APPENDIX

APPENDIX TABLE OF CONTENTS

Other Materials

APPENDIX A

UNITED STATES COURT OF APPEALS
FOR THE FEDERAL CIRCUIT

Hyundai Heavy Industries Co., Ltd.

Plaintiff-Appellant,

v.

United States, ABB, Inc.,

Defendants-Appellees

2020-1005

Appeal from the United States Court of International Trade in No. 1:17-cv-00054-MAB, Judge Mark A. Barnett.

JUDGMENT

DAVID EDWARD BOND, White & Case LLP, Washington, DC, argued for plaintiff-appellant. Also represented by RON KENDLER.

JOHN JACOB TODOR, Commercial Litigation Branch, Civil Division, United States Department of Justice, Washington, DC, argued for defendant-appellee United States. Also represented by ETHAN P. DAVIS, JEANNE DAVIDSON, FRANKLIN E. WHITE, JR.

ROBERT ALAN LUBERDA, Kelley Drye & Warren, LLP, Washington, DC, argued for defendant-appellee ABB, Inc. Also represented by MELISSA M. BREWER, DAVID C. SMITH, JR.

THIS CAUSE having been heard and considered, it is

ORDERED AND ADJUDGED:

PER CURIAM (REYNA, CLEVENGER, and CHEN, *Circuit Judges*).

AFFIRMED. See Fed. Cir. R. 36

ENTERED BY ORDER OF THE COURT

September 8, 2020 — Peter R. Marksteiner, Clerk of Court

APPENDIX B

HYUNDAI HEAVY INDUSTRIES, CO. LTD.,
Plaintiff,

v.

UNITED STATES, Defendant,

and

ABB Inc., Defendant-Intervenor.

Slip Op. 19-104
Court No. 17-00054

Before: Mark A. Barnett, Judge

United States Court of International Trade.

Dated: August 2, 2019

Ron Kendler, White & Case LLP, of Washington, DC, argued for Plaintiff. With him on the brief were David E. Bond and William J. Moran.

John J. Todor, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for Defendant. With him on the brief were Joseph H. Hunt, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Franklin E. White, Jr., Assistant Director. Of counsel on the brief was David W. Richardson, Senior Counsel, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce, of Washington, DC.

Melissa M. Brewer, Kelley Drye & Warren LLP, of Washington, DC, argued for Defendant Intervenor. With her on the brief were David C. Smith and R. Alan Luberda.

OPINION

Barnett, Judge:

[Sustaining the U.S. Department of Commerce's redetermination upon remand in the third administrative review of the antidumping duty order on large power transformers from the Republic of Korea.]

This matter comes before the court following the U.S. Department of Commerce's ("Commerce" or "the agency") redetermination upon remand in this case. *See* Confidential Final Results of Redetermination Pursuant to Court Remand ("Remand Results"), ECF No. 65-1.[1] Plaintiff,

---

[1] The administrative record for this case is divided into a Public Administrative Record ("PR"), ECF No. 17-4, a Public Remand Record ("PRR"), ECF No. 68-1, a Confidential Administrative Record ("CR"), ECF No. 17-5, and a Confidential Remand Record ("CRR"), ECF No. 68-2. Parties submitted joint appendices containing record documents cited in their Rule 56.2 briefs. *See* Public J.A., ECF No. 44 (Vols. I-III); Confidential J.A. ("CJA"), ECF Nos. 40-1 (Vol. I), 41-1 (Vol. II), 42-1 (Vol. III), 43-1 (Vol. IV), 45-1 (Vol. V), 46-1 (Vol. VI), 46-2 (Vol. VII). Parties also filed joint appendices containing record documents cited in their remand briefs. *See* Confidential Remand ("CRJA"), ECF No. 84-1; Public Remand J.A., ECF No. 85-1; *see also* Public Resp. to Court's May 24, 2019 Order (May 28, 2019), ECF No. 89; Confidential Resp. to Court's May 24, 2019 Order (May 28, 2019), ECF No. 88. References are to the confidential versions of the relevant record documents,

Hyundai Heavy Industries, Co., Ltd. ("HHI")[2] initiated this action contesting certain aspects of Commerce's final results in the third administrative review of the antidumping duty order on large power transformers ("LPT") from the Republic of Korea for the period of review August 1, 2014, through July 31, 2015. *See* Compl., ECF No. 5; *Large Power Transformers From the Republic of Korea*, 82 Fed. Reg. 13,432 (Mar. 13, 2017) (final results of antidumping duty administrative review; 2014-2015), ECF No. 17-2, and accompanying Issues and Decision Mem., A-580-867 (Mar. 6, 2017) ("I&D Mem."), ECF No. 17-3. Specifically, HHI challenged Commerce's decision to assign HHI a final weighted-average dumping margin of 60.81 percent based on the use of total facts available with an adverse inference (referred to as total "adverse facts available" or total "AFA"). *See generally* Confidential Rule 56.2 Mot. for J. Upon the Agency R. on Behalf of Pl. Hyundai Heavy Industries Co. Ltd. and Mem. of P. & A. in Supp., ECF No. 26; I&D Mem. at 4-6.

Commerce based that decision on the following findings: (1) HHI failed to report service- related revenues separately from the gross unit price despite repeated requests from Commerce; (2) HHI failed to include the price of a subject "part"

---

unless statedotherwise.

[2] Hyundai Electric & Energy Systems Co., Ltd. is the successor-in-interest to HHI. Letter from David E. Bond, Attorney, White & Case LLP, to the Court (Sept. 12, 2018), ECF No. 59.

in the price for certain home market sales despite repeated opportunities to do so; (3) HHI failed to report separately the prices and costs for LPT accessories; and (4) HHI was systematically selective in providing documents to Commerce and reported data that contained discrepancies. I&D Mem. at 17-28.

The court remanded this matter to the agency for Commerce to reconsider or further explain its decision to use total AFA because substantial evidence did not support all of the bases underlying that decision. *Hyundai Heavy Indus., Co. v. United States ("HHI I")*, 42 CIT_,_____, 332 F. Supp. 3d 1331, 1350 (2018).[3] In particular, substantial evidence did not support Commerce's finding that HHI withheld requested information with respect to accessories. *Id.* at 1346-48. Moreover, Commerce failed to explain the basis for its finding that HHI provided selective documentation and data that contained discrepancies; accordingly, this finding lacked substantial evidence.[4] *Id.* at 1348-49.

On remand, Commerce reconsidered its finding that HHI misreported costs and prices for accessories, its finding that HHI selectively

---

[3] *HHI I* contains additional background in this case, familiarity with which is presumed.

[4] Substantial evidence supported Commerce's findings that HHI failed to report separately service-related revenues, failed to report properly its home market sales inclusive of the price of a particular within-scope part, and failed to act to the best of its ability in providing this information. *HHI I*, 332 F. Supp. 3d at 1340-43, 1345.

reported information, and the legal and factual basis for the use of total AFA. Remand Results at 1-2. Commerce determined that HHI had properly reported accessories, consistent with the scope of the antidumping duty order. *Id.* at 11, 19. Commerce "clarif[ied]" that accessories are "components attached to the active part of the LPT and included within the subject merchandise." *Id.* at 19. As such, the use of AFA for HHI's reporting of accessories was unwarranted. *Id.* at 11. However, Commerce continued to find that HHI selectively reported certain sales information and provided unreliable data. *Id.* at 12. Based on this finding and those sustained by the court in *HHI I*, 332 F. Supp. 3d at 1340-42, 1345, Commerce again determined that total AFA was appropriate. *See id.* at 16, 25.

HHI supports Commerce's redetermination with respect to accessories but opposes the Remand Results in all other respects. *See* Pl.'s Comments in Supp. of the Final Results of Redetermination Pursuant to Court Remand ("HHI's Supp. Cmts"), ECF No. 79; Confidential Pl.'s Comments in Opp'n to the Final Results of Redetermination Pursuant to Court Remand ("HHI's Opp'n Cmts"), ECF No. 72. Defendant, United States ("the Government"), and Defendant-Intervenor, ABB Inc. ("ABB") support the Remand Results in their entirety.[5] *See*

---

[5] While ABB does not challenge Commerce's findings on accessories, it avers that this issue is moot since it had no bearing on the agency's use of total AFA. Confidential Def.-Int.'s Comments in Supp. of the Final Results of

Confidential Def.'s Resp. to Comments on the Dep't of Commerce's Remand Results ("Gov.'s Supp. Cmts"), ECF No. 76; ABB's Supp. Cmts. The court heard oral argument on June 11, 2019. Docket Entry, ECF No. 91. For the reasons that follow, the court sustains the Remand Results.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction pursuant to § 516A(a)(2)(B)(iii) of the Tariff Act of 1930, as amended, 19 U.S.C. § 1516a(a)(2)(B)(iii) (2012[6]), and 28 U.S.C. § 1581(c). The court will uphold an agency determination that is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i). "The results of a redetermination pursuant to court remand are also reviewed for compliance with the court's remand order." SolarWorld Ams., Inc. v. United States, 41 CIT __, __, 273 F. Supp. 3d 1314, 1317 (2017) (citation and internal quotation marks omitted).

DISCUSSION

I. Selective Reporting and Total AFA

a. Commerce's Redetermination

On remand, Commerce continued to find that HHI was selective in its reporting and provided

---

Redetermination Pursuant to Court Remand ("ABB's Supp. Cmts") at 14-15, ECF No. 78. Accordingly, ABB contends, the court need not rule on this issue. *Id.* at 15.

[6] Citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code, and references to the United States Code are to the 2012 edition.

data with various discrepancies. Remand Results at 12-13. Commerce identified the following documentation that HHI failed to provide: "(1) accounting entries to record [HHI's] U.S. sales and payments; (2) U.S. commission documents for certain U.S. sales; (3) test reports for all [U.S. sales transactions (referred to as SEQUs)]; (4) Korean trucking expense invoices for several U.S. sales; and (5) [certain] . . . requests for quote[s] (or "RFQs"), bids, and packing lists." *Id.* at 13 (footnotes omitted). Additionally, Commerce identified inconsistencies with reported transportation and brokerage expenses for certain U.S. sales. *Id.*; *see also id.* at 21.

Commerce found that HHI "failed to cooperate to the best of its ability in complying with requests for information" because, "despite a specific and comprehensive request for sales and expense documentation, [HHI] selectively reported what it considered 'necessary' and 'sufficient.'" *Id.* at 17. Commerce recognized that respondents sometimes make mistakes in their submissions, *id.* at 25, but attributed HHI's reporting discrepancies and omission of documents to carelessness and inferred that HHI either "was unduly delaying the [administrative review] to its benefit by not submitting the requested documentation or [] failed to put forth the maximum effort to obtain these records," *id.* at 21. Commerce further found that HHI's failure to report service-related revenues, failure to report properly the price of a subject part, and selective and unreliable reporting "render[ed] [HHI's] reporting as a whole [] unreliable"; accordingly,

Commerce determined that the use of total AFA was warranted. *Id.* at 16.

b. Parties' Arguments

HHI argues that "substantial evidence confirms the accuracy of HHI's gross unit prices" because HHI submitted documents that "overwhelmingly supported its data." HHI's Opp'n Cmts. at 3 (internal quotation marks and capitalization omitted). HHI further argues that Commerce treated HHI inconsistently with Hyosung, the other mandatory respondent in this review, because it requested more extensive information from HHI. *See id.* at 11-13. Additionally, HHI challenges Commerce's decision to use an adverse inference with respect to the missing documents, arguing that Commerce failed to comply with 19 U.S.C. § 1677m(d) and Commerce's finding that HHI failed to cooperate to the best of its ability is unsupported by substantial evidence. *Id.* at 10, 15. HHI argues that the three issues Commerce identified, whether individually or in combination, do not support the use of total AFA. *Id.* at 16.

The Government argues that Commerce reasonably concluded that HHI failed to provide complete sales documentation and had other reporting discrepancies. Gov.'s Supp. Cmts at 5-12. The Government contends that the combined effect of HHI's reporting failures supports Commerce's use of total AFA. *Id.* at 15-18. ABB agrees that substantial evidence supports Commerce's factual findings. *See* ABB's Supp. Cmts at 4-9. According to ABB, Commerce was

justified in using total AFA based solely on the two issues that the court upheld in *HHI I* and HHI's failure to provide the requested information adds support for using total AFA. *Id.* at 3.

c. Analysis

i. Missing documents; Commerce's section 1677m(d) obligation

Substantial evidence supports Commerce's finding that HHI failed to provide certain requested documents.[7] *See* Remand Results at 13, 21. Commerce asked HHI to supply, for all U.S. sales, "clear documentation demonstrating that payment was received . . . (including each recording in [HHI's] accounting system regarding the sale and payment of the subject merchandise for both HHI and Hyundai [Corporation] USA. . .)."[8] Suppl. Questionnaire (Oct. 7, 2016) ("Oct. 7, 2016 Suppl. Questionnaire") at 5- 6, CR 346, PR 213, CRJA 3. Commerce found, and HHI does not dispute, that HHI did not provide any internal accounting screen prints to document any sales. Remand Results at 13, 22; HHI's Opp'n Cmts at 5, 14.

---

[7] HHI admits that it failed to provide test reports, accounting screen prints, and payment and commission documentation for one sale. *See* HHI's Opp'n Cmts at 5, 6, 14. As discussed herein, however, its reporting omissions were not limited to this one sale.

[8] Hyundai Corporation USA is HHI's U.S. sales affiliate. *See* Resp. of Hyundai Heavy Indus. Co., Ltd. to Section C of the Questionnaire (Jan. 27, 2016) at C-1, CR 152-156, PR 91-94, CJA Vol. I, Tab 9.

With respect to commission documents, Commerce requested "complete . . . expenses documentation," including "documents relating to any commissions or other fees that may be paid" for "**all** U.S. [sales]." Oct. 7, 2016 Suppl. Questionnaire at 5-6. Commerce determined that HHI failed to provide documents supporting its commission expenses for fourteen sales. *See* Remand Results at 13 & n.61 (citations omitted). While HHI admits that it did not provide commission documents for one sale—claiming that the omission was inadvertent—it argues that it provided commission agreements for all other U.S. sales for which it paid a commission. HHI's Opp'n Cmts at 6. HHI states that, on remand, it provided to Commerce a "detailed chart tracking the commission expenses reported . . . to the documentation submitted in response to the [October 7, 2016 supplemental questionnaire]." *Id.* (citing Comments on the Draft Results of Redetermination Pursuant to Court Remand (Nov. 26, 2018) ("HHI's Draft Cmts"), Ex. 1, CRR 3, PRR 7, CRJA 7). HHI's chart demonstrates, however, that, for seven of the sales, HHI provided the commission agreement but omitted any supporting documentation. *See* HHI's Draft Cmts, Ex. 1 (SEQUs 11, 15-18, 23-24); *see also* Remand Results at 13 n.61 (citations omitted).

With respect to trucking invoices, HHI admits that it did not provide the invoices in question but avers that Commerce's statement is misleading. *See* HHI Supp. Cmts at 7. HHI explains that "it did not receive trucking invoices showing shipment-specific expenses for all" U.S. sales. *Id.*

For sales for which it did receive an invoice, HHI provided it. *Id.* For sales for which HHI did not receive an invoice, it provided screen prints of its internal accounting system. *Id.* at 7-8. HHI did not, however, provide any source documents supporting the allocation of trucking expenses shown in the screen prints. Commerce explained that "[w]ithout complete documentation," it cannot "confirm the accuracy of [HHI's] reported data." Remand Results at 13.

Commerce identified inconsistencies in HHI's reporting of transportation and brokerage expenses as providing additional support for its finding. Specifically, Commerce identified nine sales—SEQUs 3, 5, 12-16, 21, and 22—as containing such inconsistencies and referenced ABB's administrative case brief identifying the inconsistencies. Remand Results at 13 & n.65 (citing, *inter alia*, Pet'r's Case Br. Regarding Hyundai Issues (Jan. 5, 2017) ("Pet'r's Case Br."), Attach. 4, CR 463-65, PR 280-81, CRJA 6). HHI does not identify contrary record evidence to call into question Commerce's acceptance of these claims[9] but argues that ABB's statements were wrong. *See* HHI's Opp'n. Br. at 10-11.

---

[9] HHI disputes ABB's claims with respect to four of the nine sales, contending that ABB's statements were wrong and HHI's reporting was accurate. *See* HHI's Opp'n Cmts at 10-11. HHI's arguments fail. For example, HHI "reported wharfage and the untranslated item expenses inconsistently in that [it] sometimes reported wharfage and untranslated expenses listed on the invoices in 'other U.S. transportation expense' and sometimes [it] did not." Gov.'s Supp. Cmts. at 11 & n.2 (comparing SEQUs 14 and 22 with SEQUs 23 and

HHI argues that the agency failed to give HHI an opportunity to cure the deficiencies in its submissions as required by 19 U.S.C. § 1677m(d). HHI's Opp'n Cmts at 15. However, Commerce's "request for all of the U.S. sales documentation was a direct result of the deficiencies in Hyundai's original questionnaire responses." Gov.'s Supp. Cmts at 14-15; *see also HHI I*, 332 F. Supp. 3d at 1336-38, 1343-44 (noting that the Oct. 7, 2016 Suppl. Questionnaire was Commerce's second supplemental questionnaire aimed at addressing Commerce's concerns that HHI was misreporting its gross unit prices for the U.S. and home markets). In *HHI I*, the court considered whether Commerce met its obligations pursuant to 19 U.S.C. § 1677m(d) to notify HHI of deficiencies in its questionnaire responses and found that it did. *See HHI I*, 332 F. Supp. 3d at 1341-42. Section 1677m(d) does not entitle HHI to endless opportunities to cure deficiencies in its reporting.

---

24) (citing Resp. to Questions 13 and 17 of the Third Suppl. Sections A, B, C and D Questionnaire (Nov. 10, 2016) ("Nov. 10, 2016 Suppl. Resp."), Attach. 3S-35 at JA101303-04, JA103113-19, JA103131-33, JA103145-4, CR 440-449, PR 241-250, CJA Vols. II-IV, CRJA 5). HHI also avers that ABB's administrative case brief "is not substantial evidence upon which [Commerce] should have relied." HHI's Opp'n Cmts at 10. While true, what Commerce did was accept ABB's arguments about the record evidence, and identification of inconsistencies therein, including the record citations in support of those arguments. *See* Pet'r's Case Br., Attach. 4.

ii. Commerce's differential treatment of HHI and Hyosung

HHI argues that Commerce treated HHI and Hyosung inconsistently because it requested the same information from both respondents but penalized only HHI when both companies provided incomplete responses. HHI's Opp'n Cmts at 11-13. The Government and ABB argue that Commerce requested more information from HHI because it considered HHI's worksheets to be unverifiable and unreliable. Gov.'s Supp. Cmts at 12; ABB's Cmts at 9-10.

