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Remand (Slip Op. 20-165)
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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. 20-165 (CIT November 18, 2020)

FINAL RESULTS OF REDETERMINATION PURSUANT TO COURT REMAND

I. 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 November 18, 2020, 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. 20-165 (CIT 2020) (*Second Remand Order*). These final remand results concern the final results in the antidumping duty (AD) administrative review (AR) of large power transformers (LPTs) 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]

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[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.

In response to motions filed by Hyundai, Hyosung, and Iljin, the Court directed Commerce to further explain or reconsider its reliance on total facts available, with adverse inferences, for both Hyundai and Hyosung in *Hyundai Heavy Industries, Co. Ltd. and Hyosung Corporation, Iljin Electric Co., Ltd. v. United States*, Consol. Court No. 18-00066, Slip Op. 19-105 (CIT 2019) (*First Remand Order*). 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 recorded 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 *First Remand Order*, Commerce reconsidered and further explained its finding regarding Hyundai's failure to provide information regarding accessories, Hyundai's failure to report home market gross unit prices properly, and Hyundai's failure to disclose an affiliated sales agent. Commerce also reconsidered and further explained its findings regarding Hyosung's failure to report service-related revenues recorded on 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 the *Second Remand Order*, the Court found that Commerce's findings with respect to the application of total adverse facts (AFA) available for both Hyundai and Hyosung were not supported by substantial evidence. The Court directed Commerce to reconsider its findings for both Hyundai and Hyosung, in accordance with the findings in the *Second Remand Order*. The

Court also deferred consideration of the rate assigned to Iljin, a company not subject to individual examination in the underlying review, pending Commerce's redetermination on remand.

II. DISCUSSION

A. 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.

B. 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 Electric Co., Ltd. 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 preventing Commerce

from calculating an accurate antidumping duty margin.[6] On March 9, 2018, Commerce issued the *Final Results*, determining final dumping margins of 60.81 percent for Hyosung, Hyundai and, therefore, the companies not selected for individual examination (including Iljin) 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.[7] Both Hyosung and Hyundai challenged Commerce's determinations to rely on total AFA and the rationales that Commerce relied upon as support.

In the *First 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.[8] 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.[9] The Court also held that Commerce's decision

[6] *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 Preliminary Decision Memorandum (PDM).
[7] *Id*. at 5-20.
[8] *See First Remand Order*, Slip Op. 19-105 at 30.
[9] *Id*. at 20-26.

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.[10]

Therefore, the Court directed Commerce to support its decision with a reasonable explanation that is based on record evidence.[11] 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.[12] 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.[13] Thus, the Court directed Commerce to reconsider and/or further explain its conclusions to use total AFA on remand.

In addition, in the *First Remand Order*, the Court held that Commerce's determination that Hyundai withheld information regarding accessories and failed to cooperate to the best of its ability was unsupported by substantial evidence,[14] 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.[15] 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.[16] 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

[10] *Id*. at 25.
[11] *Id*. at 26.
[12] *Id*. at 27.
[13] *Id*. at 29.
[14] *Id*. at 31.
[15] *Id*. at 39.
[16] *Id*. at 40.

product, non-foreign like product, or "accessories."[17] 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.[18] Finally, 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.[19] The Court concluded that the record was unclear whether the "sales agent" referred to Individual X or Company Y.[20] The Court held that Commerce did not identify evidence to support its affiliation finding under the statute.[21] The Court also found that Commerce did not address Hyundai's arguments in its case brief, with respect to this affiliation issue, in the final results of review.[22] 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.[23]

On December 19, 2019, Commerce issued its final redetermination on remand in response to the *First Remand Order*.[24] In the Redetermination on Remand, Commerce continued to find that the application of total AFA was warranted with respect to both Hyundai and Hyosung.[25]

For Hyosung, with respect to service-related revenues on the OAFs, Commerce found that the Court's remand order in separate litigation precluded Commerce from relying on internal company communication to determine the existence and level of service-related revenues.[26] With

