire response dated July 25, 2017 or Hyosung's August 11, 2017 response to the petitioner's July 18, 2017 submission.[178] In its July 25, 2017 submission,

[174] *Id*.
[175] *See* Second Sales Supplemental Questionnaire at Questions 45 through 49.
[176] *See* Petitioner's Case Brief at 14-15.
[177] *See* Petitioner Comments on the Draft Remand Determination at 21. We note that, although this issue was deemed moot in the underlying administrative review, *see Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2015 – 2016*, 83 FR 11679 (March 16, 2018), and accompanying IDM at Comment 1d, we are addressing this issue in response to the Petitioner's comments on the Department's Draft Remand Redetermination.
[178] *See* Petitioner's Comments on the Draft Remand Determination at 21; Petitioner's Case Brief, at 14 – 15; Hyosung submission dated July 25, 2017; Petitioner's submission labeled "Large Power Transformers from Korea – Petitioner's Pre-Preliminary Comments and Deficiency Comments on Hyosung's Supplemental Responses," dated

Hyosung explained that its cost-accounting system "records actual acquisition costs and purchase expenses as the raw material cost for specific LPTS" and "likewise records the conversion cost on an actual basis".[179] Our internal analysis of Hyosung's July 25, 2017 submission revealed that, as confirmed by Hyosung in its administrative rebuttal brief, the petitioner had disregarded numerous differences between individual transformers which impact profitability such as high line versus low line ratings, transformer type, the number of phases, transformer technology, type of tap changer, and number of windings.[180] Additionally, on August 11, 2017, Hyosung, in response to the petitioner's July 18, 2017 submission, submitted an analysis demonstrating how the conversion costs for large power transformers sold to customers in the U.S. and Korean markets were comparable when adjusted for different physical characteristics.[181] Accordingly, because Hyosung complied with all of Commerce's requests for information and provided an analysis of the differing conversion costs, Commerce determines that record evidence does not demonstrate that Hyosung shifted production costs across products to create distorted product matches.

Hyosung's Financial Accounting Practices

The petitioner alleges inconsistencies in HICO America's reported income and profit figures, pointing to what they described as a "significant, unexplained, and potentially unreported expense" on HICO America's accounting system.[182]

Hyosung notes that HICO America's financial statements are audited, and that it provided the auditors reports from HICO America's auditor.[183] Additionally, Hyosung states

July 18, 2017, at 13 -22; and Hyosung's submission dated August 11, 2017.
[179] *See* Hyosung's submission dated July 25, 2017, at 7.
[180] *See* Hyosung Rebuttal Brief at 23-24.
[181] *See* Hyosung's submission dated August 11, 2017, at Appendices 4 – 7.
[182] *See* Petitioner's Case Brief at 14-16.
[183] *See* Hyosung Rebuttal Brief at 28.

that tax accounting and financial accounting are different, and the differences in the accounting practices explain the differences in the reported selling expenses.[184] Hyosung also notes that Commerce asked no supplemental questions regarding these issues.[185]

Commerce requested a copy of the independent auditor reports for 2014 and 2015, and the auditor's engagement letter, for HICO America.[186] Commerce also requested that Hyosung provide its tax reports.[187] Hyosung provided the auditor's engagement letter for HICO America in its section A supplemental questionnaire response.[188] Hyosung also stated that it had previously provided the auditors' reports in its section A questionnaire response.[189] Hyosung provided its tax filing for HICO America for 2015.[190] We agree with Hyosung that the financial statements and tax reports are different. We found no further discrepancies in our review of these statements. Therefore, we determine that Hyosung has cooperated with our requests for information on this issue and do not find this to be a basis for the application of adverse facts available.

Improper Reporting of Accounts Receivable

The petitioner alleges that HICO America reported a significant change in the accounts receivable balance.[191] The petitioner believes this change could be a reflection of an expected

[184] *Id*. at 28-29.
[185] *Id*. at 29.
[186] *See* Commerce's Letter, "Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2015-2016: First Sales Supplemental Questionnaire," dated April 12, 2017 (First Sales Supplemental Questionnaire), at Questions 66-68.
[187] *Id*. at Question 74.
[188] *See* Hyosung's Letter, "Large Power Transformers from Korea: Supplemental Questionnaire Response," dated May 8, 2017 (Hyosung Supplemental A Response), at S-35 and Exhibit S-33.
[189] *Id*. at S-35.
[190] *Id*. at S-36 and Exhibit S-38.
[191] *See* Petitioner's Case Brief at 17-18.

refund of service-related revenues to various customers, and that the change indicates that Hyosung's reported sales prices are not reliable.[192]

Hyosung indicates that the change in accounts receivable represents an expected [ ] and the use of [ ].[193] Hyosung provided this explanation in response to a request for information from Commerce regarding changes in the accounts receivable balances from the previous POR to the review period in question.[194] Exhibit S-34 details the calculations for the expected [ ]. We have examined this information and have found Hyosung's explanation to be plausible, and have found no other information that would call into question the explanation provided. As to the question of possible [ ], Hyosung notes that Exhibit S-34 provides in part information regarding a refund from a service provider.[195] Hyosung notes that this is not a payment from HICO America to a customer, but a refund of a payment by a service provider to HICO America.[196] Concerning questions regarding [ ], Hyosung states that there is nothing inconsistent with updating and accruing an accounts receivable balance as progress payments are received, while on the other hand waiting until a unit is accepted by the customer before recognizing the amount received as income.[197]