To the extent that Commerce treated HHI and Hyosung differently, it was justified in so doing. In response to this argument in the remand proceeding, Commerce explained:

> The [c]ourt has already affirmed Commerce's decision to not rely on [HHI's] worksheet information because it was unreliable and unverifiable at a late stage in the review. Because [HHI's] worksheet information was problematic, we asked for additional sales documentation to aid us in our analysis[.] We did not request additional documentation from Hyosung because we found its worksheets sufficient.

Remand Results at 21.[10] As the court discussed in *HHI I*, Commerce requested documentation to

---

[10] The court discerns that the "worksheets" to which Commerce was referring were those that HHI submitted along with all the other documents in its November 10, 2016 response to the October 7, 2016 supplemental questionnaire.

determine whether HHI was overstating U.S. gross unit prices by misreporting service-related revenues and understating home market prices by misreporting home market sales of an LPT part. 332 F. Supp. 3d at 1338, 1342.

Commerce's concerns were legitimate because HHI failed to report separately service-related revenues even though it had such revenues to report and failed to report properly its home market sales of the LPT part. *Id.* at 1340-42, 1345. It is sufficiently clear to the court that HHI was differently situated than Hyosung, justifying Commerce's different supplemental information requests.

iii. Adverse inference and Total AFA

HHI argues that Commerce was not justified in using an adverse inference and, even if it was, that it was not justified in using total AFA. *See* HHI's Opp'n Cmts at 13-17. With respect to the adverse inference, HHI argues that it provided 3,300 pages of documents, reflecting that HHI "met or exceeded the level of participation that could be expected from a 'reasonable and responsible' respondent" under the circumstances. *Id.* at 13-14. According to HHI, Commerce failed to account for the difficult circumstances Commerce created when it requested documentation for all U.S. sales at a late stage in the review (i.e., after the preliminary results). *Id.* at 14-15. Moreover, HHI argues, there is no

---

See HHI I, 332 F. Supp. 3d at 1338.

evidence that HHI was selective in its reporting. *Id.* at 13-14. The court finds that the record adequately supports Commerce's decision to make an adverse inference.

The mere production of a substantial volume of documents does not, *ipso facto*, demonstrate that a respondent acted to the best of its ability. The inquiry is "whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation." *Nippon Steel Corp. v. United States*, 337 F.3d 1373, 1382 (Fed. Cir. 2003). The court has previously determined that HHI failed to satisfy this standard when it reported service-related revenues and home market sales of an LPT part. *HHI I*, 332 F. Supp. 3d at 1343, 1345. The court now concludes that Commerce reasonably determined that "despite a specific and comprehensive request for sales and expense documentation, [HHI] selectively reported what it considered 'necessary' and 'sufficient.'" Remand Results at 17.

At a minimum, HHI's failure to document its accounting entries provides substantial evidence for Commerce's finding. There was no ambiguity in Commerce's request for "recording[s] in your accounting system regarding the sale[s] and payment[s] of the subject merchandise for both HHI and Hyundai USA (for U.S. sales))." Oct. 7, 2016 Suppl. Questionnaire at 6. Nevertheless, HHI failed to provide those documents and failed to explain why it was not providing the documents. HHI now argues that the documents it did provide were sufficient to substantiate the

gross unit prices it reported, HHI's Opp'n Cmts. at 3,[11] suggesting that HHI reported only information that it deemed necessary and sufficient. Moreover, HHI's ability to provide supporting documentation for some commission expenses indicates that additional documents existed but HHI failed to provide them. Under these circumstances,[12] "it is reasonable to conclude that" HHI demonstrated "less than full cooperation." *Nippon Steel Corp.,* 337 F.3d at 1382.

---

[11] HHI avers that the "'critical question . . . is whether' a respondent, through the submission of requested documents, has '**adequately substantiated the data**' that it reports." HHI's Opp'n Cmts at 3 (quoting *ABB Inc. v. United States*, 40 CIT__,__, 190 F. Supp. 3d 1159, 1168-69 (2016)). The quoted language from *ABB Inc.* related to whether substantial evidence supported Commerce's conclusion that actual cost data, submitted during an administrative review, was reliable when it differed from estimated costs submitted during the investigation phase. *See* 190 F. Supp. 3d at 1168-69. *ABB Inc.* does not stand for the proposition that a respondent may selectively report the information that it deems sufficient to substantiate its reported data. It is Commerce, not the respondents, that decides what information must be provided. *See, e.g., POSCO v. United States*, 42 CIT__, __, 296 F. Supp. 3d 1320, 1341 n.31 (2018).

[12] With respect to the timing of Commerce's request, Commerce requested the documents when it did because of deficiencies in HHI's initial and supplemental questionnaire responses. HHI did not request additional time to respond to the supplemental questionnaire nor does HHI claim that it could not comply with the request in a timely manner.

Turning to HHI's argument that Commerce was not justified in using total AFA, HHI contends that its failure to report properly service-related revenues does not support the use of total AFA because, in the preceding review, Commerce determined that such a reporting failure only justified the use of partial AFA. HHI's Opp'n Cmts at 16 (citing *ABB Inc. v. United States*, 42 CIT__, __, 355 F. Supp. 3d 1206, 1215-16 (2018)). With respect to the reporting of home market sales of an LPT part, HHI argues that the reporting error "affects a single part for four sales observations," and is not enough to render the entirety of the home market prices unreliable.[13] *Id.* Regarding the missing documents, HHI argues that the omissions were "minor," and "not pervasive." *Id.* at 17 (internal quotation marks omitted). The court concludes that Commerce's decision to use total AFA based on its collective findings is supported by substantial evidence and in accordance with law.

"In general, 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." *Mukand, Ltd. v. United States*, 767 F.3d 1300 , 1308 (Fed. Cir. 2014). Commerce uses "total AFA" when it concludes "that all of a party's reported information is unreliable or unusable

---

[13] HHI claimed that this reporting issue concerned less than five percent of sales, and its effect on gross unit price for those sales was 0.89 to 2.69 percent. Oral Arg. 26:52- 27:17, 27:46-28:02 (reflecting time stamp from the recording).

and that as a result of a party's failure to cooperate to the best of its ability, it must use an adverse inference in selecting among the facts otherwise available." *Deacero S.A.P.I. de C.V. v. United States*, 42 CIT ,_, 353 F. Supp. 3d 1303, 1305 n.2 (2018). The U.S. and home market prices are central to the dumping calculation. Commerce explained that the consequence of a failure to report properly service-related revenues and the price of a subject LPT part[14] caused the reported U.S. prices to be overstated and home market prices to be understated. Remand Results at 16. Commerce also explained that HHI's selective provision of sales documentation undermined the reliability of its reporting of

---

[14] Regarding the LPT part, HHI avers that the agency may not "extrapolate from *a single error*, which may well have been an isolated oversight, a conclusion that the entirety of the respondent's submissions concerning other classes of subject merchandise are unreliable." HHI's Opp'n Cmts at 16 (quoting *Fujian Mach. & Equip. Imp. & Exp. Corp. v. United States*, 27 CIT 1059, 1061, 276 F. Supp. 2d 1371, 1374 (2003)) (emphasis added). "On the other hand," however, "numerous 'oversights' would likely suggest a 'pattern of unresponsiveness' justifying not only the application of facts available [], but of AFA." *Fujian*, 276 F. Supp. 2d at 1374 n.2 (citation omitted). Despite HHI's effort to disaggregate its reporting omissions and errors, Commerce identified several such "oversights," Remand Results at 16, detracting from HHI's argument. Additionally, regarding the home market sales of the LPT part, Commerce explained that its discovery of this misreporting in sales for which it had requested full documentation gave it reason to question the reliability of the other home market sales for which Commerce did not request full documentation. I&D Mem. at 25.

expenses associated with U.S. sales.[15] *Id.* at 16. Commerce reasonably found that the reporting failures "cut across and affect all of [HHI's] reported data" and, thus, prevented the agency from relying on HHI's reporting "because the basic elements of a dumping calculation (i.e. the reported gross prices of the [U.S.] and home market) are deficient." *Id.* at 26. The deficiencies in HHI's questionnaire responses were not limited to discrete categories of information but included service-related revenues, the LPT part, and sales related documentation. These gaps were sufficiently prevalent that Commerce reasonably determined that the use of partial AFA was not practicable.

II. Accessories

HHI requests that the court affirm the agency's determination concerning accessories. HHI's Supp. Cmts at 1. ABB argues that the court need not rule on this issue because Commerce's discussion of accessories is moot since it had no bearing on the agency's use of total AFA. ABB's Supp. Cmts at 15. The Government does not

---

[15] HHI contends that it is unclear how its failure to provide commission expense or transportation documents support the use of total AFA because those expenses were reported in fields separate from the gross unit prices. HHI's Opp'n Cmts at 7, 8. Commerce explained, however, that the missing information was "important . . . to have [an] accurate starting point from which to calculate [constructed export price] and normal value, or, at a minimum, calculate adjustments to those starting prices." Remand Results at 22 (internal quotation marks omitted).

express a view, simply requesting that the court sustain the Remand Results.[16] *See* Gov.'s Supp. Cmts at 18. No party challenged the Remand Results with respect to accessories by the deadline for submission of comments in opposition to the Remand Results, therefore, any such arguments are waived. Upon review of the Remand Results, Commerce properly reevaluated its treatment of accessories; therefore, the Remand Results are sustained with respect to the treatment of accessories.

CONCLUSION

For the foregoing reasons, the court finds that the Remand Results comply with the court's remand order, are supported by substantial evidence and otherwise in accordance with law. Judgment will enter accordingly.

---

[16] In the underlying proceeding, Commerce responded to ABB's argument as follows:

> Considering the [c]ourt's finding that there is a need for guidance on the term "accessories," we further examined the record. After analyzing the factual information regarding "accessories" and assessing [HHI's] business practices regarding the term, we find it necessary to clarify our treatment of "accessories" in this case. For this reason, we disagree with ABB that we should not include our discussion of "accessories" and have included our discussion.

Id. at 19.

HYUNDAI HEAVY INDUSTRIES, CO. LTD.,
Plaintiff,

v.

UNITED STATES, Defendant,

and

ABB Inc., Defendant-Intervenor.

Slip Op. 18-101
Court No. 17-00054

Before: Mark A. Barnett, Judge

United States Court of International Trade.

Dated: August 14, 2018

David E. Bond, White and Case LLP, of Washington, DC, argued for Plaintiff. With him on the brief were William J. Moran and Ron Kendler.

John J. Todor, Senior Trial Counsel, Commercial Litigation Branch, Civil Division, U.S. Department of Justice, of Washington, DC, argued for Defendant. With him on the brief were Chad A. Readler, Acting Assistant Attorney General, Jeanne E. Davidson, Director, and Franklin E. White, Jr., Assistant Director. Of counsel on the brief was Christopher Hyner, Attorney, Office of the Chief Counsel for Trade Enforcement and Compliance, U.S. Department of Commerce.

R. Alan Luberda, Kelley Drye & Warren LLP, of Washington, DC, argued for Defendant-

Intervenor. With him on the brief were David C. Smith and Melissa M. Brewer.

OPINION

Barnett, Judge:

[Remanding the U.S. Department of Commerce's decision to use total facts available with an adverse inference.]

Plaintiff, Hyundai Heavy Industries, Co., Ltd. ("Plaintiff" or "HHI") contests the final results of the U.S. Department of Commerce ("Commerce" or the "agency") in the third administrative review ("AR 3") of the antidumping duty order covering large power transformers ("LPTs") from the Republic of Korea for the period of review August 1, 2014, through July 31, 2015. *Large Power Transformers from the Republic of Korea*, 82 Fed. Reg. 13,432 (Mar. 13, 2017) (final results of antidumping duty administrative review; 2014-2015) ("*Final Results*"), ECF No. 17-2, and accompanying Issues and Decision Mem., A-580-867 (Mar. 6, 2017) ("I&D Mem."), ECF No. 17-3.[1]

---

[1] The administrative record for this case is divided into a Public Administrative Record ("PR"), ECF No. 17-4, and a Confidential Administrative Record ("CR"), ECF No. 17-5. Parties submitted joint appendices containing record documents cited in their briefs. *See* Public J.A. ("PJA"), ECF No. 44 (Vols. I-III); Confidential J.A. ("CJA"), ECF Nos. 40- 1 (Vol. I), 41-1 (Vol. II), 42-1 (Vol. III), 43-1 (Vol. IV), 45-1 (Vol. V), 46-1 (Vol. VI), 46-2 (Vol. VII). References are to the confidential versions of the relevant record documents, unless stated otherwise.

BACKGROUND

Commerce initiated AR 3 on October 6, 2015. *Initiation of Antidumping and Countervailing Duty Admin. Reviews*, 80 Fed. Reg. 60,356, 60,358 (Dep't Commerce Oct. 6, 2015), CJA Vol. I Tab 5, PJA Vol. I Tab 5, PR 10, ECF No. 40-1. Commerce selected HHI and Hyosung Corporation as mandatory respondents. I&D Mem. at 3. Commerce issued its initial questionnaire to HHI on December 3, 2015. *See* Req. for Information – Antidumping Admin. Review (Dec. 3, 2015) ("Initial Questionnaire"), CJA Vol. I Tab 6, PJA Vol. I Tab 6, PR 21, ECF No. 40-1.[2] Commerce published its preliminary results of review on September 2, 2016. *Large Power Transformers from the Republic of Korea*, 81 Fed. Reg. 60,672 (Dep't Commerce Sept. 2, 2016) (prelim. results of antidumping duty administrative review*; 2014-2015)* ("*Preliminary Results*"). For the *Preliminary Results*, Commerce relied on HHI's submitted data and calculated a weighted-average dumping margin of 3.09 percent for HHI. *Id.*, 81 Fed. Reg. at 60,673.

Commerce published the *Final Results* on March 13, 2017. *Final Results*, 82 Fed. Reg. 13,432. For the *Final Results*, Commerce assigned to HHI a final weighted- average dumping margin

---

[2] Commerce issued supplemental questionnaires to HHI both before and after it published the preliminary results. Further discussion of the supplemental questionnaires and HHI's responses to them is contained in the relevant section of the analysis, *infra*.

of 60.81 percent based on total facts available with an adverse inference (referred to as total adverse facts available). *Id.*, 82 Fed. Reg. at 13,432. Commerce's decision to rely on total adverse facts available was based on four findings: (1) HHI failed to report service-related revenues separately from the gross unit price despite repeated requests from Commerce, I&D Mem. at 21-22; (2) HHI failed to include the price of a subject "part" in the price for certain home-market sales despite repeated opportunities to do so, *id.* at 23-26; (3) HHI failed to report separately the prices and costs for accessories, *id.* at 26-27; and, (4) HHI was systematically selective in providing various documents to Commerce and Commerce determined there were discrepancies in HHI's reported data, *id.* at 27-28.

HHI now challenges Commerce's decision to rely on total adverse facts available and each of the four rationales that the agency cited as supporting that decision. The court must determine whether Commerce's individual findings are supported by substantial evidence and whether the agency's resort to total adverse facts available is otherwise in accordance with law.

JURISDICTION AND STANDARD OF REVIEW

The court has jurisdiction over this action pursuant to 28 U.S.C. § 1581(c) and 19 § 1516a(a)(2)(A)(i)(I) and (a)(2)(B)(iii).[3] The court

---

[3] Citations to the Tariff Act of 1930, as amended, are to Title 19 of the U.S. Code, and references to the United States

will uphold an agency determination that is supported by substantial evidence and otherwise in accordance with law. 19 U.S.C. § 1516a(b)(1)(B)(i).

LEGAL FRAMEWORK FOR ADVERSE FACTS AVAILABLE

When "necessary information is not available on the record," or an interested party "withholds information" requested by Commerce," "fails to provide" requested information by the submission deadlines, "significantly impedes a proceeding," or provides information that cannot be verified pursuant to 19 U.S.C. § 1677m(i), Commerce "shall . . . use the facts otherwise available." 19 U.S.C. § 1677e(a). Commerce's authority to use the facts otherwise available is subject to 19 U.S.C. § 1677m(d). *Id.* Pursuant to § 1677m(d), if Commerce determines that a respondent has not complied with a request for information, it must promptly inform that respondent of the nature of the deficiency and, to the extent practicable in light of statutory deadlines, provide that

---

Code are to the 2012 edition. Citations to 19 U.S.C. § 1677e, however, are to the United States Code 2016 edition, which reflects amendments to § 1677e pursuant to the Trade Preferences Extension Act ("TPEA"), Pub. L. No. 114–27, § 502, 129 Stat. 362, 383–84 (2015). The TPEA amendments affect all antidumping determinations made on or after August 6, 2015, and, therefore, apply to the instant proceeding. *See* Dates of Application of Amendments to the Antidumping and Countervailing Duty Laws Made by the Trade Preferences Extension Act of 2015, 80 Fed. Reg. 46,793 (Dep't Commerce Aug. 6, 2015).

respondent "an opportunity to remedy or explain the deficiency." *Id.* § 1677m(d).

Commerce may not disregard information that is "necessary to the determination but does not meet all the applicable requirements," when:

> (1) the information is submitted by the deadline established for its submission,
>
> (2) the information can be verified,
>
> (3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,
>
> (4) the interested party has demonstrated that it acted to the best of its ability in providing the information . . ., and
>
> (5) the information can be used without undue difficulties.

Id. § 1677m(e).

If, however, Commerce determines that the party "has failed to cooperate by not acting to the best of its ability to comply with a request for information," it "may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available." *Id.* § 1677e(b). "Compliance with the 'best of its ability' standard is determined by assessing whether a respondent has put forth its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation." *Nippon Steel*

Corp. v. United States, 337 F.3d 1373, 1382 (Fed. Cir. 2003).[4]

Commerce uses total adverse facts available when "none of the reported data is reliable or usable," such as when all of the "submitted data exhibit[s] pervasive and persistent deficiencies that cut across all aspects of the data." *Zhejiang DunAn Hetian Metal Co. v. United States*, 652 F.3d 1333, 1348 (Fed. Cir. 2011) (citing *Steel Authority of India, Ltd. v. United States*, 25 CIT 482, 487, 149 F. Supp. 2d 921, 928-29 (2001)).