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[17] *Id*. at 42.
[18] *Id*.
[19] *Id*.
[20] *Id*. at 43.
[21] *Id*. at 44-45.
[22] *Id.*
[23] *Id*.
[24] *See Final Results of Redetermination Pursuant to Court Remand, 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, dated December 19, 2019 (First Redetermination on Remand), available at https://enforcement.trade.gov/remands/19-105.pdf
[25] *Id*. at 15, 21-22, 62.
[26] *Id.* at 10-11, 43; *see also ABB Inc. v. United States* , 42 CIT __, 355 F. Supp. 3d 1206 (2018), *reconsideration denied*, 43 CIT __, 375 F. Supp. 3d 1348 (2019).

respect to a single invoice covering multiple sales, Commerce determined that Hyosung had provided an adequate explanation for how one invoice could be used to support multiple sales over multiple periods of review.[27] Concerning the unreported sales adjustments, Commerce continued to find that Hyosung had not cooperated to the best of its ability and that total AFA was warranted.[28] Finally, Commerce also addressed a number of issues raised by the petitioner and did not find any of these to be a reasonable basis for the application of total AFA.[29]

For Hyundai, with respect to its reporting of accessories, Commerce determined that Hyundai's reporting was reasonable.[30] Nevertheless, Commerce continued to find that defining "accessories" was no longer relevant and explained that it will treat parts and components as defined by the language of the scope of the order.[31] Commerce continued to find that Hyundai understated the gross unit prices in the home market due to inconsistent treatment of merchandise under consideration (which involves parts and components), and that Hyundai's understatement of the gross unit price was an appropriate basis to continue the application of total AFA.[32] With respect to the issue of an affiliated sales agent, Commerce reexamined the record evidence and determined that Hyundai did not fail to report its affiliation with the sales agent in question.[33] Finally, Commerce addressed a number of issues raised by the petitioner and did not find any of these to be sufficient to warrant the application of total AFA.[34]

C. Draft Results of Redetermination Pursuant to Remand

Commerce released its Draft Remand Redetermination, along with analysis memoranda for

[27] *See* Redetermination on Remand at 11, 45-50.
[28] *Id*. at 53-61.
[29] *Id*. at 35-42.
[30] *Id*. at 15-16.
[31] *Id*. at 16-17.
[32] *Id*. at 17-19, 24-32.
[33] *Id*. at 20-21.
[34] *Id*. at 32-35.

both Hyundai and Hyosung, on March 5, 2021, and invited comments from interested parties.[35] ABB Enterprise Software, Inc. (ABB), Hyundai, and Hyosung submitted comments on March 15, 2021.[36]

D. Final Remand Results

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:

> (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 by Commerce, subject to subsections (c)(1) and (e) of section 782 of the Act;
>
> (C) significantly impedes a proceeding... , or
>
> (D) provides such information but the information cannot be verified …[37]

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.

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[35] *See* Draft Results of Remand Determination, *Hyundai Heavy Industries, Co. Ltd. v. United States and ABB Inc.*, Court No. 18-00066, Slip Op. 20-165 (CIT March 5, 2021) (Draft Remand Redetermination). We note that the title of the Draft Remand Redetermination was incorrect, and that the correct title is "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)."

[36] *See* ABB's Letter, "Large Power Transformers from the Republic of Korea – Petitioner's Comments on the Draft Remand Redetermination," dated March 15, 2021 (Petitioner 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 March 15, 2021; *see also* Hyosung's Letter, "Large Power Transformers from Korea: Comments on Draft Remand Redetermination," dated March 15, 2021 (Hyosung Comments).

[37] *See* 19 U.S.C. § 1677e(a)(2).

1. Hyosung

Unreported Discounts

In its *First Remand Order*, the Court recognized that Hyosung failed to provide the requested information regarding relevant discounts and price adjustments.[38] However, the Court further indicated that Commerce's authority to disregard Hyosung's submitted data and instead rely on facts available is subject to section 782(d) of the Act.[39] Thus, the Court contended that Commerce did not identify the opportunities provided to Hyosung to remedy deficiencies, and found that Commerce's decision to apply facts available, with an adverse inference, was therefore unsupported by substantial evidence.[40] In the *Second Remand Order*, the Court examined Commerce's findings and determined that Commerce failed to meet its obligations under section 782(d) of the Act.[41] More specifically, the Court found that section 782(d) of the Act requires Commerce to provide a party with an opportunity to remedy or explain a deficiency "to the extent practicable."[42] The Court further found that Commerce failed to provide such an opportunity, as the last questionnaire response was submitted by Hyosung more than two months before Commerce issued the *Preliminary Results*.[43]