Hyosung's description of [ ] is consistent with its description of the sales and invoicing process. Additionally, while there is no further evidence on the record regarding the refunding of a payment by a service provider to HICO America, we have no evidence on the record to question the plausibility of the explanation. Therefore, we find that

[192] *Id*.
[193] *See* Hyosung Supplemental A Response at S-35 and Exhibit S-34.
[194] *See* First Sales Supplemental Questionnaire at Question 69.
[195] *See* Hyosung Rebuttal Brief at 30.
[196] *Id*.
[197] *Id*.

the record information regarding accounts receivable is not sufficient to determine that Hyosung failed to cooperate with Commerce's request for information on this issue, and cannot serve as the basis for the application of adverse facts available.

Hyosung Issues

Order Acknowledgement Form

Petitioner's Comments

- ABB states that, given the Court's express direction, it understands Commerce's reticence to rely on the OAFs to implement its capping policy or as a basis supporting its use of total AFA.[198]
- Nevertheless, ABB argues that Commerce should indicate in its final remand redetermination that it is complying with the Court's order in this regard under respectful protest.[199]
- ABB believes that a finding that Commerce may never rely on an internal company document goes too far, and that the correct interpretation of the Court's opinion is that Commerce may not rely on internal documentation to implement its capping policy absent some indication that the internal document reflects separately negotiated services to be provided by the seller and paid for by the buyer.[200]
- ABB continues to assert that the OAF should be treated as containing evidence of separately negotiated revenues between the seller and the customer.[201]

Commerce's Position:

As we noted in the Draft Remand Redetermination, the Court specifically stated in *ABB II*[202] that Commerce may not rely on internal {company} communications, absent any evidence of communication with the unaffiliated customer, to find that there were additional service-related revenues and expenses that {a company} failed to report.[203] Therefore, we have not relied on the internal documentation.

[198] *See* Petitioner's Comments at 15.
[199] *Id.*
[200] *Id.*
[201] *Id.*
[202] *See Remand Order* at 21 (citing *ABB Inc. v. United States ("ABB II")*, 42 CIT __, 355 F. Supp. 3d 1206 (2018), *reconsideration denied*, 43 CIT __, 375 F. Supp. 3d 1348 (2019)).
[203] *See Remand Order* at 21 (citing *ABB II*).

Overlapping Invoice

Petitioner's Comments

- ABB argues that nothing in Hyosung's responses or briefs explains the inconsistency of its provision of a single invoice for multiple sales across review periods.[204]
- ABB contends that either Hyosung's quantity and value reconciliation provided in the instant review, the documentation provided (*i.e.*, the invoice), or both are not accurate.[205]
- ABB believes Commerce has correctly found that Hyosung has not documented the basis for U.S. sales reporting despite being given the opportunity to do so.
- ABB states that establishing that the correct quantity and value of U.S. sales has been reported is the most basic element of verifying the accuracy of a respondent's questionnaire response.[206]
- ABB asserts that, at this point in the proceeding, the necessary information for Commerce to verify the accuracy of Hyosung's quantity and value of sales is not on the record and therefore warrants the application of facts available.[207]
- ABB agrees with Commerce's determination that the application of an adverse inference is warranted because Hyosung did not act to the best of its ability to provide requested information regarding the sales reconciliation despite having multiple opportunities to do so.[208]
- ABB requests that Commerce add statutory citations to its final remand redetermination for the portion of the facts available statute on which it is relying.[209]

Hyosung's Comments

- Commerce lacked clear understanding of the invoice.[210]
- Commerce did not raise any concern regarding the invoice prior to September 7, 2017 preliminary result—despite having several opportunities to do so; thereby contravening the court's order and Commerce's statutory obligation under 19 U.S.C. 1677m(d) to seek clarification.[211] Furthermore, Commerce flouted the notion of "basic considerations of fairness and commitment to investigative integrity—to seek clarification."[212]
- Commerce's current finding of adverse fact available flies in the face of prior explicit determination on the third administrative review that the said invoice, [ ], did not undermine the accuracy of Hyosung's reporting.[213]
- Taken in the context of all information on record, the Department's prior examination of the flagged invoice in the third administrative review, a determination of adverse facts

[204] *See* Petitioner's Comments at 4-5.
[205] *Id.* at 5.
[206] *Id.* at 6 (citing *Fujian Mach. & Equip. Imp. & Exp. Corp.*, 276 F. Supp. 2d 1371, 1376 (Ct. Int'l Trade 2003)).
[207] *Id.*
[208] *Id.*
[209] *Id.*
[210] *See* Hyosung's Comments at 2
[211] *Id.* at 3.
[212] *Id.* at 4.
[213] *Id.*

available based on an "isolated portion of invoice number [ ]" was not warranted.[214]