DISCUSSION

I. Service-related revenue

a. Relevant Facts

In Sections B and C of the initial questionnaire, Commerce instructed HHI to "report revenue in separate fields (e.g., ocean freight revenue, inland freight revenue, oil revenue, installation, etc.) and identify the related expense(s) for each revenue." Initial Questionnaire at JA100059. In response, HHI stated:

> [HHI] has reported, since the first administrative review, separate revenue and expenses whe[n] the customer issues a separate purchase order for services that

---

[4] *Nippon Steel* predates the amendments made to 19 U.S.C. § 1677e by the TPEA; however, the relevant statutory language discussed in that case remains unchanged. *Compare* 19 U.S.C. § 1677e(b)(2012), *with* 19 U.S.C. § 1677e(b)(1)(2016).

> are not part of the original term of sale . . . [HHI] has reported the sales amount from additional purchase orders in the ADDPOPRU field and the associated additional expenses under the separate purchase order in the ADDPOEXPU field. [HHI] did not receive additional purchase orders for home-market sales during the POR . . . ."

Resp. of Hyundai Heavy Industries Co., Ltd. to Section B of the Questionnaire (Jan. 27, 2016) ("HHI's Sec. B Resp.") at B-4, CJA Vol. I Tab 8, CR 152-156, PJA Vol. I Tab 8, PR 91-94, ECF No. 40-1; *see also* Resp. of Hyundai Heavy Industries Co., Ltd. to Section C of the Questionnaire (Jan. 27, 2016) ("HHI's Sec. C Resp.") at C-3, CJA Vol. I Tab 9, CR 152-156, PJA Vol. I Tab 9, PR 91-94, ECF No. 40-1 (cross-referencing its response to Section B of the questionnaire). HHI explained that its reporting methodology was based on Commerce's "conclusion" in the original investigation:

> [Commerce] found that [HHI] correctly had reported its gross unit price and properly did not separate, for example, freight where there were no 'separate arrangements on behalf of the customer' and where [HHI] had not 'sought reimbursement for that cost.' . . . [Commerce] recognized that its practice is to separate revenue and expenses 'that are not included in the term of sale.'

HHI's Sec. B Resp. at B-3 (citing Issues and Decision Mem., A-580-867 (Jul. 11, 2012) ("Initial Investigation I&D Mem.") at Comment 4, accompanying *Large Power Transformers from the Republic of Korea*, 77 Fed. Reg. 40,857 (Dep't Commerce July 11, 2012) (final determination of sales at less than fair value). HHI reasoned that the prices of its services are not separable from the price of the subject merchandise. *See id.* at B-4 ("[W]he[n] it is required, installation and supervision are not separable from the LPT itself."). HHI's response asserted that Commerce has distinguished "separately provided and charged services from those within the terms of sale" in prior proceedings. *Id.* at B-3 (citing Issues and Decision Mem., A-100-001 (Aug. 31, 2009) at Comment 12, accompanying *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom*, 74 Fed. Reg. 44,819 (Dep't Commerce Aug. 31, 2009) (final results of antidumping duty admin. reviews and revocation of an order in part).

Following this initial response, Commerce asked HHI to "clarify whether HHI or Hyundai USA received revenue related to international freight, inland freight, oil, installation, or any other expenses on U.S. sales. If so, please report this revenue in a field separate from the related expense." Suppl. Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corp. USA's Questionnaire Resps. (July 27, 2016) ("July 27, 2016 Suppl. Questionnaire") at 7, CJA Vol. I Tab 13, CR 266, PJA Vol. I Tab 13, PR 169, ECF No. 40-1. HHI responded in two parts. In the first

part, HHI stated: "In accordance with [Commerce's] review and treatment of [HHI's] sales documentation in prior segments of this proceeding, [HHI] did not receive separate revenue related to international freight, inland freight, oil, installation, or any other expenses on home-market sales or U.S. sales." *See* Resp. to the Second Suppl. Sections A, B, C and D Questionnaire (Aug. 10, 2016) ("HHI's Aug. 10, 2016 Suppl. Resp."), at 11, CJA Vol. I Tab 14, CR 299-313, PJA Vol. I Tab 14, PR 179-179, ECF No. 40-1. HHI further indicated that it reported its service revenues in accordance with Commerce's conclusions in prior reviews. *See id.* at 11-12 ("In those instances whe[n HHI] received a purchase order for a separate service, [HHI] reported the sales revenue and corresponding expenses separately in accordance with [Commerce's] requirements[.]").

In the second part of its response, HHI included Attachment 2S-17, which Commerce found to be relevant to HHI's revenue reporting. *See* Resp. to Questions 8, 16, 25, 26 and 28 of the Second Suppl. Sections A, B, C and D Questionnaire (Aug. 18, 2016) ("HHI's Aug. 18, 2016 Suppl. Resp."), Attach 2S-17, CJA Vol. I Tab 15, CR 300-313, PJA Vol. I Tab 15, PR 189-190, ECF No. 40-1. Attachment 2S-17 included sales documentation that contained separate service line-items with a corresponding price, and those price amounts were higher than the expenses that HHI reported in its sales database. *See* I&D Mem. at 20 & nn.105-106 (citing HHI's Aug. 18, 2016 Suppl. Resp., Attach 2S-17; HHI's Aug. 18, 2016

Suppl. Resp., Attach 2S-26, CJA Vol. VI Tab 4, CR 299-315, PJA Vol. II Tab 4, PR 189-190, ECF No. 46-1).

Commerce sent a second supplemental questionnaire to HHI after it issued the *Preliminary Results*. *See* Suppl. Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corp. USA's Questionnaire Resps. (Oct. 7, 2016) ("Oct. 7, 2016 Suppl. Questionnaire"), CJA Vol. I Tab 16, CR 346, PJA Vol. I Tab 16, PR 213, ECF No. 40-1. Therein, Commerce cited ABB Inc.'s ("ABB") argument that HHI had received service-related revenue, and instructed HHI to report such expenses and revenues:

> "In its September 13, 2016 comments, Petitioner asserts [that] HHI incurred expenses and obtained revenues for separately-negotiated services and non-subject merchandise for [certain][5] sales. . . . Please revise your U.S. sales database to report all such expenses and revenues for these sales in separate fields."

Id. at 6. Commerce also stated: "If, in your opinion, there were no additional expenses or

---

[5] The sales were identified as U.S. sequence numbers ("SEQUs") 11 and 16. Oct. 7, 2016 Suppl. Questionnaire at 6. SEQU 11 concerned the issue of separately negotiated services, whereas SEQU 16 concerned the issue of non-subject merchandise. *See* Resp. to Questions 13 and 17 of the Third Suppl. Sections A, B, C, and D Questionnaire (Nov. 10, 2016) ("HHI's Nov. 10, 2016 Suppl. Resp.") at 7-8, CJA Vol. II Tab 17, CR 440-449, PJA Vol. I Tab 17, PR 241-250, ECF No. 41-1.

revenues related to a sale, please comment on each of the items cited by the Petitioner . . . ." *Id.* at 6.

In its response, HHI addressed the particular sales rather than revising the sales database. See HHI's Nov. 10, 2016 Suppl. Resp. at 7-8, 11-16. Relevant to the service-related revenue issue, HHI explained that although there were separate line item values for certain services, those values were "not severable from the lump-sum price." *Id.* at 7-8.[6] HHI went on to state that, notwithstanding its "demonstration [] that HHI did not have any 'separate' revenues for separate services or non-subject merchandise," HHI was providing "a worksheet listing on a category basis the values listed anywhere in the sales documentation for the breakdowns of the price of the LPTs and the corresponding expenses." *Id.* at 23; *see also id.*, Attach. 3S-46 (the worksheet), CJA Vol. IV Tab 17, PJA Vol. I Tab 17, ECF No. 43-1.

In its *Final Results*, Commerce determined that HHI refused to provide information requested in the initial and supplemental questionnaires, and therefore, "impeded [the] review by failing to act to the best of its ability by failing to provide [Commerce] with the requested information in a timely manner." I&D Mem. at 22. Commerce's review of HHI's sales documents identified separate service line items with corresponding prices, which were higher than

---

[6] Transportation, offloading, and supervision. *Id.* at 7-8.

HHI's corresponding reported expenses, supporting Commerce's concern that HHI could be overstating gross unit prices. *Id.* at 20, 21. Commerce concluded that, "HHI and its customers separately assigned prices for the related services and identified these amounts as separate line items on invoices, separate from the price of the subject merchandise." *Id.* at 21. Moreover, Commerce stated:

> Although these services are required under the terms of sale and are invoiced on a lump-sum basis, as [HHI] argued, we find that [HHI's] sales documentation specifically indicates that these sales-related services could be negotiable, apart from subject merchandise, since each service is shown/listed with the corresponding amount in purchase orders and/or invoices. In other words, if customers do not like [HHI]'s price for a certain service, they can procure/arrange such service on their own without using [HHI]'s service.

Id. at 21. Commerce questioned the reliability of the worksheet provided by HHI, finding it incomplete because it appeared to be missing certain data fields for multiple U.S. sales, such as the related expenses for its claimed revenues. *Id.* According to Commerce, if HHI had "followed [Commerce's] request to report separately service-related revenues and the related expenses early on . . . [the agency] would have had the time to request additional necessary information (i.e., the missing data) and verify other issues." *Id.* at 22.

Commerce also explained that it had "specifically requested that [HHI] provide this information in the instant review, because [HHI's] sales documentation identifies separate line items for sales-related services." *Id.* Those separate line items demonstrated to the agency that the sales-related services could be negotiable, thereby distinguishing this review from prior segments of this proceeding. *See id.*

b. Parties' Contentions

Plaintiff asserts that Commerce departed from the practice it relied upon in previous segments of the proceeding for determining whether separate service-related revenue existed or should have been reported. *See* Confidential Rule 56.2 Mot. for J. Upon the Agency R. on Behalf of Pl. Hyundai Heavy Industries Co. Ltd. and Mem. of P. & A. in Supp. ("Pl.'s Br.") at 24-26, ECF No. 26 (referring to Commerce's application of a "new test"). Plaintiff contends that in so doing, Commerce failed to provide Plaintiff sufficient notice of its change in practice. *See id.* at 24, 29-31. Plaintiff further contends that Commerce did not indicate in the supplemental questionnaires that the agency was changing its approach to service-related revenue or identify a deficiency in HHI's data. Confidential Am. Reply in Supp. of Pl.'s Rule 56.2 Mot. for J. Upon the Agency R. ("Pl.'s Reply") at 6-7, ECF No. 38. HHI also argues that the worksheet submitted with its third response provided the information necessary to calculate a dumping margin. *See* Pl.'s Br. at 31-33.

United States ("Defendant" or the "Government") defends Commerce's determination on the grounds that "each administrative review is a separate segment of [the] proceeding[] with its own unique facts." Confidential Def.'s Resp. to Pl.'s Rule 56.2 Mot. for J. Upon the Agency R. ("Def.'s Resp.") at 16, ECF No. 31 (quoting *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491 (2005)). According to the Government, Commerce based its revenue-capping decision in each segment on the record evidence presented in that individual segment. *See id.* at 17. Thus, notwithstanding the agency's conclusions in prior administrative segments, Commerce reasonably concluded, based on evidence presented in AR 3, that HHI separately negotiated the price for service-related expenses. *See id.* at 18.

ABB argues that Commerce modified its standard antidumping duty questionnaire at the beginning of the review, instructing HHI to separately report its service-related revenue. Confidential Def.-Int.'s Resp. in Opp'n to Pl.'s Mot. for J. on the Agency R. ("ABB's Resp.") at 6-7, ECF No. 29. ABB contends that Commerce's instruction in the supplemental questionnaire "did not limit reporting of revenues in this review regardless of what it may have done in the prior segments." *Id.* at 8. ABB characterizes Plaintiff's arguments concerning Commerce's alleged use of a new service-related revenue methodology as a challenge to Commerce's fact-finding authority. *See id.* at 22 ("Contrary to HHI's claim, Commerce's right to seek factual information

during a proceeding does not constitute a 'test' from which the agency must justify a departure.").

c. Analysis

Antidumping analysis requires Commerce to compare the export price or constructed export price of the subject merchandise with the normal value of the foreign like product. *See* 19 U.S.C. § 1677b(a); *see also* 19 C.F.R. § 351.401(a). Section 1677a(c) provides three instances when Commerce shall increase the export price or constructed export price, and § 1677b(a)(6) provides six instances when Commerce shall increase the normal value. *See* 19 U.S.C §§ 1677a(c), 1677b(a)(6). There is no statutory basis for increasing the export price, constructed export price, or normal value when a service is separately provided and the respondent earns a profit on the provision of that service. *See Sucocitrico Cutrale Ltda. v. United States*, Slip Op. 12-71, 2012 WL 2317764, at 4 (CIT June 1, 2012) ("Commerce properly determined that it was inappropriate to treat the [service charges] as adjustments to the U.S. price under section 1677a(c)" when those charges were not attributable to the subject merchandise.) Likewise, there is no statutory language requiring export price, constructed export price, or normal value to be adjusted downward for any profit made on the provision of a service when the provision of that service is part of the transaction for the sale of the subject merchandise. *See* 19 U.S.C §§ 1677a(c)-(d), 1677b(1)(6)-(7). Thus, the issue, as framed by Commerce, is whether the gross unit price, as reported by HHI, properly

includes the provision of the services in question or, as determined by Commerce, those services were separately negotiable, regardless of whether they were ultimately provided and charged in a single, lump-sum invoice. *See* I&D Mem. at 21 ("[HHI's] sales documentation specifically indicate[d] that these sales-related services could be negotiable, apart from subject merchandise since each service is shown/listed with the corresponding amount in purchase orders and/or invoices.").

When Commerce finds that a service is separately negotiable, its practice has been to cap the service-related revenue by the associated expenses when determining the U.S. price. *Id.* at 18 & n.88 (citations omitted). This court recently acknowledged that Commerce's revenue-capping practice was previously examined by the court and found to be reasonable. *See ABB, Inc. v. United States*, 41 CIT____,_____, 273 F. Supp. 3d 1200, 1208-09 (2017) (citing *Dongguan Sunrise Furniture Co., Ltd. v. United States*, 36 CIT_,_ ___, 865 F.Supp.2d 1216, 1248 (2012)).

Plaintiff does not challenge Commerce's capping practice, instead focusing its arguments on the agency's factual findings. *See* Pl.'s Br. at 25-31; Pl.'s Reply at 2-6.

Substantial evidence supports Commerce's finding that HHI had separate service-related revenue to report, but failed to do so. *See* I&D Mem. at 21. Although HHI did not issue separate invoices for these services, the record shows that "HHI and its customers separately assigned prices for these services and identified these amounts as

separate line items on invoices, separate from the price of the [LPTs]." I&D Mem. at 21 & n.112 (citing HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35);[7] *see also id.* at 20 & n.105 (citing HHI's Aug. 18, 2016 Suppl. Resp., Attach. 2S-17); Pl.'s Br. at 10 (asserting that "its sale documents sometimes showed separate prices for services") (citations omitted).

Moreover, Commerce's determination that HHI withheld information requested by the agency and significantly impeded the proceeding is supported by substantial evidence. *See* I&D Mem. at 4-5, 21-22. Commerce's initial questionnaire instructed HHI to report service-related revenue in separate fields and to identify the related expense for each type of revenue. Initial Questionnaire at JA100059. HHI did not report all separately identifiable revenues as requested, instead reporting separate revenue and expenses only for services when the customer issued a separate purchase order because they were not encompassed in the original terms of sale. *See* HHI's Sec. B Resp. at B-3; HHI's Sec. C Resp. at C-3. When Commerce requested Plaintiff to clarify whether HHI or its U.S. affiliate received revenue related to freight, oil, installation, or other related expenses on U.S. sales, and, if so, to report this revenue in a separate field along with the related expense, HHI again responded by providing its

---

[7] Attachment 3S-35 spans CJA Vol. II Tab 17 at JA 100538, ECF No. 41-1, to CJA Vol. IV Tab 17 at JA 103841, ECF No. 43-1.

understanding of the terms "separate revenue." *See* July 27, 2016 Suppl. Questionnaire at 7; HHI's Aug. 10, 2016 Suppl. Resp. at 11-12. When Commerce asked Plaintiff in the subsequent supplemental questionnaire to revise its U.S. sales database to report expenses and revenues in separate fields, addressing ABB's assertions of separately-negotiated services, Plaintiff did not revise its database but rather provided a worksheet purporting to list a breakdown of "the values listed anywhere in the sales documentation" and the corresponding expenses. *See* Oct. 7, 2016 Suppl. Questionnaire at 6; HHI's Nov. 10, 2016 Suppl. Resp. at 23.

Thus, Commerce asked HHI on three separate occasions to separately report service-related revenue. Twice, HHI did not; and the third time, HHI provided a worksheet which was not responsive in the form or manner requested by Commerce. "The focus of [19 U.S.C. 1677e](a) is respondent's failure to provide information. . . . The mere failure of a respondent to furnish requested information—for any reason— requires Commerce to resort to other sources of information to complete the factual record on which it makes its determination." *Nippon Steel*, 337 F.3d at 1381 (emphasis omitted).

The court must next consider whether Commerce met its obligations, pursuant to 19 U.S.C. § 1677m(d), to notify HHI of deficiencies in its questionnaire responses.

Plaintiff's arguments that Commerce did not provide HHI with sufficiently detailed notice of

deficiencies in its reporting are not persuasive. *See* Pl.'s Br. at 22-23, 32-33. HHI was informed that its reporting of service-related revenue was deficient because Commerce made multiple requests for such information, including an explicit request that HHI revise its sales database to report "all expenses and revenues" in separate fields.[8] Intentional obtuseness on the part of respondent does not obviate Commerce's multiple requests to HHI for the relevant information.