In its Second Sales Supplemental Questionnaire, Commerce requested complete sales documentation for certain U.S. sales.[44] Hyosung submitted the sales documentation for certain

[38] *See First Remand Order* at 27.
[39] *See* 19 U.S.C. § 1677m(d); *see also First Remand Order* at 28.
[40] *Id*. at 29.
[41] *See* 19 U.S.C. § 1677m(d); *see also Second Remand Order* at 17.
[42] *See also* 19 U.S.C. § 1677m(d); and *Second Remand Order* at 14.
[43] *Id*. at 16.
[44] *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 Question 66. Commerce requested complete sales documentation for SEQUs [ ].

sales, as requested in the Second Sales Supplemental Questionnaire, at Question 43.[45] Hyosung did not report any new variables for discounts or interest.

Commerce 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, in its Antidumping Duty Questionnaire, Commerce requested that Hyosung provide gross unit prices and all sales adjustments.[46] In response, Hyosung stated that it did not grant discounts, did not realize interest revenue, and did not incur U.S. warehousing expenses.[47] In the Second Sales Supplemental Questionnaire, Hyosung provided sales documentation for certain U.S. sales; the documentation Hyosung submitted demonstrated that their assertion that they had no discounts was incorrect and further demonstrated that Hyosung failed to report interest revenue which was contained on the commercial invoices for certain of those sales.[48]

Facts Available

Hyosung's initial assertions and representations concerning price adjustments were shown by Hyosung's own later submissions to be incorrect. Hyosung initially provided answers which appeared to be complete, and thus did not appear to require further supplemental questions. Upon review of Hyosung's supplemental questionnaire response, it became apparent that Hyosung did not report additional price adjustments. Given that Hyosung failed to accurately report its sales

[45] *See* Hyosung's Letter, "Large Power Transformers from Korea: Third Supplemental Questionnaire Response," dated June 21, 2017 (Hyosung Supplemental BC Response) at 41 and Exhibit SBC-66.
[46] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated January 5, 2017.
[47] *See generally* Hyosung's Letter, "Large Power Transformers from Korea: Section A Questionnaire Response," dated February 2, 2017; *and* Hyosung's Letter, "Large Power Transformers from Korea: Sections B-D Questionnaire Responses," dated February 27, 2017.
[48] *See* Hyosung Supplemental BC Response at Exhibit SBC-66.

adjustments, the necessary pricing information is missing from the record. Therefore, Commerce determined that it was appropriate to resort to facts available for the unreported and inaccurate information.

For the draft redetermination, as partial facts available, we applied the actual amounts of the previously unreported discounts to U.S. sales SEQUs [ ].[49] In its comments on the draft redetermination, Hyosung states that Commerce should not apply previously unreported discounts to SEQU [ ].[50] However, we have examined the record evidence in the Hyosung Supplemental BC Response, and as discussed below continue to find that the discount in question is applicable to SEQU [ ]. For SEQUs [ ], we have not applied any discounts, as record information indicates that these sales did not contain any unreported discounts.[51]

Conclusion

On remand, under respectful protest, Commerce has resorted to the application of partial facts available for the discount for the sales for which there is record evidence of discounts, and calculated a margin for Hyosung. Commerce also finds that the previously unreported U.S. price adjustments are reasonable as a basis for the application of partial facts available for Hyosung's dumping calculations, as explained above.