- Commerce's failure to seek clarification on this is in direct contravention of CIT's remand order.[215] "The record contains no evidence that the Department ever identified concerns about the issues it now identifies, and the Department never issued a questionnaire that included questions that 'informed the person submitting the response of the nature of the deficiency,' and further did not "provide that person with an opportunity to remedy or explain the deficiency," as required by the statute [216] and as ordered by the court."[217]
- Invoice number [ ] reflected amount for initial progress payment of 40% as specified in purchase order (PO) [ ] based on [ ]. Invoice numbers [ ] contains 'technical errors resulting in the duplication of line items causing [ ] line items for the four units reflected," same goes for invoice number [ ] (reflects final progress payment of 10%).[218]
- Commerce's failure to seek clarification on this issue is in direct contradiction of CIT's remand order. CIT ruled that "Commerce is without legal authority to resort to facts otherwise available when it fails to comply with {19 U.S.C.} 1677m(d)."[219]

Commerce's Position:

After careful consideration of all interested party comments, we find that the issue of the overlapping invoice is not grounds for the application of total adverse facts available with respect to Hyosung. In its comments on Commerce's draft remand redetermination, Hyosung cites to record evidence to outline reasons that the invoice in question reasonably reflects payment for [ ] LPTs, [ ] from the instant review and [ ] from the previous review.[220] Our examination of the record evidence in light of this explanation is detailed below.

Hyosung argues that Commerce confirmed the accuracy of the invoice in question in the previous administrative review, and states that "nothing provided on the record of this administrative review detracts from the Department's finding in AR3."[221] Hyosung's

[214] *Id.*
[215] *Id.* at 5.
[216] *See* Section 782(d) of the Act.
[217] *Id.* at 20.
[218] *Id.* at 6-8.
[219] *Id.* at 14.
[220] *See* Hyosung's Comments at 2-13.
[221] *Id.* at 4, 10, 12.

arguments here miss the point. Commerce's examination of the invoice in question in AR3 does not negate the concerns that Commerce has had with the re-use of this invoice in the fourth administrative review. As noted above, in AR3 the invoice was submitted in support of [ ] sale report in AR3. We stated that our examination of the invoice in question and the record in this review period raised a factual discrepancy as to the number of sales covered by the invoice, or how the invoice would be used to cover multiple sales.[222] Hyosung's offered explanation, that an invoice may cover multiple sales in multiple entries over multiple periods of review,[223] did not address Commerce's concerns as it does not demonstrate specifically how the invoice supports the sales and entries in question. By itself, we do not find that our examination and acceptance of the invoice in question in AR3 negates our stated concerns in this review period.

We also disagree with Hyosung's assertion that Commerce was not in compliance with 19 USC § 1677m(d). Hyosung references questions suggested by the petitioner that Commerce did not ask, suggesting that asking such questions would have satisfied Commerce's responsibility under 19 USC § 1677m(d).[224] What Hyosung fails to note, however, is that the petitioner's comments proposing these questions were submitted on June 1, 2017.[225] By this date, as described above, Commerce had already issued the antidumping duty questionnaire and two sales supplemental questionnaires to Hyosung requesting information regarding both the sales process and Hyosung's reported quantity and value. As discussed further below with respect to the unreported sales discounts and interest revenue, Commerce need not issue multiple, new supplemental questionnaires each time a previous questionnaire or supplemental

[222] *See Final Results* IDM at Comment 4B. "Our examination of the invoice and record evidence leaves us unclear as to the number of sales covered, as well as why this invoice would be used to cover multiple sales."
[223] *See* Hyosung's Letter, "Large Power Transformers from Korea: Case Brief of Hyosung Corporation and Request for Closed Hearing," dated October 13, 2017 (Hyosung Case Brief), at 23-24.
[224] *See* Hyosung's Comments at 13.
[225] *Id.* at footnote 21.

questionnaire response reveals new factual errors or concerns with a respondent's submitted data.

Nevertheless, using record evidence from this administrative review, Hyosung has clarified how the invoice in question may cover [ ] sales over [ ] periods of review even though it appears to only list and apply to [ ]. Hyosung first notes that the original purchase order, and change orders, from customer [ ] are on the record of this proceeding and show an initial order for [ ] units with a total order price of $[ ] and [ ] on the total order amount.[226] The total amount was revised to $[ ].[227] Hyosung generated invoices for this purchase order using series [ ].[228] One of the units to be sold under this purchase order was [ ].[229]

Hyosung provided copies of the invoices in series [ ] in AR3[230] and provided screenshots of the invoices in their comments.[231] Each invoice, according to Hyosung, represents the various [ ] listed in the purchase order.[232] However, we note that the total values of the line items in each invoice exceeds the total value of the purchase order. Hyosung states that invoices [ ] contain erroneous duplication errors,