[6] Substantial evidence also supports Commerce's decision to apply an adverse inference, which was otherwise in accordance with law. Commerce "may use an inference that is adverse to the interests of [a respondent] in selecting from among the facts otherwise available" when the respondent "fail[s] to cooperate by not acting to the best of its ability to comply with a request for information." 19 U.S.C. § 1677e(b)(1)(A). A respondent fails to cooperate by acting to the best of its ability to comply with a request for information when it has not "put forth

---

[8] While Commerce's instruction included an alternative by which HHI might explain why it chose not revise its database, this alternative did not excuse HHI from the reporting burden if Commerce did not accept the explanation and the alternative did not exclude the risk that Commerce would rely on facts available in the absence of time to make another request for the information. Plaintiff was required to prepare an "accurate and complete record in response to questions plainly asked by Commerce." *Tung Mung Dev. Co., Ltd. v. United States*, 25 CIT 752, 788–89 (2001) (citing *Olympic Adhesives, Inc. v. United States*, 899 F.2d 1565, 1571–72 (Fed. Cir. 1990)).

its maximum effort to provide Commerce with full and complete answers to all inquiries in an investigation." *Nippon Steel*, 337 F.3d at 1382.

As noted, Commerce made multiple requests for HHI's service-related revenue, and each time HHI explained that its reporting relied on prior segments of the proceeding rather than providing the information specific to the current review period as requested by Commerce. The fact that the records of prior segments did not support a conclusion that certain service-related revenues were separately reportable does not excuse HHI from the burden of again establishing, on the record of this review, that such revenues were not separately reportable. As evidenced by the worksheet that HHI ultimately provided, HHI had the ability to provide substantially more information than it initially did, but withheld that information until very late in the review.

HHI argues that its failure to comply with the supplemental questionnaires was informed by, and should be excused by, Commerce's treatment of its service-related revenues in the original investigation and prior reviews of LPTs. *See* Pl.'s Br. at 25-26 (citing Initial Investigation I&D Mem. at 29; Issues and Decision Mem., A-580-867 (Mar. 8, 2016) ("AR 2 I&D Mem.") at 39-40, accompanying *Large Power Transformers from the Republic of Korea*, 81 Fed. Reg. 14,087 (Dep't Commerce Mar. 16, 2016) (final results of antidumping duty admin. review; 2013-2014). HHI may not, however, rely on Commerce's factual conclusions from prior reviews in the instant review because each review is separate

and based on the record developed before the agency in the review. *See, e.g.*, *Jiaxing Bro. Fastener Co., Ltd. v. United States*, 822 F.3d 1289, 1299 (Fed. Cir. 2014); *Shandong Huarong Mach. Co. v. United States*, 29 CIT 484, 491, (2005) ("[A]s Commerce points out, 'each administrative review is a separate segment of [the] proceeding[] with its own unique facts. Indeed, if the facts remained the same from period to period, there would be no need for administrative reviews.'") (citation omitted).

In prior segments of the LPTs from Korea proceeding, Commerce made clear that its conclusions were based on the record of each segment. *See* HHI's Aug. 10, 2016 Suppl. Resp. at 11-13 (citing Initial Investigation I&D Mem.; AR 2 I&D Mem.). Tellingly, on three occasions, HHI quoted language from the prior review and the original investigation, indicating that Commerce's results were "[b]ased on the record of the current review," "based upon its review of record evidence," or based on what "the record . . . suggest[ed]." *Id.* at 11-13. The burden to build the record in each segment lies with the respondent. *See Ta Chen Stainless Steel Pipe, Inc. v. United States*, 298 F.3d 1330, 1336 (Fed. Cir. 2002) ("The burden of production [belongs] to the party in possession of the necessary information.") (quoting *Zenith Elecs. Corp. v. United States,* 988 F.2d 1573, 1583 (Fed. Cir. 1993) (alteration in original).

Substantial evidence further supports a finding that HHI's worksheet failed to satisfy the elements of 19 U.S.C. § 1677m(e). As already

noted, HHI did not provide the worksheet allegedly containing the service-related revenue until after the *Preliminary Results* were issued. *See* HHI's Nov. 10, 2016 Suppl. Resp. at 23; *see also id.*, Attach. 3S-46 (the worksheet). At that point, Commerce determined that it could not verify the worksheet's information and address various other issues concerning the worksheet at such a late stage of the review. *See* I&D Mem. at 22 & n.15 (citing Petitioner's Case Br. (Jan. 5, 2017) at 20-22, CJA Vol. VI Tab 9, CR 463-65, PR 280- 281, ECF No. 46-1). Further, Commerce also noted that the worksheet was "incomplete" in that it was "missing information for multiple U.S. sales," casting "serious doubt on the reliability of such information." *Id.* at 21. These findings are confirmed by the worksheet itself. See HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-46. Thus, substantial evidence supports Commerce's finding that HHI failed to satisfy the elements of 19 U.S.C. § 1677m(e).

For the foregoing reasons, Commerce's findings that HHI had service-related revenues, and that HHI failed to report service-related revenues separately from the gross unit price despite repeated requests from Commerce, are supported by substantial evidence.

II. HHI's Treatment of a Certain LPT "Part"

a. Relevant Facts

The scope of the antidumping duty order covers both complete and incomplete LPTs. In its initial questionnaire, Commerce repeated the text of the scope, including the definition of incomplete

LPTs as "subassemblies consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs." Initial Questionnaire at JA100062. Commerce instructed Plaintiff to "report the price and cost for 'spare parts' and 'accessories' to ensure that product matches are based on accurate physical characteristics of the LPTs." *See* Resp. of HHI to Section D of the Questionnaire (Feb. 5, 2016) ("HHI's Sec. D Resp.") at D-2, CJA Vol. V Tab 22, CR 163-69, PJA Vol. I Tab 22, PR 97, ECF No. 45-1. Commerce found that despite the agency's clear instructions, HHI failed to report correctly its home-market price because it excluded a certain part from the home-market gross unit price, thereby understating normal value. *See* I&D Mem. at 23-25.

In a supplemental questionnaire, Commerce instructed HHI to provide complete sales documentation and all sales related documentation for two home-market sales.[9] July 27, 2016 Suppl. Questionnaire at 5. The documentation that Plaintiff submitted in response indicated that HHI "incorrectly identified a certain part required to assemble a complete LPT as non-foreign like product." I&D Mem. at 24 & n.123 (citing HHI's Aug. 18, 2016 Suppl. Resp. at 1-3 & Attach. 2S-17).[10]

---

[9] Home market sequence numbers 84 and 91. July 27, 2016 Suppl. Questionnaire at 5.

[10] HHI reported the local control panels for main transformers (MT), stand-by auxiliary transformers (SAT),

Commerce issued a second supplemental questionnaire, requesting documents supporting HHI's sales negotiation process and all expenses concerning these same home-market sales. Oct. 7, 2016 Suppl. Questionnaire at 5. Hyundai again reported the same part as non-subject merchandise. *See* Resp. to the Third Suppl. Sections A, B, C, and D Questionnaire (Oct. 27, 2016), Attach. 3S-7 at JA 300104-JA 300106, CJA Vol. VI Tab 7, CR 347-71, PJA Vol. II Tab 7, PR 225-27, ECF No. 46-1.

In December 2016, ABB raised the issue of HHI's failure to include the part in the home-market gross unit price in comments to the agency. *See* ABB's Dec. 2, 2016 Cmts at 10-13. In its response to these comments, HHI failed to address this issue; instead, it waited to raise the issue in its case brief. *See* Def.'s Resp. at 22; Pl.'s Br. At 13. In its case brief, HHI then argued:

> At this stage of this review, [HHI] is not permitted to submit rebuttal information to respond to ABB's argument and is limited to documents on record. With this limitation, the record is ambiguous and does not allow a definitive conclusion regarding whether the items in question are properly included in the gross unit price.

---

and unit auxiliary transformers (UAT) as non-subject merchandise. *See* HHI's Aug. 18, 2016 Suppl. Resp., Attach. 2S-17 at JA100160, JA100165- JA100167 (referring to this part as "NSM").

Pl.'s Br. at 13 (quoting HHI Admin. Case Br. (Jan. 5, 2017) at 21, CJA Vol. V Tab 19, CR 462, PJA Vol I Tab 19, PR 279, ECF. No. 45-1). Hyundai proffered a "revised price calculation worksheet" that allegedly included the excluded part with increased gross unit prices for the sales in question. Pl.'s Br. at 13; HHI Admin. Case Br. at 21 & Ex. 2.

Commerce concluded that the excluded part was "required to assemble a complete LPT," and that Hyundai had incorrectly labeled the part as non-subject merchandise in its first and second supplemental questionnaire responses. I&D Mem. at 25. The agency noted while HHI excluded the part from the gross unit prices for the home market sales, it included the same part in the gross unit prices for the U.S. sales, rendering the two prices incomparable. *Id.* Because this issue impacted the vast majority of home market sales for which the agency had examined full documentation, Commerce found that the improper reporting called into question all of the home market sales reporting and, thus, found all of HHI's home market prices unreliable. *Id.* at 26.

b. Parties' Contentions

At the outset, Plaintiff does not specifically challenge Commerce's factual finding that that the excluded part was subject merchandise and Plaintiff failed to correctly report it as such. *See* Pl.'s Br. at 34-35. Instead, Plaintiff argues that the sales documentation and revised calculation it provided to the agency as part of its

administrative case brief contained all the information necessary to calculate home market prices for the LPTs, inclusive of the part. *See* Pl.'s Br. at 34.[11] Plaintiff avers that "[Commerce] had no grounds to use [facts available]" under these circumstances. Pl.'s Br. at 34.

Defendant argues that HHI's failure to include the particular part in its home- market gross unit price "undermined Commerce's ability to analyze [HHI]'s information" and "Commerce reasonably determined that Hyundai failed to act to the best of its ability to provide necessary requested information." Def.'s Resp. at 19-20. ABB argues that HHI is attempting to shift the record-building burden to Commerce by "claiming that this issue did not arise until late in the proceeding such that HHI was deprived of the chance to remedy its misreporting," when the burden to build the record is on the respondent. ABB's Resp. at 36-37.

c. Analysis

Commerce's finding that HHI's failure to report properly its home market sales, inclusive of the price of within-scope parts, warrants the use of adverse facts available is supported by substantial evidence.

---

[11] The sales documentation included product price and detail for the part in question.

See HHI's Aug. 18, 2016 Suppl. Resp., Attach 2S-17 at JA100164-JA100168.

First, as noted, Plaintiff does not directly challenge Commerce's factual finding that Plaintiff withheld information, such as the proper reporting of the part in question. Second, Commerce identified the problem with HHI's reporting while in the process of reviewing Plaintiff's response to the second supplemental questionnaire, I&D Mem. at 24, and HHI acknowledged that this issue was identified at "a very late stage of the review process," *id.* Plaintiff does not argue that Commerce should have provided it an opportunity to remedy its defect, but argues that Commence should have utilized the revised calculation worksheet that HHI submitted in its administrative case brief. *See* Pl.'s Br. at 34. Alternatively, Plaintiff argues that Commerce had the necessary documentation to calculate the prices inclusive of the part. *Id.* This argument requires the court to assess whether substantial evidence supports a finding that HHI failed to satisfy the elements of 19 U.S.C. § 1677m(e) regarding the use of certain information.

Commerce declined to rely on the revised calculated worksheet because it "did not have time to confirm or verify the validity of these revisions." I&D Mem. at 25 (discussing in detail the agency's concerns with HHI's reporting and providing specific examples of why it questioned the reliability of HHI's reported home market prices). As discussed above, § 1677m(e) precludes Commerce from disregarding information that is "necessary to the determination" when five criteria are satisfied. 19 U.S.C. § 1677m(e).

Having articulated its reasons for why it could not verify the accuracy of this data, 19 U.S.C. § 1677m(e) did not preclude Commerce from disregarding this data.

Finally, the court must assess whether Commerce's analysis of HHI's misreporting of this part supports its determination to draw an adverse inference pursuant to 19 U.S.C. § 1677e(b). " 'Compliance with the 'best of its ability standard . . . requires that importers . . . have familiarity with all of the records . . . [in their] possession, custody, or control," and that they "conduct prompt, careful, and comprehensive investigations of all relevant records that refer or relate to the imports in question to the full extent of the importers' ability to do so." *Nippon Steel Corp.*, 337 F.3d at 1382. Here, the court cannot find fault with the agency's conclusion that this issue supports the use of an adverse inference. Record evidence indicates that Plaintiff understood it was required to report the gross unit price to reflect any parts necessary to assemble an incomplete LPT. As Commerce noted, the same part that Plaintiff reported as non-subject merchandise in its home-market sales database was also sold in the United States and properly reported as subject merchandise in the U.S. sales database. *See* I&D Mem. at 25 & n.134 (citing HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35). At no point in its briefing to the court, including in its reply brief after Defendant and Defendant-Intervenor raised this issue, did Plaintiff acknowledge or address this contradictory treatment of the part in question.

See Def.'s Resp. at 24; ABB's Resp. at 36. On this record, it is clear that HHI failed to act to the best of its ability in properly reporting sales of this part.

III. Accessories

a. Relevant Facts

As previously noted, Commerce instructed HHI to "separately report the price and cost for 'spare parts' and 'accessories' to ensure that product matches are based on accurate physical characteristics of the LPTs." HHI's Sec. D Resp. at D-2. Commerce, however, did not define what it meant by "accessories." *See id.* In its response, HHI reported the price and cost for "spare parts," that is, "parts that are not needed to assemble an incomplete [LPT,] and noted that "there is no definition of what constitutes 'accessories.'" *Id.* HHI further stated that components attached to the active part of the LPT are defined as included within the subject merchandise; therefore, it reported the price and cost of those components inclusive with the LPT. *Id.* at D-2—D- 3.

Commerce sent a supplemental questionnaire requesting HHI to "confirm that [its] product-specific costs do not include the costs for spare parts and accessories (i.e., non-subject merchandise)." *See* Resp. to the Third Suppl. Sections A, B, C, and D Questionnaire (Oct. 27, 2016) ("HHI's Oct. 27, 2016 Suppl. Resp.") at 22, CJA Vol. V Tab 24, CR 349-67, PR 225-27, ECF No. 45-1. In its response, HHI "confirm[ed] that the product-specific costs reported in the cost database do not include costs for non- subject

merchandise." *Id.* In the *Final Results*, Commerce concluded that "[HHI] withheld necessary information that was specifically requested" with respect to "accessories." I&D Mem. at 27. It reasoned that if HHI "had questions related to the definition of 'accessories,' it could have contacted the [agency] to request clarification." *Id.* Moreover, it found that record evidence, to wit, sales documentation, contradicted HHI's assertion that it was unaware of the definition of accessories "because sales documentation provided by [HHI] indicates that the industry uses such term and that term is referred to in certain documents provided by [HHI]." *Id.* at 27 & n.139 (citing HHI's Nov. 10, 2016 Resp., Attach. 3S-35).

b. Parties' Contentions

Plaintiff argues that Commerce was responsible for defining "accessories," Pl.'s Br. at 38, and states that the documents referenced by the agency did not consistently treat particular products as "accessories," which "demonstrates [HHI's] quandary and why [Commerce] needed to define 'accessories,'" Pl.'s Reply at 17. Plaintiff also argues that the agency failed to comply with 19 U.S.C. § 1677m(d); that is, to notify HHI of the deficiency and provide it an opportunity to cure the deficiency. *See* Pl.'s Reply at 15-16. Defendant and ABB argue that Commerce did not have the burden to define "accessories" because the burden to build the record is on the respondent; HHI did not request clarification regarding the definition of "accessories"; and HHI knew the definition of "accessories" because its sales documentation uses

the term. *See* Def.'s Resp. at 27; ABB's Resp. at 40.

c. Analysis

Commerce's conclusion that "[HHI] withheld necessary information that was specifically requested" with respect to "accessories[,]" I&D Mem. at 27, is unsupported by substantial evidence. Commerce asserted that it instructed HHI to separately report accessories, and HHI failed to do so. *See* I&D Mem. at 26-27; *see also* Def.'s Resp. at 26-27. However, Commerce did not find that any of HHI's components should have been reported as accessories. *See* I&D Mem. at 26-27. Plaintiff asserted that "all of its 'accessories' are in the scope by definition, and, thus properly included in subject merchandise[.]" *Id.* at 26. Commerce made no finding that Plaintiff's assertion was incorrect. *Id.* at 26-27. Rather, it appears that the agency faulted HHI simply for asserting that it was unaware of how Commerce defined accessories (because Commerce never provided guidance on this definition), rather than for failure to correctly report accessories. Specifically, Commerce stated:

> [R]ecord evidence contradicts [HHI's] assertion that [HHI] has been unaware of the definition of accessories. Specifically, at minimum, [HHI] is aware of what constitutes an accessory, because sales documentation provided by [HHI] indicates that the industry uses such term and that term is referred to in certain documents provided by [HHI].

Id. at 27 & n.139 (citing HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35). Commerce never made a factual finding that any "accessories" referenced in such sales documentation were non-subject merchandise that should have been separately reported as accessories. *Id.* at 26-27.

HHI addressed its concerns regarding a lack of definition for accessories in written submissions before and after Commerce issued the questionnaires requesting this data. *See* Resp. to Petitioner's Comments on Antidumping Questionnaires (Nov. 20, 2015) at 3-4, CJA Vol. V, Tab 21, PJA Vol. V Tab 21, PR 19, ECF No. 45-1; Rebuttal Br. of Hyundai Heavy Industries Co., Ltd. (Jan. 11, 2017) at 66, CJA Vol. V, Tab 25, CR 469, PJA Vol. I Tab 25, PR 288, ECF No. 45-1 (arguing that "[b]y definition, [accessories] are subject merchandise and properly included in the transformer" and that "ABB has not demonstrated that any of the "accessories" of which it complains is not attached to, has a function in, or is integral to the transformer"). Additionally, documentation on record shows that there has not been consistent identification of "accessories," which supports the need for guidance on the term's meaning. *See* Pl.'s Reply at 17.[12] Without guidance from Commerce

---

[12] *Compare* HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35 at JA100587-92, CJA Vol. II Tab 17, ECF No. 41-1 (listing "Transformer Monitoring," "On-line Dissolved Gas & Moisture Monitor," "Magnetic Liquid-Level Indicators," "Pressure-Relief Devices," "Rate- of-Rise Fault Pressure Relay," "Bladder Integrity Relay," "Dial-Type Top-Oil Thermometer," "Dial-Type Winding Thermometer," and

regarding the definition of "accessories," HHI's interpretation of the term as excluding transformer parts that physically attach to an LPT was reasonable and otherwise appears to comport with the scope of the order and with Commerce's instructions. *See* Initial Questionnaire at JA100062 (defining the scope of subject merchandise as "consisting of the active part and any other parts attached to, imported with or invoiced with the active parts of LPTs"); HHI's Oct. 27, 2016 Suppl. Resp. at 22 ("[C]onfirm that your product-specific costs do not include the costs for spare parts and accessories (i.e., non-subject merchandise).").