2. Hyundai

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}."[52] After Hyundai responded to this initial

[49] SEQU [ ] is [ ]. *See* Hyosung Supplemental BC Response at Exhibit SBC-66.
[50] *See* Hyosung Comments at 3.
[51] *See* Hyosung Supplemental BC Response at Exhibit SBC-66; *see below* for a discussion of SEQU [ ].
[52] *See* Commerce's Letter, "Antidumping Duty Questionnaire," dated January 5, 2017.

request, Commerce asked Hyundai to further provide "complete sales and expenses documentation" for five home market sales and five U.S. sales.[53] Commerce additionally requested a breakdown between foreign like product and non-foreign like product, complete with a detailed narrative and supporting documentation.[54] 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.[55] Hyundai asserted that the revisions to the original contract related to a part that is non-foreign like product, and thus the revisions did not affect the gross unit prices of foreign like product.[56] Commerce found the record to be ambiguous, calling into question Hyundai's consistent treatment and reporting of merchandise under consideration.[57] 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.[58]

In the *Second Remand Order*, the Court found that substantial evidence supports Commerce's finding that the parts and components reported by Hyundai for SEQH 53 are within the scope of the order.[59] The Court further found that Commerce's finding that Hyundai failed to report these parts and components is supported by substantial evidence.[60] In addition, the Court found that Commerce's refusal to issue a supplemental questionnaire to Hyundai regarding the

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[53] *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.
[54] *Id*. at 10-11.
[55] *See Preliminary Results* PDM at 18.
[56] *See* Hyundai's Letter, "Large Power Transformers from South Korea: Resubmission of Post-Preliminary Comments," dated October 5, 2017 at 4-5.
[57] *See Final Results* IDM at 15-16.
[58] *See First Remand Order* at 42.
[59] *See Second Remand Order* at 25.
[60] *Id*. at 26.

previously unreported parts and components is also supported by substantial evidence.[61] However, the Court also found that Commerce's determination that Hyundai did not act to the best of its ability and thus, Commerce's decision to disregard all of Hyundai's reported home market and U.S. sales databases and instead rely on total AFA, is not supported by substantial evidence.[62] The Court found that, based on the IDM, because the record on Hyundai's reporting was unclear to Commerce, Hyundai could not be expected to know what Commerce wanted and therefore the record did not support Commerce's finding that Hyundai had failed to act to the best of its ability.[63] Taking the above into consideration, regarding selection of facts available, the Court noted that only one sale in the home market was affected by the previously unreported in-scope parts and components, and that, based on Commerce's original finding that the record was unclear, the inaccurate reporting of this one sale does not undermine the reliability of all other documented sales.[64] In light of the Court's finding that Hyundai acted to the best of its ability, the Court stated that Commerce had no basis to impute discounts to most home market sales and to do so "is simply unsupported speculation and not based on substantial evidence."[65] The reporting deficiencies, the Court found, were limited to discrete categories of information.[66] Thus, the Court found that Commerce's determination was inconsistent with section 782(e) of the Act.[67] For these reasons, the Court remanded to Commerce the decision to rely on total AFA.

Based on the Court's remand, we have, under respectful protest, applied partial facts available to Hyundai's home market sales. Specifically, we find that the previously unreported discounts are reasonable as a basis for the application of partial facts available for Hyundai's

[61] *Id*. at 28-29.
[62] *Id*. at 30-34.
[63] *Id*. at 34
[64] *Id*. at 31.
[65] *Id*.
[66] *Id*.
[67] *Id*. at 32.

dumping calculations. Further, we have added the costs for the unreported in-scope parts for SEQH 53, as reported.[68]

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 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.

Hyundai did not use amended contract values in reporting one of 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.[69] By not treating this part consistently in its home market sales reporting, Hyundai has understated its home market prices for the one sale in which it treated the part as non-subject. Therefore, Commerce must resort to facts available for the one sale.

Conclusion

Hyundai's understatement of home market prices, by inconsistently treating a certain part as subject merchandise for certain sales and non-subject for other home market sales, undermines Commerce's ability to calculate an accurate margin for Hyundai. Therefore, for purposes of this redetermination, we are applying partial facts available for Hyundai's margin calculation.

E. Discussion of Comments

1. Hyundai Issues

Issue 1: Application of Facts Available

[68] *See* 19 U.S.C. § 1677m(e); *see also* Memorandum, "Remand Determination Margin Calculation for Hyundai," dated concurrently with this final redetermination.
[69] *See* SSQ at Exhibit 94.