[226] *Id*. at 5 (citing Petitioner's Submission of AR3 Documents on Record of AR4, dated February 13, 2017, at Attachment 1;0 and Hyosung Supplemental BC Response at Exhibit SBC-64. The purchase order appears on pages 2-14 of SBC-64. This exhibit was filed in response to a question from Commerce regarding a [ ] LPT, referenced in Hyosung's Comments at page 6. Additionally, we note that Hyosung references an "Exhibit SD5-3" as part of Attachment 10. We believe that this is actually Exhibit S5-3, which is part of Attachment 10 of Petitioner's February 13, 2017, submission, as this contains the cited information and there is no "Exhibit SD5-3.").
[227] *Id*.
[228] *Id*. at Attachment 10, Exhibit S5-5.
[229] *See* Hyosung Supplemental BC Response at Exhibit SBC-64. In Hyosung's Comments at 6, footnote 14, Hyosung references "Exhibit SBC-65." There is no such exhibit on the record. However, we have previously noted above Exhibit SBC-64 associated with this issue.
[230] *See* Petitioner's Submission of AR3 Documents on Record of AR4, dated February 13, 2017, at Attachment 10 at Exhibit S5-5. The invoices for sale SEQU [ ] from the third AR are listed at the end of Exhibit S5-5.
[231] *See* Hyosung Comments at 7-11.
[232] *Id*.

doubling the total line items.[233] Thus, according to Hyosung, invoice [ ] should contain a single line item with a value of $[ ].[234] In order to support its statement that half of the line items of invoices [ ] are unintentional duplicates, Hyosung states that it reconciled the sales value from Hyosung to HICO America and that the reconciliation contains the payment for invoice [ ].[235]

Commerce has examined Hyosung's narrative and the supporting information on the record. We find that record evidence provides a reasonable explanation as to how one invoice, [ ], may cover [ ] sales over two review periods. We also find Hyosung's explanation regarding the total value of the invoices, and how those totals exceed the contract amount and the reported value for the sales, reasonable. As noted above, Hyosung stated that inadvertent duplication of line items on [ ] invoices resulted in the invoice values exceeding the reported sales values. Additionally, Hyosung's explanation is consistent with our findings in AR3.[236]

The petitioner argues that Hyosung provided [

] for sales to customer [ ] which involve the sales in question.[237] In support of this contention, the petitioner states that Hyosung never submitted an invoice with the number [

], and speculate that this further "calls into question the accuracy of Hyosung's reported quantity and value."[238] We note, however, that in AR3 Commerce addressed this issue with respect, in part, to the invoices associated with [ ].[239] In this segment of the proceeding,

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[233] *Id*. at 9-10.
[234] *Id*. at 10.
[235] *Id*. at 13 (citing Hyosung Supplemental BC Response at SBC-55).
[236] *See AR3 Final Results* IDM at Comment 12.
[237] *See* Petitioner's Comments at 18.
[238] *Id*. at 18-19.
[239] *See AR3 Final Results* IDM at Comment 12. Commerce stated that "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

record evidence indicates that Hyosung reported sales with invoices which are not sequential.[240] Thus, we determine that the non-sequential invoices for sales SEQU [ ] do not provide a basis for total adverse facts available.

The petitioner also states that invoice [ ] indicates that LPTs were delivered to [ ], while SEQUs [ ] were delivered to [ ]. We note that invoice [ ] also indicates delivery to [ ], while invoice [ ] indicates delivery to [ ]. The original purchase order indicates that the LPTs are to be shipped to [ ] for the [ ] site.[241] We note that one document indicates that a transformer was [ ].[242] We find the fact that the values of the invoices correspond to the reported values for these sales is sufficient to demonstrate that the invoices in question cover the sales in question.

Petitioner also states that the reported payments for SEQUs [ ] do not match to the values on invoice [ ].[243] However, as noted above, record evidence indicates that invoice [ ] is part of a [ ] LPTs. The reported payments for SEQUs [ ] would thus be an allocated percentage of the payment amount listed on invoice [ ].

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sequential. Hyosung also states that the 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." 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." As noted previously, the record evidence underlying our findings in AR3 is on the record of this proceeding. *See* Petitioner's Submission of AR3 Documents on Record of AR4, dated February 13, 2017.

[240] *See* Hyosung Supplemental BC Response at Exhibit SBC-63(1) and SBC-66, with respect to SEQUs [ ]. Hyosung reported [ ] invoices, with invoice numbers [ ].

[241] *See* Hyosung Supplemental BC Response at Exhibit SBC-64.

[242] *Id*.; *see also* the [ ].

[243] *See* Petitioner's Comments at 19.

That is, the value of $[ ] would be divided by [ ]. That figure, which is $[ ], appears as the value for [ ] in the database for SEQUs [ ].[244]

The petitioner also states that the OAF for SEQUs [ ] is "inconsistent with the corresponding information Hyosung reported in U.S. sales database for these sales" and that "{s}pecifically, the OAF for the sale listed [

] respectively.[245] As we noted in our preliminary analysis memorandum for Hyosung, it appears that Hyosung failed to report the proper OAFs for SEQUs [ ].[246] In its case brief, Hyosung noted the issue, but stated that Commerce had not afforded Hyosung an opportunity to explain the discrepancy and that the OAF is not a sales document but an internal planning document that does not often match with the invoice to the customer.[247] We agree with petitioner that the submitted OAF does not appear to correspond to SEQUs [ ]. However, this does not indicate that the values on invoice [ ] are incorrect or that the issue of an invoice which overlaps two review periods and covers [ ] sales is sufficiently unclear that Commerce must resort to adverse facts available.