ABB argues that "Commerce was not in a position to define accessories as the term applies to HHI's sales without HHI providing information on how that term was used [with its customers]" and that "it was incumbent on HHI in the first instance to notify Commerce of its commercial practice regarding the treatment of accessories." ABB's Resp. at 40 (first alteration in original). However, Commerce did not communicate to HHI that its commercial literature should be the basis

---

"Transformer Nameplate" as "accessories"), *with id.* at JA 101002-09 (listing "Fault Gas Analyzer," "LAN Ethernet Switch," "Fiber Optic Temperature Monitoring/Control & Sensors," "Top Oil/Winding Temperature Instrument," "Thermometers," "Fan And Oil Pump Motors," "Oil Level Sight Glass," "Buchholz Relay," "Fault Pressure Relay," "Seal-In Relay," "Rupture Disk Assembly Failure Relay," "Auxiliary Relays," "Alarm Contacts," "Tap-Changer Operator," "Identification Plates," and "Valves" as "accessories").

of the "accessories" definition. The only guidance Commerce provided to HHI regarding the definition was in the scope of the order and when Commerce compared "accessories" to non-subject merchandise in the second supplemental questionnaire. "If Commerce is to take an action adverse to a party for an alleged failure to comply with an information request, it must fulfill its own responsibility to communicate its intent in that request." *Prosperity Tieh Enter. Co. v. United States*, 42 CIT_____, 284 F. Supp. 3d 1364, 1381 (2018).

For the foregoing reasons, Commerce's conclusion that "[HHI] withheld necessary information that was specifically requested" with respect to "accessories" is unsupported by substantial evidence.

IV. Selective Reporting and Other Discrepancies

a. Relevant Facts

In October 2016, Commerce instructed Hyundai to "provide complete sales and expenses documentation (including all sales and expenses related documentation generated in the sales process) for all U.S. [sales]." Oct. 7, 2016 Suppl. Questionnaire at 5 (emphasis omitted). Hyundai responded by providing, *inter alia*, an attachment comprised of over 3,300 pages of sales information. *See* HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35; *supra* note 7

In the *Final Results*, Commerce determined that HHI selectively reported information in response to Commerce's October 2016 request,

and that there were other discrepancies with this submission that further supported use of adverse facts available. *See* I&D Mem. at 27-28. Commerce found that HHI impeded the review and frustrated the agency's ability to "satisfy [itself] that the data provided are accurate and reliable." I&D Mem. at 27. As an example of HHI's selective reporting, Commerce stated it was missing invoices for certain expenses despite its instruction to HHI "to submit all related documents." I&D Mem. at 28. Commerce also identified discrepancies in freight and marine insurance values reported to U.S. Customs and Border Protection and to Commerce, brokerage expense issues, and an incorrect allocation of installation costs. *See* I&D Mem. at 28.

b. Parties' Contentions

Plaintiff argues that Commerce's determination lacks specific explanation to support its findings that HHI selectively reported information and that there were discrepancies in the information that HHI provided. *See* Pl.'s Br. at 39-40. Plaintiff also asserts that Commerce's "request for all U.S. sales and expense documents late in the case was procedurally unfair" because it "denied [HHI] an opportunity to clarify data by prohibiting the submission of new facts." *Id.* at 40-41. Defendant contends that HHI failed to cooperate to the best of its ability because it did not comply with Commerce's request for complete sales and expense documentation, namely, by failing to provide invoices. *See* Def.'s Resp. at 30-31. Defendant further contends that HHI could not rely on Commerce's acceptance of information

in the *Preliminary Results* when Commerce requested additional supporting information after the *Preliminary Results*. *Id.* at 31. ABB avers that Commerce did identify specific deficiencies in the *Final Results*, and Commerce's findings are supported by substantial evidence. *See* ABB's Resp. at 42-43 (citing I&D Mem. at 27-28). According to ABB, HHI's selective reporting and discrepancies in its data amounts to "willful behavior that does not meet the 'maximum effort' standard set in *Nippon Steel*." *Id.* at 43 (citing *Nippon Steel,* 337 F.3d at 1382).

c. Analysis

Commerce's determination that Hyundai impeded the review by selectively reporting incomplete and unreliable documentation to Commerce is unsupported by substantial evidence. "Substantial evidence is 'such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.'" *Huaiyin Foreign Trade Corp. v. United States*, 322 F.3d 1369, 1374 (Fed. Cir. 2003) (quoting *Consol. Edison Co. v. NLRB*, 305 U.S. 197, 229, 59 S.Ct. 206, 83 L.Ed. 126 (1938)). To be supported by substantial evidence, Commerce must explain the basis for its decisions sufficiently to make its decisions reasonably discernable to a reviewing court. *NMB Singapore Ltd. v. United States*, 557 F3d. 1316, 1319 (Fed. Cir. 2009) (citing *NSK Ltd. v. United States*, 481 F.3d 1355, 1359 (Fed. Cir. 2007)).

Commerce's discussion of HHI's selective reporting and data discrepancies lacks record

citations supporting the agency's findings. *See* I&D Mem. at 27-28 & nn.140-41 (citing only the Oct. 7, 2016 Suppl. Questionnaire at 5-6). Commerce's discussion consists of conclusory statements regarding HHI's 3,300 pages of sales documentation, without any examples or citations to support those statements. *See id.* at 27-28. As a result, the court cannot reasonably discern how HHI impeded the review because the court cannot determine which transactions were missing supporting documentation, and which particular information Commerce determined was missing when it concluded that HHI's submission was deficient.

For example, Commerce found that Hyundai "did not provide invoices for many expenses." *Id.* at 28. The only record evidence that the agency cited as support is Commerce's supplemental questionnaire dated October 7, 2016. *See id.* at 27-28 nn.140-41 (citing Oct. 7, 2016 Suppl. Questionnaire at 5-6). The questionnaire does not indicate that HHI failed to provide any invoices because it does not include HHI's responses or identify particular transactions that were not supported by invoices. Commerce also found "other discrepancies on the record" for which it provided no citations to the record or detailed discussion. *See id.* at 28. The Government cites generally to the extensive attachment and does not explain how the agency determined that the attachment indicates which invoices were missing or otherwise demonstrates discrepancies in HHI's data. *See* Def.'s Resp. at 30 (citing HHI's Nov. 10, 2016 Suppl. Resp., Attach. 3S-35).

ABB cites its own administrative case brief as record evidence supporting the agency's findings. ABB's Resp. at 42 & nn. 11-12 (citations omitted). However, the Issues and Decision Memorandum does not indicate that Commerce relied on ABB's administrative case brief to determine that there was missing documentation or that Commerce agreed with the discrepancies alleged therein. *See* I&D Mem. at 27-28 & nn.140-41. The court may not conclude that Commerce based its findings on ABB's administrative case brief when Commerce made no indication of such in the Issues and Decisions Memorandum. "Commerce must explain the basis for its decisions; while its explanations do not have to be perfect, the path of Commerce's decision must be reasonably discernable to a reviewing court." *NMB Singapore Ltd.*, 557 F.3d at 1319.

Commerce's Issues and Decision Memorandum, by itself, does not constitute substantial evidence. In the absence of substantial evidence, this conclusion must be remanded. *See Bowman Transp., Inc. v. Ark.–Best Freight System, Inc.*, 419 U.S. 281, 285-86 (1974) ("The agency must articulate a rational connection between the facts found and the choice made.") (internal quotation marks and citation omitted).

CONCLUSION

As previously noted, Commerce based its decision to use total facts available with an adverse inference on four findings: (1) HHI failed to report separately service- related revenues

despite repeated requests from Commerce; (2) HHI failed to include the price of a subject part in the gross unit price of certain home-market sales; (3) HHI failed to report separately the price and costs of accessories; and (4) HHI selectively provided (and withheld) sales documents, and there were discrepancies in the reporting. The court has found that two of the four bases for resorting to total adverse facts available were unsupported by substantial evidence; therefore, the court will remand this matter to the agency so that Commerce may reconsider or further explain its decision to use total facts available with an adverse inference.[13]

In accordance with the foregoing, it is hereby

ORDERED that Commerce's *Final Results* are remanded to Commerce so that it may reconsider or further explain its use of total facts available with an adverse inference consistent with this Opinion;

ORDERED that Commerce shall file its remand results on or before November 13, 2018; and it is further

---

[13] At Oral Argument, Defendant and Defendant-Intervenor both suggested that any one or two of the bases cited by Commerce was sufficient to support the agency's decision to rely on total adverse facts available in the *Final Results*. *See* Oral Arg. Tr. at 15-20, ECF No. 51. While the court finds that two of the four bases are supported by substantial evidence, the court is unable to affirm the agency's resort to total adverse facts available because the agency made clear that its determination was based on its view of the record "taken as [a] whole." I&D Memo. at 17.

ORDERED that subsequent proceedings shall be governed by USCIT Rule 56.2(h); and it is further

ORDERED that any comments or responsive comments must not exceed 5,000 words.

APPENDIX C

Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015, 82 Fed. Reg. 13432 (Mar. 13, 2017)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 2, 2016, the Department of Commerce (the Department) published in the **Federal Register** the preliminary results of the third administrative review of the antidumping duty order on large power transformers from the Republic of Korea. The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), Iljin, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co., Ltd. (LSIS). Iljin, Iljin Electric and LSIS, were not selected for individual examination. The period of review is August 1, 2014, through July 31, 2015. As a result of our analysis of the comments and information received, these final results differ from the preliminary results of review. For the

final weighted-average dumping margins, see the "Final Results of Review" section below.

DATES: *Effective Date*: March 13, 2017.

FOR FURTHER INFORMATION CONTACT: John Drury (Hyosung) or Moses Song (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 1401 Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0195 or (202) 482-5041, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 2016, the Department published the *Preliminary Results.*[1] A summary of the events that occurred since the Department published these results, as well as a full discussion of the issues raised by parties for this final determination, may be found in the Issues and Decision Memorandum, which is hereby adopted by this notice.[2]

---

[1] *See Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015,* 81 FR 60672 (September 2, 2016) (Preliminary Results).

[2] *See* Memorandum to Ronald K. Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2014-2015", dated concurrently with this notice (Issues and

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080, and 8504.90.9540. For a complete description of the scope of the order, see Appendix I.

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum. A list of the issues raised by parties is attached to this notice as Appendix II. The Issues and Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to registered users at *https://access.trade.gov* and it is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly at *http://enforcement.trade.gov/frn/index.html*. The

---

Decision Memorandum).

signed and electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on our review of the record and comments received from interested parties, we made certain changes to the margin calculations for Hyosung and Hyundai. For Hyosung, the Department has relied on partial facts available under section 776(a)(1) of the Act with respect to adjustments to the cost of manufacturing and U.S. gross unit price for certain sales. In addition, the Department has relied on partial adverse facts available under sections 776(a) and (b) of the Act with respect to ocean freight expenses for certain sales made by Hyosung. Furthermore, pursuant to section 776(a) and (b) of the Act, the Department has relied upon total facts otherwise available, with adverse inferences, for Hyundai's dumping margin. For a discussion of these changes, see the "Margin Calculations" section of the Issues and Decision Memorandum. As a result of these changes, the weighted-average dumping margin also changes for the three companies not selected for individual examination.

Final Results of the Review

The final weighted-average dumping margins are as follows:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation……	2.99
Hyundai Heavy Industries Co., Ltd……..	60.81
Iljin Electric Co., Ltd……	2.99
Iljin……..	2.99
LSIS Co., Ltd……	2.99

Disclosure

We will disclose the calculations performed to parties in this proceeding within five days of the date of publication of this notice, in accordance with 19 CFR 351.224(b).

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries.[3] For any individually examined respondents whose weighted-average dumping margin is above *de minimis*, we calculated importer-specific *ad*

[3] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

valorem duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific ad valorem rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we will apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all

shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.00 percent, the all-others rate established in the antidumping investigation.[4] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR

---

[4] *See Large Power Transformers from the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the period of review. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties did occur and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 6, 2017.

Ronald K. Lorentzen,

Acting Assistant Secretary for Enforcement and Compliance.

Appendix I--Scope of the Order

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

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

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

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

Appendix II--List of Topics Discussed in the Final Issues and Decision Memorandum

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

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

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

Comment 10: Hyosung Misreported the Physical Characteristics for Certain Sales

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

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

1. Freight and Sales Revenues Not Supported by the Record

2. Hyosung's Commercial Invoices Are Not Reliable

3. Hyosung's Invoices Show Incorrect Amounts

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

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

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

Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2014-2015 (Mar. 6, 2017) (relevant excerpt)

Comment 1: Application of Total Adverse Facts Available

A. Revenue Reporting Petitioner's Comments:

- Hyundai failed on three occasions to report separately negotiated revenues regarding ocean freight, inland freight, oil, *etc.*[25]
- Hyundai's failure to report the above revenues renders its U.S. sales database unusable, as reported.[26]
- The Department specifically employed its revenue reporting and capping methodology on Hyosung's sales in the last review, as well as in the *Preliminary Results* of this review.[27]
- Failure to apply the same methodology to Hyundai in the *Preliminary Results* of this review based on similar facts is

---

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

[26] *Id.*

[27] *Id.*, at 11.

contrary to law and not supported by record facts.[28]

- Hyundai makes a variety of arguments, *e.g.*, separately negotiated revenues are invoiced in a lump sum and are not severable from the lump-sum price, for why it should not be required to report separately negotiated revenues.[29] Regardless of those arguments, at no point in this proceeding did the Department excuse Hyundai from the requirement to report revenues separately.[30]
- The Department is required to cap revenues for non-subject merchandise, or services included in gross unit price by the associated expense, pursuant to its established practice and the facts of this case.[31]
- Hyundai is required to report additional revenues separately, but failed to do so. The Department, therefore, is unable to apply properly its revenue capping policy to Hyundai's reported U.S. sales.[32]

---

[28] *Id.*

[29] *Id.,* at 11-18.

[30] *Id.*, at 12.

[31] *Id.*, at 19.

[32] *Id.*

- The Department should reject Hyundai's unsolicited, untimely filed, and incomplete worksheet regarding certain revenues it failed to report previously.[33]
- Hyundai's reporting failure overstated the U.S. gross unit price, understated associated expenses, and prohibited the Department from implementing its capping policy. Consequently, the antidumping margin is decreased and the Department cannot use Hyundai's reported U.S. sales as the basis of a margin calculation.[34]

Hyundai's Comments:

- Petitioner's argument that Hyundai failed to report certain data to the Department appears to be based on a misreading of the scope of the antidumping duty order on LPTs, the material terms of sale, the Department's prior clarifications, and Petitioner's own position on installation in the original investigation.[35]

---

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

[34] *Id.*, at 22-23.

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

Petitioner's Rebuttal Comments:

- Hyundai's excuses for failing to follow the Department's requests to report certain revenues separately should be rejected.[36]
- First, at no point in this review did the Department excuse Hyundai from the requirement to report certain revenues separately. Second, Hyundai's non-compliance prevented the Department from applying its capping policy in the same manner for both respondents.[37]
- Hyundai had the choice to report certain revenues separately, in addition to making its legal arguments, but it chose not to do so. It has, therefore, not cooperated to the best of its ability with the Department's requests for information in this review.[38]
- Hyundai's argument that Petitioner misread the scope of the antidumping duty is incorrect. The scope does not

---

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

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

[38] *Id.*, at 19.

determine what expenses and revenues are to be reported or in what manner.[39]

- The Department, therefore, is unable to apply its revenue capping policy to Hyundai's reported home market sales properly and should find that Hyundai has deliberately withheld data requested by the agency that results in an inability to calculate normal value accurately.[40]

Hyundai's Rebuttal Comments:

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

---

[39] *Id.,* at 20.

[40] *Id.*

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

- Petitioner's complaint that Hyundai failed to provide the requested breakdown of revenues is contrary to the record.[42]
- The Department should continue to find that what Petitioner claims to be "separate revenues" are, in fact, correctly included in the gross unit price, in accordance with the terms of sale or are transformer components that are part of the subject transformer, in accordance with the scope of the antidumping duty order.[43]
- In all prior segments of this proceeding, including two sales verifications, the Department found that Hyundai correctly reported gross unit prices based on the terms of sale.[44]
- The Department also confirmed that "no such capping was indicated as Hyundai did not report revenues from reimbursement expenses and the record did not suggest it should have done so."[45]

---

[42] *Id.*, at 5.

[43] *Id.*, at 2-5.

[44] *Id.*, at 5-6.

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

- The Department's conclusions regarding Hyundai were consistent with other precedent that considered the terms of sale.[46]
- Petitioner's claim that Hyundai improperly included transformer components in the gross unit price is inconsistent with the scope of the antidumping duty order. As demonstrated previously, the components of which Petitioner complains are attached to, imported with, and invoiced with the active parts of LPTs. Thus, Hyundai correctly included such components in the gross unit price.[47]
- Petitioner's assertion that Hyundai has refused to provide separate revenue data ignores the detailed price breakdowns Hyundai provided. The Department should continue to reflect in the gross unit price those services that are required under the terms of sale.[48]
- Petitioner's characterization of Hyundai's sales is not supported by the record. Hyundai was not permitted to sell the service to the customer separately and customers required the service as part of

---

(2013-2014 Ministerial Error Memorandum) at 7).

[46] *Id.*

[47] *Id.*, at 8.

[48] *Id.*, at 8.

the purchase of the transformer. Informational breakdowns of the services do not remove them from being required under the terms of sale.[49]

- Petitioner does not acknowledge that Hyundai submitted its worksheet providing the breakdown of revenues and expenses pursuant to a question from the Department.[50]
- Further, Petitioner's complaints regarding the substance of the worksheet are erroneous.[51]
- Petitioner wrongly argues that Hyundai's reported home market gross unit prices cannot be tied to the documents submitted by Hyundai. Petitioner's argument appears to be based on a misreading of the scope of the antidumping duty order on transformers.[52]
- Hyundai agrees that if the customer separately sought installation in a

---

[49] *Id.*, at 10.

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

[51] *Id.*, at 16.