***Hyundai's Comments*[70]**

- Commerce's application of facts available (FA) is based on a misreading of the record. There is no evidence that SEQH 52 contained certain components.
- The contract covering SEQHs 52 and 53 does not indicate that the [ ] and the [ ] were included in SEQH 52; only that they were included in SEQH 53.
- The CIT recognized that only the pricing breakdown for SEQH 53 indicated the two parts sold with the LPT were part of the main transformer.[71]

No other party commented on this issue.

Commerce's Position

We agree with Hyundai that we should not apply facts available to SEQH 52. As Hyundai noted, in its response to Commerce's request, it provided the contract covering SEQH 52 and SEQH 53, which contained a breakdown for two items that were assigned to SEQH 53 under "Main Transformer."[72] Thus, there is no basis to apply facts available to the sale of the LPT in SEQH 52, as Hyundai had reported all parts and components assigned to that LPT. Accordingly, Commerce is applying FA only to SEQH 53 in its final redetermination.[73]

Issue 2: Deduction of Selling Expenses

***Hyundai's Comments*[74]**

- Commerce inadvertently deducted the entirety of Hyundai's reported selling expenses (which included service-related revenues), without adjustment, plus the service-related expenses, which resulted in the double-counting of service-related expenses.
- Commerce should deduct only the netted expenses that do not relate to separately-provided services, along with the service-related expenses that were to cap service-related revenues, as well as the imputed expenses (*i.e.*, credit, indirect selling, and banking) that related to the LPT, rather than the LPT and service-related revenues. Commerce should rely on the fields in Hyundai's databases that have the prefix "N_" prior to each expense.

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[70] *See* Hyundai's Letter, "Large Power Transformers from Korea: Comments on the Department's Draft Results of Redetermination Pursuant to Court Remand," dated March 15, 2021 (Hyundai's Comments) at 3-5.
[71] *Id.* at 4 (citing Remand Order at 25).
[72] *Id.* at 3 (citing Hyundai's Letter, "Large Power Transformers from South Korea: Second Sales Supplemental Response," dated June 19, 2017 at Attachment 2nd SS-22).
[73] *See* Memorandum, "Remand Determination Margin Calculation for Hyundai," dated concurrently with this final redetermination (Hyundai Analysis Memo).
[74] *See* Hyundai's Comments at 5-11.

No other party commented on this issue.

Commerce's Position

After reviewing the program, we determine that Hyundai is correct; Commerce inadvertently deducted Hyundai's service-related expenses twice. Specifically, the program deducted reported sales expenses (which included service-related revenues), without adjustment, in addition to the service-related expenses; Commerce also deducted credit expenses, indirect selling expenses, and banking expenses attributable to service-related revenues. Accordingly, for this redetermination, Commerce is relying on the expenses reported in the various sales-specific service expenses field to cap the corresponding revenue. We have also deducted Hyundai's capped service-related expenses and the netted expenses (*i.e.*, expenses with the prefix "N_"), which net out the expenses related to the service-related revenues, thereby preventing any double-counting of expenses. Finally, we have relied on the adjusted expenses that are calculated based on the gross unit price (*i.e.*, imputed expenses).[75]

Issue 3: Application of Capping Methodology

***Petitioner's Comments*[76]**

- The CIT has affirmed Commerce's practice of applying its capping methodology to ensure that the amount of service-related revenue included in the U.S. price does not exceed the associated expense.[77]
- Commerce's programming language for Hyosung applies the methodology on a revenue-specific basis, whereas for Hyundai, Commerce applied the capping methodology on an aggregate basis.

No other party commented on this issue.

Commerce's Position

[75] *See* Hyundai Analysis Memo.
[76] *See* Hyundai's Comments at 7-8.
[77] *Id*. at 7 (citing *Hyundai Heavy Industry., Co. v. United States*, 332 F. Supp. 3d 1331, 1340 (CIT 2018)).