Therefore, our review of the record evidence in light of Hyosung's brief on our Draft Remand Redetermination provides sufficient explanation as to how one invoice can cover [ ] sales over two review periods. In conclusion, we do not believe that total adverse facts available is appropriate with respect to the overlapping invoice.

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[244] *See* Hyosung Supplemental BC Response at Exhibit SBC-19(2).
[245] *See* Petitioner's Comments at 19-20.
[246] *See* Memorandum, "Analysis of Data/Questionnaire Responses Submitted by Hyosung Corporation in the Preliminary **Error! Main Document Only.**Results of the 2015-2016 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea," dated August 31, 2017, at 3.
[247] *See* Hyosung Case Brief at 20.

Unreported Sales Adjustments

Petitioner's Comments

- ABB urges Commerce, in the final remand, to cite to additional, specific record evidence regarding its finding that Hyosung failed to cooperate to the best of its ability due to its failure to report U.S. sales price and associated price adjustments in the manner requested by Commerce.[248]
- Additionally, ABB insists that, in the final remand, Commerce should indicate that additional, supplemental questions regarding discounts and interest charges were not necessary because Hyosung originally claimed not to incur any such charges, that Hyosung never did disclose their existence, and that Commerce observed these expenses and revenue items in invoices that Hyosung submitted for a different purpose.[249]
- ABB states that the missing price adjustment information prevented Commerce from determining net price for individual U.S. sales as well as whether Hyosung reported U.S. sales quantity and value for the POR accurately.[250]
- ABB contends that, given its history of responses, Hyosung was not entitled to another opportunity to correct its response to properly report adjustments to price ,such as discounts and interest.[251]
- ABB notes that once Hyosung affirmatively misled Commerce as to the existence of interest and discounts and failed to avail itself of the opportunity to correct the other missing data, Commerce was no longer obligated to provide Hyosung with additional opportunities to correct the record.[252]
- ABB maintains that a deliberate failure to provide requested information justifies both the application of facts available and the adverse inference, and obviates the need to seek further information under 19 U.S.C. § 1677m(d).[253]

Hyosung's Comments

- With regards to price adjustments, Hyosung reiterated the court's order "that Commerce must reconsider this issue and collect or identify additional information to make a determination supported by substantial evidence and otherwise in accordance with law."[254]
- Hyosung argues that there are no indications that Commerce complied with the court ruling. There are no indications that Commerce sought addition information and clarification or reconsidered the aforesaid issue in any "substantive way."[255]

[248] *See* Petitioner's Comments. at 11-12.
[249] *Id.* at 12.
[250] *Id.*
[251] *Id.*
[252] *Id.* at 13.
[253] *Id.* at 14.
[254] *Id*. at 18.
[255] *Id.*

- "Commerce's attempt to tie the price adjustment issue to the unrelated issue of Hyosung's U.S. warehouse expenses" merely reiterates a previous assertion which the court had ruled against, thereby contravening "the court's remand instructions."[256]
- The record does not support a determination of total AFA.[257]
- Commerce's argument that it is not obliged to send out "unending number of supplemental questionnaires" is akin to a "strawman argument" since Hyosung has not requested an "unending number of supplemental questionnaires." [258] Commerce simply disregarded the court's remand order.[259]
- The record shows no evidence that the current concerns were ever identified in prior administrative reviews.[260]
- There were no questions in the questionnaire that informed the respondent of any issues, thereby granting Hyosung no opportunity to clarify or remedy the deficiency.[261]
- Commerce only issued one questionnaire which did not "address directly identify any deficiencies with respect to the price adjustment" issue, thereby affording Hyosung no opportunity to cure any deficiency. [262]
- Commerce "must acknowledge this deficiency and reverse its finding in the final remand redetermination."[263]
- While Commerce complied with section 1677m(d) in requesting documentation regarding warehousing expenses, nothing in the supplemental questionnaire indicated that Hyosung was on notice for any alleged deficiency regarding price adjustment. [264]
- Commerce did not demonstrate how the corrections made in Hyosung's supplemental sales questionnaire response of May 8, 2019, rationally correlates with a finding of total AFA.[265]
- Hyosung did not disaggregate the amount shown on the invoice by listing a price and discount, rather it reported the total amount charged the customer.[266] To date, Commerce has not indicated that it found anything contradicting Hyosung's reporting methodology.[267]
- As for the charge that "Hyosung failed to report interest amount charged to the customer," the actual amount that the customer was required to pay was the "invoice price less interest charges."[268]

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[256] *Id.*
[257] *Id*.
[258] *Id.* at 19.
[259] *Id.*
[260] *Id.*
[261] *Id.*
[262] *Id.*
[263] *Id*.
[264] *Id.* at 21.
[265] *Id.* at 22.
[266] *Id*.
[267] *Id.*
[268] *Id*. at 23.