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

transaction outside of the sale of the transformer (*e.g.*, if the installation was not included in the sales contract but was later separately procured), installation in that case would not be within the terms of sale and not included in the contract and should be reported separately.[53]

- Accordingly, where the customer separately procured a service outside of the contract for the transformer, Hyundai has reported such revenues and associated expenses separately.[54]
- No party has sought to change the scope of the antidumping duty order to exclude assembled transformers, nor has any party demonstrated that installation is no longer a material term of sale.[55]
- Therefore, Petitioner's argument that Hyundai failed to report certain revenue is without merit and inconsistent with the scope of the antidumping duty order, the material terms of sale, the Department's prior clarifications, and Petitioner's own position on installation in the investigation.[56]

[. . .]

---

[53] *Id.*, at 55.

[54] *Id.*

[55] *Id.*

[56] *Id.*

Department's Position:

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

A. Revenue Reporting

To prevent U.S. price from being overstated, the statute and the regulations require revenues for services provided with the sale in excess of the related expense to be removed from Hyundai's reported U.S. price. Section 772(c)(1) of the Act provides that the Department shall increase the

price used to establish export price and CEP (*i.e.*, U.S. price) in only the following three instances: (1) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in a condition packed ready for shipment to the United States; (2) the amount of any import duties imposed by the country of exportation which have been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States; and (3) the amount of any countervailing duty imposed on the subject merchandise under Subtitle A to offset an export subsidy. Revenues received by a respondent on sales-related services are not included as an upward adjustment to U.S. price.

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

In addition, 19 CFR 351.401(c) directs the Department to use a price that is net of any price adjustment, as defined in 19 CFR 351.102(b), that is reasonably attributable to the subject merchandise or the foreign like product (whichever is applicable). The term "price adjustment" is defined under 19 CFR

351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The definition specifies that the adjustment applies to changes in the price charged for the subject merchandise or the foreign like product.

Pursuant to the relevant statute and regulations which prevent U.S. price from being overstated by any upward adjustments other than the three instances above, the Department's practice is to cap service-related revenue by the corresponding expense when making adjustments to U.S. price.[88]

---

[88] *See Circular Welded Carbon Steel Pipes and Tubes from Thailand: Final Results of Antidumping Duty Administrative Review*, 77 FR 61738 (October 11, 2012) and accompanying Memorandum, entitled "Antidumping Duty Administrative Review of Circular Welded Carbon Steel Pipes and Tubes from Thailand: Issues and Decision Memorandum," at 7 (where we stated that "{b}ased on the plain language of the law and the Department's regulations, it has been the Department's stated practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). We further stated that "… although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services …."); *see also Certain Orange Juice from Brazil: Final Results of Antidumping Duty Administrative Review*

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

---

and Final No Shipment Determination, 77 FR 63291 (October 16, 2012) and accompanying Memorandum, entitled "Issues and Decision Memorandum for the Antidumping Duty Administrative Review on Certain Orange Juice from Brazil – March 1, 2010, through February 28, 2011," at 34 (where we stated that "we find that it would be inappropriate to increase the gross unit price for subject merchandise as a result of profits earned on the provision or sale of services…such profits should be attributable to the sale of the service, not to the subject merchandise." We further stated that "the Department has consistently applied the same capping methodology to both U.S. and home market revenues, regardless of whether it limits the increase to U.S. price or NV {normal value}."); *see also e.g., Purified Carboxymethylcellulose from the Netherlands: Preliminary Results of Antidumping Duty Administrative Review*, 75 FR 48310, 48314 (August 10, 2010) (where we stated that "{i}n accordance with our practice, we capped the amount of freight revenue permitted to offset gross unit price at no greater than the amount of corresponding inland freight expenses incurred by…"), unchanged in *Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Administrative Review,* 75 FR 77829 (December 14, 2010).

Department's ability to calculate an accurate antidumping margin. Given these concerns, at the onset of this instant review, we requested that Hyundai separately report such revenues and related expenses so that, per our practice, we could cap such revenues by the related expenses.

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

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

On January 27, 2016, Hyundai filed its initial questionnaire response to sections B and C of the Department's AD Questionnaire. [91] In its response, Hyundai refused to provide the requested information. Instead, citing the *Final*

---

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

[90] *Id.*, at B-1 and C-1.

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

Determination, [92] Hyundai stated that the Department found that Hyundai correctly reported its gross unit price and properly did not separate revenues, because such revenues are included in the terms of sale.[93] Hyundai further stated that it is required to provide such services (*e.g.*, delivery, supervision, and installation) by the terms of sale and such services are not separable from subject merchandise. [94] In addition, citing *Ball Bearings*,[95] Hyundai sought

---

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

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

[94] *Id.*, B-3 and B-4.

[95] *See Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819 (August 31, 2009) and accompanying Memorandum, entitled "Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom for the Period of Review May 1, 2007, through April 30, 2008," at 31 (where we stated that respondents' "freight and insurance revenues are revenues received from customers for invoice items covering transportation and insurance expenses and arise when freight and insurance are not included in the selling price under the applicable terms of delivery but when the respondent arranges and

to distinguish separately provided and charged services from those within the terms of sale, arguing its services are within the applicable terms of sale and not separately arranged on behalf of the customer.[96]

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

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

---

prepays freight and insurance for the customer." We further stated that "{a}ccordingly, the respondents incurred expenses and realized revenue for these activities," which we capped such revenue at the level of the corresponding expense.).

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

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

[98] *Id.*, at 7.

On August 10, 2016, Hyundai filed the *first* part of its supplemental questionnaire response.[99] Again, Hyundai refused to provide such information, stating that "{i}n accordance with the Department's review and treatment of Hyundai's sales documentation in prior segments of this proceeding, Hyundai did not receive separate revenue related to international freight, inland freight, oil, installation, or any other expenses on home-market sales or U.S. sales."[100] Citing to the Department's position in the prior review,[101] Hyundai stated that its reporting of home market and U.S. gross unit prices is appropriate and in accordance with the

---

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

[100] *Id.*, at 11.

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

Department's prior consideration of Hyundai's sales.[102] Hyundai added that it reported the sales revenues and corresponding expenses separately when it received a purchase order for a separate service, pursuant to the Department's requirements.[103]

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

In light of the finding identified above, in a supplemental questionnaire issued after the *Preliminary Results*, we again requested, for a

---

[102] *See* Hyundai's August 10, 2016, Supplemental Questionnaire Response at 12.

[103] *Id*

[104] *See* Letter from Hyundai to the Department, regarding "Large Power Transformers from South Korea: Response to Questions 8, 16, 25, 26 and 28 of the Second Supplemental Sections A, B, C and D Questionnaire," dated August 18, 2018 (Hyundai's August 18, 2016, Supplemental Questionnaire Response).

[105] *Id.*, at Attachment 2S-17.

[106] *Id.*, at Attachment 2S-26.

third time, that Hyundai report service-related revenues and the related expenses separately. Specifically, the Department instructed Hyundai in relevant part:

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

Hyundai submitted its response to our post-*Preliminary Results* supplemental questionnaire on October 27, 2016,[108] November 3, 2016,[109]and November 10, 2016.[110] In Hyundai's November 10, 2016, Supplemental Questionnaire Response, Hyundai provided the Department with a worksheet in which it claimed that service-related revenues and the corresponding expenses for U.S. sales were reported separately.[111]

While reviewing Hyundai's November 10, 2016, Supplemental Questionnaire Response, we

---

[107] Id., at 6.

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

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

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

[111] *Id.,* at Attachment 3S-46.

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

---

[112] *Id.*, at Attachment 3S-35.

the sale of subject merchandise should not be considered as a component of the gross unit price.

Above, we have established that our concern related to Hyundai's reporting of U.S. gross unit prices was confirmed by record evidence and, therefore, that Hyundai should have reported service-related revenues separately from the related expenses. As noted above, in Hyundai's November 10, 2016, Supplemental Questionnaire Response, upon a third request, Hyundai provided the Department with a worksheet which shows the breakdown of service-related revenues and the corresponding expenses for its U.S. sales. While Hyundai claimed to have provided the information the Department requested, the worksheet provided is incomplete and casts serious doubt on the reliability of such information. For example, as Petitioner noted, the worksheet appears to be missing information for multiple U.S. sales (*i.e.*, it is missing the related expenses for its claimed revenues).[113] In its rebuttal brief, Hyundai attempted to explain the reason for the missing information by claiming that: (1) such items relate to the manufacture of the transformer and the costs are, therefore, included in the reported cost of production; and (2) there are no separate sales expenses for these production costs.[114] However, we cannot examine the validity of Hyundai's reporting at this late stage of the review. What key information

---

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

[114] *See* Hyundai's Rebuttal Brief at 17.

Hyundai finally provided came in very late in the process, thereby negating our ability to satisfy ourselves that the data provided are accurate and reliable, and to develop deficiency questionnaires, as needed. Had Hyundai followed the Department's request to report separately service-related revenues and the related expenses early on (*i.e.*, in Hyundai's January 27, 2016, Sections B and C Questionnaire Response or even in Hyundai's August 10, 2016, Supplemental Questionnaire Response), we would have had the time to request additional necessary information (*i.e.*, the missing data) and verify other issues that Petitioner raised in its case brief.[115] In sum, the worksheet Hyundai eventually provided, and which contained missing data, is not reliable for calculating an accurate margin.

The statue and regulations, as stated above, only permit adjustments to U.S. price in certain limited instances. An upward adjustment to U.S. price due to the inclusion of revenues received by a respondent on sales-related services is not included. Furthermore, the Department caps revenues from such services at the level of corresponding expenses, in order to prevent overstating U.S. price. As described above, although we permitted Hyundai to include service- related revenues in the gross unit price on the basis of Hyundai's claim in prior segments, the record evidence in this review indicates that there are separate line items for revenues from

---

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

service-related revenues, as shown in purchase orders and/or invoices. Hyundai has demonstrated to the Department its ability to report service-related revenues separately. As a result, we find that Hyundai's arguments regarding the Department's practice of having respondents separately report service-related revenues from the associated expenses for purposes of "capping" do not excuse Hyundai from complying with the Department's request for such reporting. In addition, contrary to Hyundai's assertions, it cannot simply rely on its reporting from prior segments; the Department specifically requested that Hyundai provide this information in the instant review, because Hyundai's sales documentation identifies separate line items for sales-related services, demonstrating that these sales-related services could be negotiable.

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

data provided are accurate and reliable, or to develop deficiency questionnaires, as needed.

Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015, 81 Fed. Reg. 60672 (Sept. 2, 2016)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2014-2015

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). The period of review is August 1, 2014, through July 31, 2015. The review covers five producers/exporters of the subject merchandise. We preliminarily determine that sales of subject merchandise by Hyosung Corporation (Hyosung) and Hyundai Heavy Industries Co., Ltd. (Hyundai), the two companies selected for individual examination, were made at less than normal value during the period of review. Interested parties are invited to comment on these preliminary results.

DATES: Effective September 2, 2016.

FOR FURTHER INFORMATION CONTACT: John Drury or Edythe Artman, AD/CVD

Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-0195 or (202) 482-3931, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers large liquid dielectric power transformers having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive.[1]

The Preliminary Decision Memorandum is a public document and is on file electronically via

---

[1] The full text of the scope of the order is contained in the memorandum to Paul Piquado, Assistant Secretary for Enforcement and Compliance, from Gary Taverman, Associate Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, entitled "Decision Memorandum for Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2014-2015" (Preliminary Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Tolling of Deadline

As explained in the memorandum from the Acting Assistant Secretary for Enforcement and Compliance, the Department exercised its discretion to toll all administrative deadlines due to a closure of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the preliminary results of this review is now August 26, 2016.[2]

---

[2] *See* Memorandum to the File from Ron Lorentzen, Acting Assistant Secretary for Enforcement and Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016.

Methodology

The Department is conducting this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2014, through July 31, 2015, the following weighted-average dumping margins exist: [3]

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation…….	1.76
Hyundai Heavy Industries Co.,	3.09

[3] As we did not have a publicly-ranged total U.S. sales value for Hyosung for the period August 1, 2014, through July 31, 2015, to calculate a weighted-average dumping margin for the non-examined companies (*i.e.*, Iljin, Iljin Electric Co., Ltd, and LSIS Co., Ltd.), the rate applied to these companies is a simple average of the weighted-average dumping margins calculated for Hyosung and Hyundai.

Ltd……..	
Iljin Electric Co., Ltd…….	2.43
Iljin…….	2.43
LSIS Co., Ltd…….	2.43

Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of review within five days after the date of publication of this notice.[4] The Department will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that the Department will announce.[5] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[6]

Parties who submit case or rebuttal briefs in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[7] Case and rebuttal briefs should be filed using ACCESS.[8] Case and rebuttal briefs

[4] *See* 19 CFR 351.224(b)

[5] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[6] *See* 19 CFR 351.309(d)(1) and (2).

[7] *See* 19 CFR 351.309(c)(2).

[8] *See* generally 19 CFR 351.303.

must be served on interested parties.[9] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice. Requests should contain: (1) The party's name, address and telephone number; (2) the number of participants; and (3) a list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[10] Parties should confirm the date, time, and location of the hearing two days before the scheduled date.

The Department intends to publish the final results of this administrative review, including the results of its analysis of issues raised in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[11]

---

[9] *See* 19 CFR 351.303(f).

[10] *See* 19 CFR 351.310(d).

[11] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries. If a respondent's weighted-average dumping margin is not zero or *de minimis* in the final results of this review and the respondent reported reliable entered values, we will calculate importer-specific *ad valorem* assessment rates for the merchandise based on the ratio of the total amount of dumping calculated for the examined sales made during the period of review to each importer to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). If the respondent has not reported reliable entered values, we will calculate a per-unit assessment rate for each importer by dividing the total amount of dumping for the examined sales made during the period of review to that importer by the total sales quantity associated with those transactions. Where an importer-specific *ad valorem* assessment rate is zero or *de minimis*, we will instruct CBP to liquidate the appropriate entries without regard to antidumping duties in accordance with 19 CFR 351.106(c)(2). If the respondent's weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews*, *i.e.*, "{w}here the weighted-average margin of dumping for the exporter is determined

to be zero or *de minimis*, no antidumping duties will be assessed." [12]

Regarding entries of subject merchandise during the period of review that were produced by Hyosung and Hyundai and for which they did not know that the merchandise was destined for the United States, we will instruct CBP to liquidate un-reviewed entries at the all-others rate of 22.00 percent, as established in the less-than-fair-value investigation of the order, if there is no rate for the intermediate company(ies) involved in the transaction.[13] For a full discussion of this matter, see *Assessment Policy Notice*.[14]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the

---

[12] *See Antidumping Proceedings: Calculation of the Weighted- Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification,* 77 FR 8101, 8102 (February 14, 2012) (*Final Modification for Reviews*).

[13] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

[14] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (Assessment Policy Notice).

subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyosung and Hyundai and other companies listed above will be equal to the weighted-average dumping margin established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recently completed segment of this proceeding in which they were reviewed; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the producer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the producer of the merchandise; and (4) the cash deposit rate for all other producers or exporters will continue to be the all-others rate of 22.00 percent, the rate established in the investigation of this proceeding.[15] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR

---

[15] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Notification to Interested Parties

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

Dated: August 26, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix--List of Topics Discussed in the Preliminary Decision Memorandum

1. Background

2. Companies Not Selected for Individual Examination

3. Deadline for Submission of Updated Sales and Cost Information

4. Scope of the Order

5. Comparisons to Normal Value

   A. Determination of Comparison Method

   B. Results of the Differential Pricing Analysis

6. Product Comparisons

Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014, 81 Fed. Reg. 14087 (Mar. 16, 2016)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2013-2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 4, 2015, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on large power transformers from the Republic of Korea. [1] The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). ILJIN, ILJIN Electric, and LSIS, were not selected for individual examination. The period of review (POR) is August 1, 2013, through July 31, 2014. As a result of our analysis of the

---

[1] *See Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review*; 2013- 2014, 80 FR 53496 (September 4, 2015) (*Preliminary Results*).

comments and information received, these final results differ from the *Preliminary Results*. For the final weighted-average dumping margins, see the "Final Results of Review" section below.

DATES: *Effective Date*: March 16, 2016.

FOR FURTHER INFORMATION CONTACT: Brian Davis (Hyosung) or Edythe Artman (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-7924 or (202) 482-3931, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 4, 2015, the Department published the *Preliminary Results*. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our *Preliminary Results*.[2] On October 16, 2015, Hyundai timely submitted a case brief and on October 19, 2015, Hyosung and ABB Inc. (Petitioner) timely submitted case briefs.[3] Rebuttal briefs were also timely filed by

---

[2] The Department issued the briefing schedule in a Memorandum to the File, dated September 9, 2015. This briefing schedule was later extended at the request of interested parties to October 16, 2015 for briefs and October 26, 2015 for rebuttal briefs.

[3] *See* Case Brief from Petitioner regarding Hyundai, (Petitioner Brief Hyundai), Brief from Petitioner regarding Hyosung (Petitioner Brief Hyosung), and Hyosung Brief, all dated October 19, 2015, and Hyundai Brief, dated

Hyosung, Hyundai, and Petitioner, on October 27, 2015.[4] On December 22, 2015, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from January 4, 2016 to February 24, 2016.[5] On February 29, 2016, the Department further extended the final results to March 8, 2015.[6]

October 16, 2015.

[4] *See* Hyosung Rebuttal Brief, Hyundai Rebuttal Brief and Petitioner Rebuttal Brief: All dated October 26, 2015. Petitioner requested an extension for the briefing schedule to 30 days after Hyundai's submission of a post-verification supplemental questionnaire and an extension for filing rebuttal briefs, which the Department partially granted for all parties in a letter dated September 29, 2015 and extended in a letter dated October 13, 2015. *See* Letter to Petitioner dated September 29, 2015 and Letter to Petitioner dated October 13, 2015.

[5] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, "Large Power Transformers from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2013-2014" (December 22, 2015).

[6] *See* Memorandum to Christian Marsh, Deputy Assistant Secretary for AD/CVD Operations, "Large Power Transformers from the Republic of Korea: Extension of Deadline for Final Results of Antidumping Duty Administrative Review; 2013-2014" (February 29, 2016); *See* also Memorandum to the Record from Ron Lorentzen, Acting Assistant Secretary for Enforcement & Compliance, regarding "Tolling of Administrative Deadlines As a Result of the Government Closure During Snowstorm Jonas," dated January 27, 2016. As explained in this memorandum, the Department has exercised its discretion to toll all administrative deadlines due to the recent closure

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540.[7]

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[8] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and

---

of the Federal Government. All deadlines in this segment of the proceeding have been extended by four business days. The revised deadline for the final determination is now March 8, 2016.