As the petitioner notes, the CIT has upheld Commerce's application of its capping methodology in prior segments of this proceeding in order to ensure that the service-related revenue does not exceed the associated expense.[78] The petitioner is correct that Commerce's programming language for Hyosung applies the methodology on a revenue-specific basis, whereas for Hyundai, Commerce applied the capping methodology on an aggregate basis. However, for purposes of this redetermination, because the record contains Hyundai's revenues and expenses reported on a sales-specific basis, Commerce continues to apply its capping methodology on a sales-specific basis.[79]

Issue 4: Cost of Merchandise (COM) Adjustment for Affiliated-Party Transactions

***Hyundai's Comments*[80]**

- Commerce inappropriately compared tap changer purchases from affiliated and unaffiliated suppliers by concluding that there is a single "market price" for them.
- Since the investigation, Commerce has recognized that there is a wide range of tap changers, making the application of a single "market price" inappropriate.
- The failure to consider the various models of tap changers inherent in Commerce's use of a single "market price" for all tap changers cannot be reconciled with Commerce's finding that tap changers have a "commercially significant" effect on the costs of LPTs.
- There is no basis to reject the affiliated prices based on a meaningless comparison of averages across all tap changers.
- When aware of differences in the categories of a major input, Commerce has applied the major input calculation to take specification into account.
- In the alternative, Commerce could conclude that tap changers are not a major input.
- Further, oil is a selling expense, not a manufacturing cost. As such, an adjustment to COM for oil is improper.
- Throughout the underlying review, Commerce treated oil as a selling expense.
- No affiliates were involved in the provision of oil for U.S. sales.

No other party commented on this issue.

Commerce's Position

[78] *Id*.
[79] *See* Hyundai Analysis Memo.
[80] *See* Hyundai's Comments at 11-17.

With respect to tap changers, Hyundai alleges that tap changers are too unique in their physical characteristics, and in price, for Commerce to compare the POR-average of the affiliated-party purchase price for all variations of tap changers to the POR-average of the unaffiliated-party purchase price for all types of tap changers. Consequently, Hyundai argues that Commerce should determine that tap changers are not a major input and, accordingly, Commerce should not make an adjustment.

Our analysis and consequent adjustment were based on the information that Hyundai reported.[81] Hyundai's affiliated party comparison schedule provided a comparison of average prices only for two broad categories of tap changers (OLTC and OCTC); therefore, we made two separate transactions disregarded calculations for tap changers that reflect those categories. Because this is how Hyundai reported the information, we are continuing to make these adjustments with respect to tap changers.

Additionally, Hyundai argues that Commerce should determine that tap changers are not a major input and therefore accept the transfer prices without adjustment. Based on the relative percentage that the affiliate-supplied tap changers represent of the total COM, we agree that they are not major inputs. Indeed, in the draft redetermination, Commerce relied on section 773(f)(2) of the Act, transactions disregarded, meaning Commerce did not consider tap changers to be a "major" input under section 773(f)(3) of the Act, which requires an additional comparison of the transfer price to the affiliated party's cost of producing the input in determining whether the affiliated transactions reflect arm's length values. Rather, because the tap changers represent minor affiliated party transactions and therefore fall under section 773(f)(2) of the Act, we relied on Hyundai's reported comparison chart showing its two categories of affiliated and unaffiliated

[81] *See* Hyundai's Letter, "Large Power Transformers from Korea: Supplemental D Questionnaire Response," dated June 1, 2017 at Exhibit SD-1.

party tap changer purchases to calculate our adjustment. Accordingly, based on the information reported in Hyundai's affiliated transactions comparison chart, Commerce continues to find that tap changers are not major inputs and continues to adjust the affiliated tap changer transactions to market values, as applied in the draft redetermination.

Further, Hyundai contends that oil expenses were removed from COM and reported as selling expenses and, therefore, COM should not be adjusted with respect to oil. Commerce agrees with Hyundai. Although Hyundai reported oil as a material input that was obtained from affiliated parties, Hyundai also later removed the cost of oil delivered to customers in the home market (in contrast to the U.S. market, in which Hyundai USA supplied oil) from its cost reporting. Thus, for this redetermination, Commerce is not making an adjustment to COM for affiliated oil purchases based on Hyundai's reasoning that it was reported, and treated, as a selling expense.