- If Hyosung's reporting methodology does not affect Commerce's margin calculation, a finding of total AFA is unwarranted.[269]
- Rendering Hyosung's submitted data wholly unusable is unreasonable because any alleged failure to "report a revenue for U.S. sales mathematically *could not* result in a lower dumping margin for Hyosung."[270]
- Commerce had heretofore, "made clear that AFA is not appropriate where with a few isolated exceptions, all data necessary to perform our margin calculations is on the record of this proceeding."[271]
- Hyosung points out that in a case of similar facts, "the Department found that facts available was not warranted because there were no gaps in the record and Samsung had not withheld requested information."[272]
- Similarly, Hyosung "withheld no information throughout the proceedings."[273]

Commerce's Position:

We continue to find, after reviewing all comments on the issue, that Hyosung failed to cooperate to the best of its ability when reporting all sales adjustments, and that the application of total adverse facts available is warranted. Our discussion of interested party comments is below.

Throughout its comments, Hyosung argues that Commerce failed to comply with the Court's order with respect to the issue of unreported price adjustments and discounts.[274] However, Hyosung misconstrues the Court's order to Commerce. Hyosung argues that the Court's order required Commerce to request new information regarding this issue,[275] or that Commerce failed to comply with its statutory obligation under 19 USC §1677m(d) to "promptly" inform Hyosung of any deficiencies and allow Hyosung an opportunity to remedy them.[276]

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[269] *Id*.
[270] *Id*. at 24.
[271] *Id.*
[272] *Id*.
[273] *Id*. at 25.
[274] *See generally* Hyosung's Comments at 18 -32.
[275] *Id*. at 18. Hyosung states that Commerce "collected *no* additional information on this issue." *Id.* at 20. Commerce did not inform Hyosung of the deficiency and provide an opportunity to remedy the deficiencies as required by the statute "and as ordered by the court." *Id.* at 21.
[276] *See* Hyosung's Comments at 19-21.

However, concerning a supposed requirement to request new information, the Court stated that Commerce "must reconsider this issue and collect *or* identify additional information to make a determination supported by substantial evidence and otherwise in accordance with the law" (emphasis added).[277] The collection of new information is an option, not a requirement, of the Court's order.

Hyosung also misconstrues the statute with respect to deficiencies and Commerce's requirements under that portion of the statute.[278] The statute requires Commerce to notify a respondent of a deficiency, but does not require Commerce to issue multiple supplemental questionnaires if each questionnaire response contains new or unresolved deficiencies. Commerce is not required to issue supplemental questionnaire after supplemental questionnaire if each questionnaire response contains new or unresolved deficiencies. Commerce is also not required to inform a respondent promptly of a deficiency if Commerce is not aware of a deficiency. As the Court has stated, {I}nherent in the requirement of § 1677m(d) is a finding that Commerce was or should have been aware of the deficiency in the questionnaire response. When a respondent provides seemingly complete, albeit completely inaccurate, information, § 1677m(d) does not require Commerce to issue a supplemental questionnaire seeking assurances that the initial response was complete and accurate. In other words, Commerce is not obligated to issue a supplemental questionnaire to the effect of, "Are you sure?"[279]

As we outlined in our Draft Remand Redetermination, after reviewing Hyosung's initial questionnaire responses, Commerce notified Hyosung of a suspected deficiency with respect to sales adjustments.[280] Hyosung initially stated that there were no warehouse expenses in the

[277] *See* Remand Order at 29.
[278] *See* 19 USC §1677m(d).
[279] *See ABB INC. v. United States* Consol. Court No. 16-00054, Slip Op. 18-156 (CIT November 13, 2018), at 27.
[280] *See* Draft Remand Redetermination at 17, concerning the sales adjustment USWAREHU.

United States,[281] but did report warehousing revenues.[282] Commerce requested further information, reasoning that it would be odd to report revenues for a service that supposedly had no expenses associated with it. The information is necessary as, absent such expenses, it is not possible for Commerce to apply properly its standard capping methodology to the reported service-related revenues. However, with respect to discounts and interest revenue, Hyosung initially stated that there were no discounts or interest revenue.[283] As Hyosung's response seemingly appeared to be complete with respect to the issue of discounts and interest revenue, we did not request further information in our supplemental questionnaire. Only after receiving the Hyosung's response[284] to Commerce's supplemental questionnaire[285] Commerce become aware of the unreported sales adjustments with respect to discounts and interest revenue.

Hyosung had the opportunity to report its discounts and interest revenue 1) in its original questionnaire response, when Commerce specifically requested that Hyosung report such sales adjustments, or 2) in response to the first supplemental questionnaire, where Commerce requested clarification of a deficiency regarding sales adjustments that it identified in review of the original questionnaire response. Hyosung failed to do so. As we have noted, 19 USC §1677m(d) does not require Commerce to issue repeated supplemental questionnaires each time a questionnaire response from a respondent reveals new deficiencies that the respondent failed to report previously.

[281] *See* Hyosung Sections BCD Response at C-32.
[282] *Id*. at C-23 through C-24.
[283] *See* Hyosung Sections BCD Response at C-25 through C-26 (with respect to discounts); and *generally* Hyosung Sections BCD Response (with respect to interest revenue).
[284] *See* Hyosung Supplemental BC Response at Exhibit SBC-66 (with respect to SDQUs [ ], [ ] and [ ]).
[285] *See* Second Sales Supplemental Questionnaire.