[7] For a full description of the scope of the order, see the Memorandum from Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013-2014" (Issues and Decision Memorandum), which is issued concurrently with, and hereby adopted by, this notice.

[8] *Id.*

is on-file electronically via ACCESS. ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.ita.goc.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our *Preliminary Results*, we recalculated Hyosung's and Hyundai's weighted-average dumping margins for these final results.

For Hyosung, we revised our margin program by adjusting our treatment of Hyosung's installation revenue, indirect selling expense ratio, U.S. commission expenses, and U.S. warranty expenses.[9] For Hyundai, we revised the margin program with respect to our treatment of bank charges and packing expenses incurred in the home market, installation and supervision

---

[9] *See* Memorandum from Brian Davis to the File, regarding "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013-2014" (Hyosung Final Analysis Memorandum), dated March 23, 2014, at section "Changes from the Preliminary Results," for further information.

expenses incurred in both markets, domestic inventory carrying costs and U.S. credit expenses, and U.S. commission expenses.[10]

As a result of the aforementioned recalculations of Hyosung's and Hyundai's weighted-average dumping margins, the weighted-average dumping margin for the three non-selected companies also changed.

Final Results of the Review

As a result of this review, the Department determines the following weighted-average dumping margins[11] for the period August 1, 2013, through July 31, 2014, are as follows:

---

[10] *See* Memorandum from Edythe Artman to the File, regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013-2014" (Hyundai Final Analysis Memorandum), dated March 23, 2014, at section "Changes from the Preliminary Results," for further information.

[11] As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2013, through July 31, 2014, to calculate a weighted-average percentage margin for the non-selected companies (*i.e.*, ILJIN, ILJIN Electric, and LSIS) in this review, the rate applied to the non-selected companies is a simple-average percentage margin calculated based on the margins calculated for Hyosung and Hyundai.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation……	9.40
Hyundai Heavy Industries Co., Ltd……..	4.07
Iljin Electric Co., Ltd……	6.74
Iljin……..	6.74
LSIS Co., Ltd……	6.74

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. [12] For any individually examined respondents whose weighted- average dumping margin is above *de minimis*, we calculated importer- specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1).

---

[12] In these final results, the Department applied the assessment rate calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification*, 77 FR 8101 (February 14, 2012).

Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific *ad valorem* rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The

cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 22.00 percent, the all- others rate established in the antidumping investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the

---

[13] See *Large Power Transformers From the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 8, 2016.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

I. Summary

Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2013-2014 (Mar. 8, 2016) (relevant excerpt)

Comment 10: Hyundai's Failure to Report Reimbursed Expenses

Petitioner's Comments

- Documents obtained at verification demonstrate that Hyundai improperly reported its gross unit prices for U.S. sales by including revenues in the prices for services in excess of the expenses incurred on the services. The Department should cap such revenues by the amount of directly-associated expenses, in keeping with its long-established practice of capping these revenues. By including the excess revenues in its reported gross unit prices, Hyundai artificially increased the prices of the U.S. sales.
- Because Hyundai did not provide an individual reporting of revenue items for its U.S. sales – items that could then be capped by associated expenses – the Department has no means to calculate an accurate U.S. net price or dumping margin on any U.S. sale and must thus base the final results for Hyundai on some form of facts available. Given Hyundai's purposeful misstatement of gross unit price and its other failures to cooperate with the Department's requests for

information, as set forth in Petitioner's brief, the Department should apply total facts available to Hyundai.

- If the Department does not apply total facts available, it should at least apply partial facts available to Hyundai's final margin by reducing the company's reported U.S. gross unit prices by the amount of highest calculated profit on sales expenses, as indicated by sales- trace information on the record.

Hyundai's Comments

- Petitioner's argument and manipulated presentation of the record is similar to that presented to and rejected by the Department with respect to Hyundai's reported prices in the investigation of the proceeding. In the investigation, the Department recognized that services included within the terms of certain sales were not separately-arranged services made on behalf of the customer and for which reimbursement was sought from the customer. This distinction is clearly set forth in *Ball Bearings and Parts Thereof From France, Germany, Italy, Japan, and the United Kingdom: Final Results of Antidumping Duty Administrative Reviews and Revocation of an Order in Part*, 74 FR 44819 (August 31, 2009) and accompanying Issues and Decision Memorandum at Comment 12, where the Department found that two

respondents had arranged and prepaid freight and insurance at the request of a customer.

- Precedent cited by Petitioner does not apply to Hyundai because, in a review of the order on light-walled rectangular pipe and tube from Mexico, the Department found the respondent allowed customers to purchase insurance separately from subject merchandise and, in reviews of the order on certain orange juice from Brazil, the Department also distinguished services included within the terms of sale from those the respondent arranged for the customer.
- The examples from Hyundai's sales data cited by Petitioner demonstrate that Hyundai did correctly report its U.S. gross unit prices. With respect to the first example, it concerns the value of a component incorporated into the LPT and not a separate service. The second example is a sale where the contract was made on a lump-sum basis and items cited by Petitioner as additional services were included in the terms of sale. The third example also concerns a sale where the cited services were included in the terms of sale, as was the case for the fourth example, which was made to the same customer with the same terms of sale. Finally, the fifth example reflects a misrepresentation of the purchase order

by Petitioner, as the "line items" cited by Petitioner do not actually appear on the order but as "line item descriptions" on the contract agreement between HHI and HDCP USA.

Department's Position

In general, reimbursed expenses only arise when the expenses are listed as separate line items on a sales invoice and there is a clear distinction between the line-item price of a product and its invoice price (*i.e.*, including the price of the product and additional expenses). Further, it is incumbent upon a respondent company to report such expenses and corresponding revenues in separate data fields from the field for gross unit price in its sales listing, as instructed in our antidumping duty questionnaire. In the current review, Hyundai did not report any of these expenses or revenues and based its reported gross unit price for U.S. sales on the invoice price, less any expenses for "spare parts."[178]

---

[178] In the current review, as in previous segments of the proceeding, the Department instructed respondents to report gross unit price to only reflect the price of the LPT and not any spare parts, unless such parts were needed to assemble an incomplete LPT. *See* "Memorandum to the File, Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea: Phone Conversation with Frank Morgan, counsel to Hyundai Heavy Industries Co., Ltd. (Hyundai)" dated January 11, 2012, and Hyundai's Supplemental Questionnaire Response, dated January 23, 2012 at 43 to 44.

A review of sales documentation on the record, including the sales traces reviewed at verification, show no indication that Hyundai improperly reported its sales data. Although some expense amounts (and spare part amounts) may have been broken out in the purchase orders, the totals on the purchase orders are lump-sum amounts and these amounts all tie to the invoice totals. Based on our review of the sales traces, we find that the expenses with which Petitioner takes issue represent a main component of a LPT, freight expenses, and other costs related to shipment or production of the LPTs. None of these expenses are inconsistent with the reported terms of sale (*i.e.*, the freight expenses are consistent with the terms of delivery) and, as they were not listed as a separate line item on the sales invoices or separately invoiced to the customers, we find no basis to indicate Hyundai sought or obtained reimbursements for the expenses from the customers. Petitioner has noted that some of the expense amounts exceed those actually incurred by Hyundai for the services, resulting in a profit for Hyundai. This finding, however, is immaterial to the question of whether Hyundai obtained reimbursement from its customers. Petitioner also cited Department determinations supporting our practice of capping revenues by the amount of directly-associated expenses. This practice is not relevant to the discussion, however, because Hyundai has not reported revenues from reimbursements and the record does not suggest it should have done so.

As observed by Hyundai, Petitioner raised a similar argument in the investigation of this proceeding. At that time, we concluded that the company "invoices on a lump-sum, project basis and that it does not separately invoice customers for services".[179] Based on the record of the current review, we again reach this conclusion. Thus, we find that Hyundai was not obligated to report separate expenses and revenues for reimbursed services related to its U.S. sales and that its reported gross unit price for each sale is the appropriate basis for the calculation of CEP for its final dumping margin.

---

[179] *See Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) (*LPTs Final Determination*), and accompanying Issues and Decision Memorandum at Comment 4, 29.

Large Power Transformers from the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014, 80 Fed. Reg. 53496 (Sept. 4, 2015)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2013-2014

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea).[1] The period of review (POR) is August 1, 2013, through July 31, 2014. The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). We preliminarily determine that sales of subject merchandise by Hyosung and Hyundai, the two companies selected for individual examination,

---

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

were made at less than normal value during the POR. Interested parties are invited to comment on these preliminary results.

DATES: *Effective Date*: September 4, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Davis or Edythe Artman, AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482- 7924 or (202) 482-3931, respectively.

SUPPLEMENTARY INFORMATION:

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540. This tariff classification is provided for convenience and Customs purposes; however, the written description of the scope of the order is dispositive. A full description of the scope of the order is contained in the memorandum from Gary Taverman, Associate Deputy Assistant Secretary for AD/CVD Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Decision Memorandum for

Preliminary Results of Antidumping Duty Administrative Review: Large Power Transformers from the Republic of Korea; 2013-2014" (Preliminary Decision Memorandum), which is issued concurrent with and hereby adopted by this notice.

The Preliminary Decision Memorandum is a public document and is on file electronically via Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). Access to ACCESS is available to registered users at *http://access.trade.gov* and is available to all parties in the Central Records Unit, Room B8024 of the main Department of Commerce building. In addition, a complete version of the Preliminary Decision Memorandum can be accessed directly on the Internet at *http://enforcement.trade.gov/frn/index.html*. A list of topics discussed in the Preliminary Decision Memorandum is attached as an Appendix to this notice. The signed Preliminary Decision Memorandum and the electronic versions of the Preliminary Decision Memorandum are identical in content.

Methodology

The Department has conducted this review in accordance with section 751(a)(2) of the Tariff Act of 1930, as amended (the Act). Constructed export price (CEP) is calculated in accordance with section 772 of the Act. Normal value is calculated in accordance with section 773 of the Act. For a full description of the methodology underlying our

conclusions, see the Preliminary Decision Memorandum.

Preliminary Results of Review

We preliminarily determine that, for the period August 1, 2013, through July 31, 2014, the following dumping margins exist: [2]

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation……	11.01
Hyundai Heavy Industries Co., Ltd……	3.96
Iljin Electric Co., Ltd……	7.49
Iljin……..	7.49
LSIS Co., Ltd……..	7.49

Disclosure and Public Comment

The Department will disclose to parties to the proceeding any calculations performed in connection with these preliminary results of

[2] As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2013, through July 31, 2014, to calculate a weighted-average percentage margin for the non-selected companies (*i.e.*, ILJIN, ILJIN Electric, and LSIS) in this review, the rate applied to the non-selected companies is a simple average percentage margin calculated based on the margins calculated for Hyosung and Hyundai.

review within five days after the date of publication of this notice.[3] The Department will announce the briefing schedule to interested parties at a later date. Interested parties may submit case briefs on the deadline that the Department will announce and rebuttal briefs within five days after the time limit for filing case briefs.[4] Rebuttal briefs, the content of which is limited to the issues raised in the case briefs, must be filed within five days from the deadline date for the submission of case briefs.[5]

Parties who submit arguments in this proceeding are requested to submit with each argument: (1) A statement of the issue; (2) a brief summary of the argument; and (3) a table of authorities.[6] Case and rebuttal briefs should be filed using ACCESS.[7] Case and rebuttal briefs must be served on interested parties.[8] Executive summaries should be limited to five pages total, including footnotes.

Pursuant to 19 CFR 351.310(c), interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Enforcement and Compliance within 30 days of the date of publication of this notice.

---

[3] *See* 19 CFR 351.224.(b).

[4] *See* 19 CFR 351.309(c)(1)(ii) and (d)(1).

[5] *See* 19 CFR 351.309(d)(1) and (2).

[6] *See* 19 CFR 351.309(c)(2).

[7] *See* generally 19 CFR 351.303.

[8] *See* 19 CFR 351.303(f).

Requests should contain: (1) The party's name, address and telephone number; (2) The number of participants; and (3) A list of issues parties intend to discuss. Issues raised in the hearing will be limited to those raised in the respective case and rebuttal briefs. If a request for a hearing is made, the Department intends to hold the hearing at the U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230, at a date and time to be determined.[9] Parties should confirm by telephone the date, time, and location of the hearing two days before the scheduled date.

The Department intends to publish the final results of this administrative review, including the results of its analysis of issues addressed in any case or rebuttal brief, no later than 120 days after publication of these preliminary results, unless extended.[10]

Assessment Rates

Upon completion of this administrative review, the Department shall determine, and Customs and Border Protection (CBP) shall assess, antidumping duties on all appropriate entries.[11] If respondents' weighted-average dumping margin is not zero or *de minimis* in the final results of this review, we will calculate importer-specific assessment rates on the basis of the ratio of the

---

[9] *See* 19 CFR 351.310(d).

[10] *See* section 751(a)(3)(A) of the Act; 19 CFR 351.213(h).

[11] *See* 19 CFR 351.212(b)(1).

total amount of antidumping duties calculated for an importer's examined sales and the total entered value of such sales in accordance with 19 CFR 351.212(b)(1). If respondents' weighted-average dumping margin is zero or *de minimis* in the final results of review, we will instruct CBP not to assess duties on any of its entries in accordance with the *Final Modification for Reviews, i.e.,* "{w}here the weighted-average margin of dumping for the exporter is determined to be zero or *de minimis*, no antidumping duties will be assessed." [12]

We intend to issue liquidation instructions to CBP 15 days after publication of the final results of this review.

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(2)(C) of the Act: (1) The cash deposit rate for Hyosung and Hyundai will be that established in the final results of this administrative review; (2) for previously reviewed or investigated

---

[12] *See* Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101, 8102 (February 14, 2012) (Final Modification for Reviews).

companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review, a prior review, or in the investigation but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be the all-others rate of 22.00 percent, which is the all-others rate established in the investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

Notification to Importers

This notice also serves as a reminder to importers of their responsibility under 19 CFR 351.402(f)(2) to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act.

---

[13] *See* Large Power Transformers From the Republic of Korea: Antidumping Duty Order, 77 FR 53177 (August 31, 2012).

Dated: August 31, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix I--List of Topics Discussed in the Preliminary Decision Memorandum

1. Background

2. Companies Not Selected for Individual Examination

3. Deadline for Submission of Updated Sales and Cost Information

4. Verification

5. Scope of the Order

6. Comparisons to Normal Value

    A. Determination of Comparison Method

    B. Results of the Differential Pricing Analysis

7. Product Comparisons

8. Date of Sale

9. Constructed Export Price

10. Normal Value

    A. Home Market Viability as Comparison Market

    B. Level of Trade

    C. Cost of Production

1. Calculation of Cost of Production

2. Test of Comparison Market Sales Prices

Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013, 80 Fed. Reg. 17034 (Mar. 31, 2015)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2012-2013

AGENCY: Enforcement and Compliance, International Trade Administration, Department of Commerce.

SUMMARY: On September 24, 2014, the Department of Commerce (the Department) published the preliminary results of the administrative review of the antidumping duty order on large power transformers from the Republic of Korea. [1] The review covers five producers/exporters of the subject merchandise, Hyosung Corporation (Hyosung), Hyundai Heavy Industries Co., Ltd. (Hyundai), ILJIN, ILJIN Electric Co., Ltd. (ILJIN Electric), and LSIS Co., Ltd. (LSIS). ILJIN, ILJIN Electric, and LSIS, were not selected for individual examination. The period of review (POR) is February 16, 2012, through July 31, 2013. As a result of our analysis

---

[1] *See Large Power Transformers From the Republic of Korea: Preliminary Results of Antidumping Duty Administrative Review; 2012- 2013*, 79 FR 57046 (September 24, 2014) (Preliminary Results).

of the comments and information received, these final results differ from the Preliminary Results. For the final weighted-average dumping margins, see the "Final Results of Review" section below.

DATES: Effective March 31, 2015.

FOR FURTHER INFORMATION CONTACT: Brian Davis (Hyosung) or David Cordell (Hyundai), AD/CVD Operations, Office VI, Enforcement and Compliance, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482-7924 or (202) 482-0408, respectively.

SUPPLEMENTARY INFORMATION:

Background

On September 24, 2014, the Department published the Preliminary Results. In accordance with 19 CFR 351.309(c)(1)(ii), we invited parties to comment on our Preliminary Results.[2] On October 15, 2014, the Department issued a post-preliminary supplemental questionnaire, to which Hyundai responded on November 3 and 12, 2014, and December 2, 2014. On December 19, 2014, Hyosung and ABB Inc. (Petitioner) timely submitted case briefs.[3] Rebuttal briefs were also

---

[2] The Department issued the briefing schedule in a Memorandum to the File, dated November 3, 2014. This briefing schedule was later extended at the request of interested parties to December 19, 2014 for briefs and January 9, 2015 for rebuttal briefs on all issues, except one.

[3] *See* Brief from Petitioner regarding Hyundai, (Petitioner Brief Hyundai), Brief from Petitioner regarding Hyosung

timely filed by Hyosung, Hyundai, and Petitioner, on January 9, 2015.[4] On January 20, 2015, the Department issued a memorandum extending the time period for issuing the final results of this administrative review from January 22, 2015 to March 16, 2015. On March 6, 2015, the Department further extended the final results to March 23, 2015.[5]

Scope of the Order

The scope of this order covers large liquid dielectric power transformers (LPTs) having a top power handling capacity greater than or equal to 60,000 kilovolt amperes (60 megavolt amperes), whether assembled or unassembled, complete or incomplete. The merchandise subject to the order is currently classified in the Harmonized Tariff Schedule of the United States at subheadings 8504.23.0040, 8504.23.0080 and 8504.90.9540.[6]

(Petitioner Brief Hyosung) and Hyosung Brief, all dated December 19, 2014.

[4] *See* Hyosung Rebuttal Brief, Hyundai Rebuttal Brief and Petitioner Rebuttal Brief: All dated January 9, 2015. Petitioner requested an extension for rebuttal briefs to January 9, 2015 which the Department granted for all parties on December 8, 2014. *See* Letter to All Interested Parties dated December 8, 2014. Petitioner also requested a further extension for submission of the initial briefs, which the Department denied in its letter to all parties dated December 17, 2014, with the exception of one issue.