2. Hyosung Issues

Issue 1: Application of Partial Facts Available

Petitioner's Comments

- ABB disagrees with Commerce's draft redetermination, and disagrees with Commerce's decision to rely on partial facts available in applying discounts only to U.S. sales for which Commerce has the previously unreported discount information.[82]
- The use of total AFA is appropriate, as indicated by S*teel Auth. of India, Ltd. v. United States*, 149 F. Supp. 2d 921, 927-928 (CIT 2001), when a respondent withholds information.[83]
- As indicated by *Mukand Ltd. v. United States*, 767 F.3d 1300, 1308 (Fed. Cir. 2014) (citing *Shanghai Taoen Int'l Trading Co. v. United States*, 360 F. Supp. 2d 1339 1348 n.13 (CIT 2005), the use of partial facts available is not appropriate when the missing information "is core to the antidumping analysis."[84]
- Commerce should apply, as partial facts available, the highest discounts previously withheld to all sales for which discount information was not provided.[85]

[82] *See* Petitioner Comments at 5.
[83] *Id.*
[84] *Id.*
[85] *Id*. at 7.

Hyosung's Comments

- Hyosung states that the draft redetermination complies with the Court's remand instructions, and is the only outcome supported by the facts of the review.[86]

Commerce's Position

In its remand order, the Court stated that Commerce failed to issue a supplemental questionnaire to Hyosung, in accordance with 19 U.S.C. § 1677m(d).[87] The Court notes that the information provided by Hyosung to Commerce which notified Commerce of Hyosung's reporting deficiencies occurred two months before the *Preliminary Results*. Given the two months between the provision of the deficient information and the issuance of the *Preliminary Results*, the Court finds that Commerce did not address the statutory standard of "practicability" contained in 19 U.S.C. § 1677m(d) when Commerce determined that a new supplemental questionnaire could not be timely issued.[88] The issue, according to the Court, is whether it was practicable for Commerce to provide Hyosung an opportunity to remedy the deficiencies.[89] The Court notes that Commerce has not provided a reasonable explanation of why it was not practicable to issue a supplemental questionnaire to Hyosung.[90] Therefore, the Court found that Commerce's reliance on AFA was not in accordance with the law because it did not comply with 19 U.S.C. § 1677m(d).[91]

Given the findings by the Court, we do not believe that the application of total AFA would be consistent with the Court's order. Similarly, the petitioner's proposal to apply the highest discounts to all other sales for which we do not have information would constitute the application of partial facts available, with an adverse inference. Applying facts available by assigning discounts to sales for which we have no information whatsoever, whether the sales in question did

[86] *See* Hyosung Comments at 2.
[87] *See Second Remand Order* at 14.
[88] *Id*.
[89] *Id*. at 14-15.
[90] *Id*. at 15.
[91] *Id*. at 17

or did not have such discounts is, by its nature, an adverse inference. We believe that the Court's remand precludes us from applying such an adverse inference.

As the petitioner has noted, we have filed this remand redetermination under respectful protest.

Issue 2: Clerical Error

Hyosung's Comments

- The preliminary analysis memorandum at page 7 states that Commerce applied a discount of $[ ] to SEQUs [ ] in the belief that such a discount was applicable to all sales.[92]
- However, according to Hyosung, record evidence indicates that the discount applies only to SEQUs [ ]."[93]
- The HICO America invoice in Exhibit SBC-66 of the Hyosung Supplemental BC Response shows that the discount in question applied to all of the LPTs, and that all of these LPTs were shipped simultaneously.[94]

No other party commented on this issue.

Commerce's Position

We have re-examined the record, and disagree with Hyosung that the discount in question does not apply to SEQU [ ]. Exhibit SBC-51 of the Hyosung Supplemental BC Response contains sales information regarding a change in the MVA rating for [ ] sales (*i.e.*, SEQUs [ ]).[95] Page 5 of Exhibit SBC-51 contains a portion of the contract from the customer to Hyosung, which states in part that "[

].[96] This same language is repeated on page 597 of Exhibit SBC-66 of the

[92] *See* Hyosung Comments at 3
[93] *Id.*
[94] *Id*.
[95] *See* Hyosung Supplemental BC Response at Exhibit SBC-51.
[96] *Id*.