Hyosung also argues that there is not a reasonable connection between Hyosung's failure to report price adjustments and Commerce's application of total adverse facts available.[286] In support of this argument, Hyosung states that the "issue here is whether Hyosung should have disaggregated the amounts shown on the invoice to list a price and a discount or simply report the total amount charged to the customer."[287] Hyosung further argues that Commerce "to date has not stated that it has found any of Hyosung's reported gross unit prices to equal anything but the amount charged to the customer."[288] With respect to interest revenue, Hyosung states that the application of total adverse facts available is not logical, since a failure to report revenue for a U.S. sale could not result in a lower dumping margin.[289]

Contrary to Hyosung's statements, the record does not show that the reported gross unit prices "equal anything but the amount charged to the customer." We are unable to find that the reported gross unit prices are accurate, because Hyosung did not report its discounts or its interest expenses. The effect on the margin is not the issue. The issue is whether Hyosung's database is complete and accurate. The record shows that it is not.

As we note below, we continue to find that total adverse facts available is warranted for Hyosung, for its failure to report certain sales adjustments.

Application of Total AFA

Hyosung's Comments

- Commerce lacks support for its finding of total AFA and for shutting down the review and cancelling verification in its Draft Remand Redetermination.[290]
- A total AFA determination is unreasonable on "the basis of…minor deficiencies in record and no affirmative evidence of noncooperation.[291]

[286] *See* Hyosung's Comments at 22-24.
[287] *Id*. at 22.
[288] *Id*.
[289] *Id*. at 24.
[290] *See* Hyosung Comments at 25.
[291] *Id.*

- Commerce flouted the express terms of 19 U.S.C. 1677m(d). [292]
- Pursuant to the court's ruling, a determination of AFA is not warranted given that no opportunity was granted Hyosung to offer clarification on the two issues which purportedly underpins the finding.[293]
- Hyosung argued that the court held that a failure to inform respondents of deficiencies in their response excludes them from the review process.[294]
- Commerce exceeded its statutory authority under 19 U.S.C. 1677e(a) by shutting down the review and investigation.[295]
- Commerce's claim that it gave Hyosung multiple opportunities to remedy the deficiencies, and on which its finding of noncooperation is based, falls apart in the face of the preceding arguments.[296]
- Commerce has not put forward enough evidence to support its determination of total AFA.[297]

Commerce's Position:

We agree with the petitioner that Commerce should resort to total adverse facts available in this remand. Section 776(a) of the Act provides that Commerce, subject to section 782(d) of the Act, will apply "facts otherwise available" if necessary information is not available on the record or an interested party: 1) withholds information that has been requested by Commerce; 2) fails to provide such information within the deadlines established, or in the form or manner requested by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act; 3) significantly impedes a proceeding; or 4) provides such information, but the information cannot be verified. Additionally, section 776(b) of the Act provides that if Commerce finds that an interested party failed to cooperate by not acting to the best of its ability to comply with a request for information, Commerce may use an inference adverse to the interests of that party in selecting the facts otherwise available.

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[292] *Id*. at 26.
[293] *Id*.
[294] *Id*. at 27.
[295] *Id*.
[296] *Id*. at 31.
[297] *Id*.

Citing to a separate proceeding,[298] Hyosung states that Commerce has not found it appropriate to apply total adverse facts available in instances where "with a few isolated exceptions, all data necessary to perform our margin calculations is on the record of this proceeding" and posits that the same situation exists in this segment of this proceeding.[299] Hyosung avers that it withheld no information throughout the proceeding as well.[300]

We disagree with Hyosung's contention that its failure to report price adjustments should not result in the application of total adverse facts available. With respect to the arguments regarding gross unit price, the Court noted that Hyosung argued before the Court that the gross unit prices reflected a purchaser's net outlay, and that "{r}egardless of what Hyosung's understanding was, it is quite clear that Commerce instructed Hyosung to report gross unit prices (not net prices) and to report separately any discounts and interest adjustments."[301] Commerce does not request that respondents report net prices, but to report gross unit prices with all price adjustments, for a number of reasons. For example, as noted above, Commerce requested that Hyosung report separate U.S. warehouse expenses in order to implement properly Commerce's capping methodology. As we stated in the Draft Remand Redetermination,[302] the accurate reporting of U.S. prices, including all price adjustments, "is critical to Commerce's ability to complete meaningful dumping calculations." Similarly, Hyosung's statement that Commerce has yet to find any problems in the reported gross unit prices is not on point. As we stated above, after Hyosung submitted its initial questionnaire response, Commerce reviewed the response and requested that Hyosung correct a discrepancy and report a sales adjustment

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[298] *See Notice of Final Determination of Sales at Less Than Fair Value and Negative Critical Circumstances Determination: Bottom Mount Combination Refrigerator-Freezers From the Republic of Korea*, 77 FR 17413 (March 26, 2012), and accompanying IDM at Comment 20.
[299] *See* Hyosung's Comments at 24-25.
[300] *Id*. at 25.
[301] *See Remand Order* at 28.
[302] *See* Draft Remand Redetermination at 19.

regarding warehouse expenses in the United States. After Hyosung submitted its supplemental questionnaire response, Commerce reviewed the response and discovered evidence of two previously unreported sales adjustments. Thus, three sales adjustments which Hyosung claimed it did not have for its U.S. sales were discovered over the course of our review of two questionnaire responses. Given this record, we cannot be confident that Hyosung has fully reported all sales adjustments and that Hyosung has cooperated to the best of its ability to provide Commerce with all of the requested and necessary information to calculate accurate margins. We do not consider the failure by Hyosung to report these adjustments as "a few isolated exceptions" but instead a pattern of withholding information despite two separate questionnaires requesting complete information. Finally, Hyosung's claim that it "withheld no information throughout the proceeding" is contradicted by the Court's findings. The Court stated that "Commerce's finding that Hyosung's reporting of gross unit prices as well as discounts and interest charges was deficient was supported by substantial evidence."[303] Therefore, Hyosung's claims that that there is not a reasonable connection between Hyosung's failure to report price adjustments and Commerce's application of total adverse facts available is meritless.

In light of our analysis, Hyosung's summary arguments that the application of total adverse facts available is unsupported by substantial evidence are similarly without merit. Hyosung continues to claim that the deficiencies identified are "minor" and that there was no affirmative evidence of non-cooperation.[304] As we noted above, Hyosung's failure to report various sales adjustments which were reflected in the submitted sample sales documentation, despite opportunities to do so in the original and supplemental questionnaires, calls into question

[303] *See Remand Order* at 28.
[304] *See* Hyosung's Comments at 25.

the completeness and accuracy of the reported sales database. Additionally, as noted above, the Court has already stated that there is substantial evidence to support the finding that Hyosung was deficient in responding to Commerce's requests for information.

Hyosung argues that 19 USC § 1677m(d) does not permit Commerce to apply total adverse facts available "on narrow grounds following general requests for information" and that "broad questions" in the original questionnaire, or brief deficiency letters, also do not provide a basis for such an application.[305] Hyosung further argues that it is incumbent on Commerce to ask relevant questions.[306] Commerce's questionnaires were not brief, with the first sales supplemental questionnaire consisting of 76 questions[307] and the second sales supplemental consisting of 66 questions with multiple subparts.[308] Commerce was thoroughly engaged in its fact-finding efforts and worked to identify deficiencies as well as notify Hyosung of those deficiencies once they were identified. However, as we have noted, Commerce is not required to issue an endless series of multiple, new deficiency questionnaires each time it identifies new deficiencies in subsequent supplemental responses. Hyosung also argues that Commerce should have resorted to partial adverse facts available, to fill the gaps in what it characterizes as "a discrete category of information" and argues that the issue in question is tangential and does not invalidate the bulk of the information reported.[309] As we noted, however, the issue in this case is Hyosung's failure to report sales adjustments accurately, after Commerce had identified at least one unreported adjustment. The failure to report such sales adjustments indicates a pattern of deficient reporting that leaves us to question the accuracy and completeness of the

[305] *Id*. at 26. Hyosung's citation in footnote 53 is incomplete.
[306] *Id*.
[307] *See* First Sales Supplemental Questionnaire.
[308] *See* Second Sales Supplemental Questionnaire.
[309] *See* Hyosung's Comments at 27-32.

submitted database. Additionally, the unreported discounts and interest charges discovered after reviewing Hyosung's supplemental questionnaire response appear on [ ] out of [ ] sales for which Commerce requested certain sales documentation.[310] Given that there were [ ] reported U.S. sales,[311] it is unclear based on record evidence how extensive the deficiency is. Under such conditions, we cannot assume that the submitted data are sufficiently complete to use as a reliable basis in the calculation of dumping margins. The accuracy and completeness of the submitted U.S. sales database is essential to our calculation of an accurate margin, and our inability to determine that accuracy and completeness due to Hyosung's deficient and incomplete reporting renders it unusable. The application of partial AFA is thus inappropriate, as we cannot be certain of the accuracy of the data as a whole.

For these reasons, we continue to find that the application of total adverse facts available is warranted.

[310] *See* Hyosung Sections BCD Response at Exhibit SBC-9.
[311] *See* Hyosung's Letter, "Large Power Transformers from Korea: Section A Questionnaire Response," dated February 2, 2017, at Exhibit A-1.

Final Results of Redetermination

In accordance with the *Remand Order*, Commerce has reconsidered the record evidence. Based on our analysis, Commerce bases its decision to use total facts available with an adverse inference on, with respect to Hyosung, unreported sales adjustments and, with respect to Hyundai, understatement of home market gross unit prices. For purposes of these final results of redetermination, Commerce is applying the total AFA rate of 60.81 percent to Hyundai and Hyosung for the POR, August 1, 2015 through July 31, 2016, for LPTs from the Korea. The AFA rate is the dumping margin alleged in the petition of this review.[312]

12/19/2019

X 

Signed by: JEFFREY KESSLER

Jeffrey I. Kessler
Assistant Secretary
for Enforcement and Compliance

[312] *See* the Petition.