Hyosung Supplemental BC Response.[97] Hyosung states that SEQUs [ ] were shipped on the same day, [ ].[98] In Exhibit SBC-66 at page 622, the delivery sheet indicates that all [ ] units were delivered on the same date, "[ ]."[99] Pages 629 and 630 of Exhibit SBC-66 contain invoices for [ ] of the units in question, and page 629 contains handwritten notes indicating discounts of $[ ] corresponding to the [ ] units covered by the [ ] invoices.[100] However, Exhibit SBC-66 does not contain the invoice for the [ ] unit. Given the plain language of the contract between the customer and Hyosung, and the invoices for [ ] of the units sold pursuant to these contract terms that demonstrate the application of the discount, we find that the lack of the commercial invoice for this [ ] unit does not confirm the lack of a discount for this sale. Therefore, as facts available, we will continue to apply a discount of $[ ] to SEQUs [ ].

3. General Issues

Issue 1: The Court's Authority

Petitioner's Comments

- The Court overstepped its authority and "stepped into the shoes of the agency" when the Court remanded the current decision to Commerce by compelling Commerce to act in a specific manner.[101]
- *Norton v. Southern Utah Wilderness Alliance*, 542 U.S. 55, 65 (2004) indicates that the Court may compel Commerce to act, but cannot specify what that action must be.[102]
- The Court has engaged in undue judicial interference with the lawful discretion afforded to Commerce in the enforcement of the statute.[103]
- The Court of Appeals for the Federal Circuit has held that the Court's role is to review an agency decision, but not to substitute its own judgment.[104]
- The Court will not evaluate whether the information used by Commerce is the best available, but instead whether a reasonable mind could conclude that Commerce chose the

[97] *See* Hyosung Supplemental BC Response at Exhibit SBC-66.
[98] *See* Hyosung Comments at 3.
[99] *See* Hyosung Supplemental BC Response at Exhibit SBC-66.
[100] *Id.*
[101] *See* Petitioner Comments at 8-9.
[102] *Id.* at 8.
[103] *Id.*
[104] *Id.* (citing *Matsushita Elec. Indus. Co. v. United States*, 750 F.2d 927, 933 (CAFC 1984)).

best information available.[105]

- The Court may not reweigh evidence or substitute its own judgment for that of the agency.[106]
- Commerce is uniquely qualified to determine what constitutes new factual information, and courts will defer to the judgment of the agency to develop the record and grant deference to complex factual determinations.[107]
- The errors contained in the submissions of both Hyosung and Hyundai are systemic and undermine the responses as a whole.[108] In remanding Commerce's findings, the Court usurped Commerce's decision-making authority.[109]

No other party commented on this issue.

Commerce's Position

Commerce has complied with the Court's order. The issue of the Court's authority is better addressed to the Court.

III. FINAL RESULTS OF REDETERMINATION

In accordance with the *Remand Order*, Commerce has reconsidered the record evidence. Based on our analysis, for both Hyosung and Hyundai, Commerce is applying partial facts available. The decision to use partial facts available to Hyundai's understatement of home market gross unit prices is due to Hyundai's inconsistent treatment of merchandise under consideration. For Hyosung, Commerce bases its decision to use partial facts available on Hyosung's failure to report in a timely manner discounts and other sales adjustments, as requested by Commerce.

[105] *Id*. (citing *Tianjin Magnesium Int'l Co. v. United States*, 722 F. Supp. 2d 1322, 1334 (CIT 2010)).
[106] *Id*., citing *Usinor v. United States*, 342 F. Supp. 2d 1267, 1272 (CIT 2004).
[107] *Id*. (citing *Apex Frozen Foods Private Ltd. v. United States*, 862 F.3d 1337, 1351 (CAFC 2017); *Thai Pineapple Pub. Co. v. United States*, 187 F.3d 1362, 1365 (CAFC 1999); *PSC VSMPO-Avisma Corp. v. United States*, 688 F.3d 751, 761 (CAFC 2012); and *Fujitsu General Ltd. v. United States*, 88 F.3d 1034, 1044 (CAFC 1996)).
[108] *Id*. at 9-10.
[109] *Id*. at 10.

For both Hyosung and Hyundai, Commerce has calculated an antidumping duty rate of zero. Commerce is also applying this rate (*i.e.*, zero percent) to Iljin, a company not selected for individual examination.

4/5/2021

X

Signed by: CHRISTIAN MARSH

Christian Marsh
Acting Assistant Secretary
for Enforcement and Compliance