[5] *See* Memoranda to the file dated January 20, 2015 and March 6, 2015.

[6] For a full description of the scope of the order, see the Memorandum from Gary Taverman, Associate Deputy

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this administrative review are addressed in the Issues and Decision Memorandum.[7] A list of the issues that parties raised and to which we responded is attached to this notice as an Appendix. The Issues and Decision Memorandum is a public document and is on-file electronically via ACCESS. ACCESS is available to registered users at *http://access.trade.gov* and in the Central Records Unit, Room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://enforcement.ita.doc.gov/frn/index.html*. The signed Issues and Decision Memorandum and the electronic version of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Results

Based on a review of the record and comments received from interested parties regarding our Preliminary Results, we recalculated Hyosung's

---

Assistant Secretary for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Enforcement and Compliance, titled "Issues and Decision Memorandum for the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012-2013" (Issues and Decision Memorandum), which is issued concurrent with and hereby adopted by this notice, and dated concurrently with this notice.

[7] *Id.*

and Hyundai's weighted-average dumping margins for these final results.

For Hyosung, we revised our margin program by adjusting Hyosung's reported U.S. duty expenses for certain sales transactions. We are also including U.S. freight expenses that were excluded in the Preliminary Results and including the entered value of a unit that entered the United States during the POR in our calculation of the assessment rates for entries of LPTs during the POR.[8]

We made some changes to our calculation programs for Hyundai with respect to oil and certain other expenses. We also used the latest revised databases for U.S. sales and the Cost of Production based on post-preliminary questionnaires and responses.[9]

---

[8] *See* Memorandum from Brian Davis to the File, regarding "Analysis of Data Submitted by Hyosung Corporation in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012-2013" (Hyosung Final Analysis Memorandum), dated March 23, 2014, at section "Changes from the Preliminary Results," for further information.

[9] *See* Memorandum from David Cordell to the File, regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Final Results of the Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea; 2012-2013" (Hyundai Final Analysis Memorandum), dated March 23, 2014, at section "Changes from the Preliminary Results," for further information.

As a result of the aforementioned recalculations of Hyosung's and Hyundai's weighted-average dumping margins, the weighted-average dumping margin for the three non-selected companies also changed.

Final Results of the Review

As a result of this review, the Department determines the following weighted-average dumping margins[10] for the period February 16, 2012, through July 31, 2013, are as follows:

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyosung Corporation.....	6.43
Hyundai Heavy Industries Co., Ltd.....	9.53
Iljin Electric Co., Ltd.....	8.16

[10] The rate applied to the non-selected companies (*i.e.*, ILJIN, ILJIN Electric, and LSIS) is a weighted-average percentage margin calculated based on the publicly-ranged U.S. volumes of the two reviewed companies with an affirmative dumping margin, for the period February 16, 2012, through July 31, 2013. *See* Memorandum to the File titled, "Large Power Transformers from the Republic of Korea: Final Dumping Margin for Respondents Not Selected for Individual Examination," through Angelica Townshend, Program Manager, dated concurrently with this notice.

Iljin……..	8.16
LSIS Co., Ltd…….	8.16

Duty Assessment

The Department shall determine and U.S. Customs and Border Protection (CBP) shall assess antidumping duties on all appropriate entries. [11] For any individually examined respondents whose weighted- average dumping margin is above *de minimis*, we calculated importer- specific *ad valorem* duty assessment rates based on the ratio of the total amount of dumping calculated for the importer's examined sales to the total entered value of those same sales in accordance with 19 CFR 351.212(b)(1). Upon issuance of the final results of this administrative review, if any importer-specific assessment rates calculated in the final results are above *de minimis* (*i.e.*, at or above 0.5 percent), the Department will issue instructions directly to CBP to assess antidumping duties on appropriate entries.

To determine whether the duty assessment rates covering the period were *de minimis*, in accordance with the requirement set forth in 19 CFR 351.106(c)(2), for each respondent we

---

[11] In these final results, the Department applied the assessment rate calculation method adopted in Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Proceedings: Final Modification, 77 FR 8101 (February 14, 2012).

calculated importer (or customer)-specific *ad valorem* rates by aggregating the amount of dumping calculated for all U.S. sales to that importer or customer and dividing this amount by the total entered value of the sales to that importer (or customer). Where an importer (or customer)-specific ad valorem rate is greater than *de minimis*, and the respondent has reported reliable entered values, we apply the assessment rate to the entered value of the importer's/customer's entries during the review period.

The Department clarified its "automatic assessment" regulation on May 6, 2003.[12] This clarification will apply to entries of subject merchandise during the POR produced by the respondent for which it did not know its merchandise was destined for the United States. In such instances, we will instruct CBP to liquidate unreviewed entries at the all-others rate if there is no rate for the intermediate company(ies) involved in the transaction. For a full discussion of this clarification, *see* the *Automatic Assessment Clarification.*

We intend to issue assessment instructions directly to CBP 15 days after publication of the final results of this review.

---

[12] *See Antidumping and Countervailing Duty Proceedings: Assessment of Antidumping Duties*, 68 FR 23954 (May 6, 2003) (*Automatic Assessment Clarification*).

Cash Deposit Requirements

The following cash deposit requirements will be effective upon publication of this notice for all shipments of subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication of these final results, as provided by section 751(a)(2) of the Act: (1) The cash deposit rate for respondents noted above will be the rate established in the final results of this administrative review; (2) for merchandise exported by manufacturers or exporters not covered in this administrative review but covered in a prior segment of the proceeding, the cash deposit rate will continue to be the company specific rate published for the most recently completed segment of this proceeding; (3) if the exporter is not a firm covered in this review, a prior review, or the original investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recently completed segment of this proceeding for the manufacturer of the subject merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will continue to be 29.93 percent, the all- others rate established in the antidumping investigation.[13] These cash deposit requirements, when imposed, shall remain in effect until further notice.

---

[13] *See Large Power Transformers From the Republic of Korea: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012).

Notification to Importers Regarding the Reimbursement of Duties

This notice also serves as a final reminder to importers of their responsibility under 19 CFR 351.402(f) to file a certificate regarding the reimbursement of antidumping and/or countervailing duties prior to liquidation of the relevant entries during the POR. Failure to comply with this requirement could result in the Department's presumption that reimbursement of antidumping and/or countervailing duties occurred and the subsequent assessment of doubled antidumping duties.

Administrative Protective Order

This notice also serves as a reminder to parties subject to administrative protective orders (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 351.305(a)(3), which continues to govern business proprietary information in this segment of the proceeding. Timely written notification of the return/destruction of APO materials, or conversion to judicial protective order, is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

We are issuing and publishing this notice in accordance with sections 751(a)(1) and 777(i)(1) of the Act and 19 CFR 351.213(h).

Dated: March 23, 2015.

Paul Piquado,

Assistant Secretary for Enforcement and Compliance.

Appendix

List of Topics Discussed in the Final Issues and Decision Memorandum

Comment 8: Consideration of an Alternative Comparison Method in an Administrative Review

Comment 9: Denial of Offsets for Non-Dumped U.S. Sales When Using the A-To-T Comparison Method In Administrative Reviews

Comment 10: Harbor Maintenance Fees

Comment 11: Oil Expenses

Comment 12: Exclusion of Certain U.S. Freight Expenses for a Particular U.S. Sales Transaction

Comment 13: Calculation of Importer-Specific Assessment Rate

Comment 14: Incomplete Further Manufacturing Cost Data

C. Hyundai-Specific Issues

Comment 15: Hyundai's U.S. Sales Data are Not Reliable or Verifiable Because of Certain Submissions and Should Not Be Used in the Final Results

Comment 16: AFA With Respect to Comment 15 (Above).

Comment 17: "Overlapping" Sales Between Investigation and This Review

Comment 18: Alleged Underreported U.S. Movement and Selling Expenses

Comment 19: Hyundai's Reporting of Home Market Sales

Comment 20: Indirect Selling Expenses

Comment 21: Section E Response Was Not Complete

Comment 22: Whether Total AFA is Warranted Based On the Totality

of Hyundai's Responses

V. Recommendation

Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value, 77 Fed. Reg. 40857 (July 11, 2012)

DEPARTMENT OF COMMERCE

International Trade Administration

[A-580-867]

Large Power Transformers From the Republic of Korea: Final Determination of Sales at Less Than Fair Value

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: The Department of Commerce (the Department) has determined that imports of large power transformers from the Republic of Korea (Korea) are being, or are likely to be, sold in the United States at less than fair value (LTFV), as provided in section 735 of the Tariff Act of 1930, as amended (the Act). The estimated margins of sales at LTFV are listed in the "Continuation of Suspension of Liquidation" section of this notice.

DATES: Effective Date: July 11, 2012.

FOR FURTHER INFORMATION CONTACT: David Cordell and Brian Davis, AD/CVD Operations, Office 7, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482- 0408 or (202) 482-7924, respectively.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 2012, the Department published in the **Federal Register** its preliminary determination in the antidumping duty investigation of large power transformers from Korea. *See Large Power Transformers From the Republic of Korea: Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination*, 77 FR 9204 (February 16, 2012) (*Preliminary Determination*).

As provided in section 782(i) of the Act, we conducted sales and cost verifications of the questionnaire responses submitted by the mandatory respondents, Hyundai Heavy Industries Co., Ltd. (Hyundai) and Hyosung Corporation (Hyosung). We used standard verification procedures, including examination of relevant accounting and production records, as well as original source documents provided by both companies.[1]

---

[1] *See* Memoranda to the File entitled "Home Market Verification of the Sales Response of Hyosung Corporation in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated May 4, 2012; "Home Market Verification of the Sales Response of Hyundai Heavy Industries Co., Ltd. ("HHI") and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated May 10, 2012; "Constructed Export Price Verification of the Sales Response of Hyosung Corporation in the Antidumping Duty Investigation of Large Power Transformers from the

We received case briefs from ABB Inc., Delta Star, Inc., and Pennsylvania Transformer Technology Inc. (collectively, Petitioners), Hyundai, and Hyosung on May 25, 2012. These parties submitted rebuttal comments on June 1, 2012. No hearing was requested.

On June 4, 2012 and June 6, 2012, the Department solicited revised sales and cost databases from Hyosung and Hyundai, respectively, to address minor corrections and findings from verification. Accordingly, Hyundai and Hyosung submitted revised sales and cost databases on June 12, 2012. We met with counsel for Petitioners, Hyundai, and Hyosung on June 13, June 18, and June 19, 2012, respectively.[2]

Republic of Korea," dated May 15, 2012; "Constructed Export Price Verification of the Sales Response of Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated May 16, 2012; "Verification of the Cost Response of Hyosung Corporation in the Antidumping Investigation of Large Power Transformers from South Korea," dated May 4, 2012; and "Verification of the Cost of Production and Constructed Value Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated May 2, 2012.

[2] *See* Memoranda to the File entitled, "Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Petitioners' Counsel," dated June 15, 2012, "Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Respondent's Counsel (Hyundai)," dated June 20, 2012, and

Period of Investigation

The period of investigation is July 1, 2010, through June 30, 2011.

Scope of Investigation

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

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

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

"Antidumping Duty Investigation concerning Large Power Transformers from the Republic of Korea: Department Meeting with Respondent's Counsel (Hyosung Corporation)," dated June 19, 2012.

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

Analysis of Comments Received

All issues raised in the case and rebuttal briefs by parties to this antidumping investigation are addressed in the Issues and Decision Memorandum from Gary Taverman, Senior Advisor for Antidumping and Countervailing Duty Operations, to Paul Piquado, Assistant Secretary for Import Administration (Issues and Decision Memorandum), which is dated concurrently with and hereby adopted by this notice. A list of the issues raised is attached to this notice as Appendix I. The Issues and Decision Memorandum is a public document and is on file electronically via Import Administration's Antidumping and Countervailing Duty Centralized Electronic Service System (IA ACCESS). Access to IA ACCESS is available in the Central Records Unit (CRU), room 7046 of the main Department of Commerce building. In addition, a complete version of the Issues and Decision Memorandum can be accessed directly on the Internet at *http://www.trade.gov/ia/*. The signed Issues and Decision Memorandum and the electronic versions of the Issues and Decision Memorandum are identical in content.

Changes Since the Preliminary Determination

Based on our analysis of the comments received and our findings at verifications, we have made certain changes to the margin calculations for Hyundai and Hyosung. For a discussion of these changes, see Memoranda to the file, through Angelica Mendoza, Program Manager, from David Cordell and Brian Davis, International Trade Analysts, entitled "Analysis of Data Submitted by Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea" and, "Analysis of Data Submitted by Hyosung Corporation in the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated July 2, 2012; see also Memoranda to Neal M. Halper, Director, Office of Accounting, through Michael P. Martin, Lead Accountant, entitled, "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination--Hyundai Heavy Industries Co., Ltd. and Hyundai Corporation, USA" and "Cost of Production and Constructed Value Calculation Adjustments for the Final Determination--Hyosung Corporation," both dated July 2, 2012.

Continuation of Suspension of Liquidation

Pursuant to section 735(c)(1)(B) of the Act, we will instruct U.S. Customs and Border Protection (CBP) to continue to suspend liquidation of all entries of large power transformers from Korea

which were entered, or withdrawn from warehouse, for consumption on or after February 16, 2012, the date of publication of the *Preliminary Determination*. We will instruct CBP to require a cash deposit or the posting of a bond equal to the weighted-average margins, as indicated below, as follows: (1) The rates for Hyundai and Hyosung will be the rates we have determined in this final determination; (2) if the exporter is not a firm identified in this investigation but the producer is, the rate will be the rate established for the producer of the subject merchandise; (3) the rate for all other producers or exporters will be 22.00 percent, as discussed in the "All Others Rate" section, below. These suspension-of-liquidation instructions will remain in effect until further notice.

Manufacturer/exporter	Weighted-average dumping margin (percent)
Hyundai Heavy Industries Co., Ltd.....	14.95
Hyosung Corporation.....	29.04
All Others.....	22.00

All Others Rate

Section 735(c)(5)(A) of the Act provides that the estimated all others rate shall be an amount equal to the weighted average of the estimated weighted-average dumping margins established

for exporters and producers individually investigated excluding any zero or *de minimis* margins and any margins determined entirely under section 776 of the Act. Hyundai and Hyosung are the only respondents in this investigation for which we calculated company-specific rates that are not zero or *de minimis* or determined entirely under section 776 of the Act. Therefore, because there are only two relevant weighted-average dumping margins for this final determination and because using a weighted-average calculation risks disclosure of business proprietary information of Hyundai and Hyosung, the "all others" rate is a simple-average of these two values, which is 22.00 percent. *See Seamless Refined Copper Pipe and Tube From Mexico: Final Determination of Sales at Less Than Fair Value*, 75 FR 60723, 60724 (October 1, 2010) (using a simple average to determine the "All Others" rate when there are only two relevant weighted-average dumping margins because use of a weighted average risks disclosure of business proprietary information).[3]

---

[3] In the public version of its December 13, 2011, supplemental questionnaire responses at page SA-1, Hyosung provided ranged quantity and value of U.S. sales data, whereas in its January 13, 2012, supplemental questionnaire response at page SBC1, Hyundai provided indexed quantity and value U.S. sales data. Therefore, we were unable to perform the analysis articulated in *Ball Bearings and Parts Thereof From France, et al.: Final Results of Antidumping Duty Administrative Reviews, Final Results of Changed-Circumstances Review, and Revocation of an Order in Part*, 75 FR 53661, 53662-3

Disclosure

We intend to disclose to parties in this proceeding the calculations performed within five days of the date of publication of this notice in accordance with 19 CFR 351.224(b).

International Trade Commission Notification

In accordance with section 735(d) of the Act, we have notified the International Trade Commission (ITC) of our final determination. As our final determination is affirmative and in accordance with section 735(b)(2) of the Act, the ITC will determine, within 45 days, whether the domestic industry in the United States is materially injured, or threatened with material injury, by reason of imports or sales (or the likelihood of sales) for importation of the subject merchandise. If the ITC determines that such injury does exist, the Department will issue an antidumping duty order directing CBP to assess antidumping duties on all imports of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the effective date of the suspension of liquidation.

Notification Regarding Administrative Protective Order

This notice also serves as a final reminder to parties subject to administrative protective order (APO) of their responsibility concerning the disposition of proprietary information disclosed

---

(September 1, 2010) in this investigation in determining the "all others rate."

under APO in accordance with 19 CPR 351.305. Timely notification of the destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This determination is issued and published pursuant to sections 735(d) and 777(i)(l) of the Act.

Dated: July 2, 2012.

Paul Piquado,

Assistant Secretary for Import Administration.

Appendix I

Issues and Decision Memorandum

General

Comment 1: Date of Sale

Comment 2: Facts Available

Hyundai Heavy Industries Co., Ltd.--Specific Comments

Comment 3: Home Market Gross Unit Price

Comment 4: U.S. Gross Unit Price

Comment 5: U.S. Selling Expenses: Commissions and U.S. Duty

Comment 6: CEP Offset

Comment 7: Inconsistent Allocation of Certain Selling Expenses

Comment 8: General and Administrative and Financial Expenses

Issues and Decision Memorandum for the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea (July 2, 2012) (relevant excerpt)

Comment 4: U.S. Gross Unit Price

Petitioners claim that that Hyundai has overstated the U.S. gross unit price (GRSUPRU) of large power transformers sold in the United States "by including the value of various revenues that are not associated with the price of the transformer and the installation of the transformer (if included in the contract)." *See* Petitioners' Case Brief at 47 - 55. Much of the detailed information related to these alleged revenues is proprietary in nature. While calling for a finding of total AFA, because in Petitioners' view Hyundai has not cooperated, Petitioners also suggest as an alternative, neutral facts available option in which the Department would make a downward adjustment to the U.S. gross unit price for Hyundai's failure to "separately report the associated expenses for the Department to cap these revenues to the level of the associated expenses." *Id.* at 55.

Hyundai first disputes Petitioners' claims that Hyundai has not cooperated, and notes that "the very documents Petitioners allege that HHI failed to disclose have been on record for months." *See* Hyundai's Rebuttal Brief at 29. Hyundai claims that it "provided copies of the relevant sales documents, including copies of nearly every PO for all sales to the United States" and that it

provided copies of the purchase orders for all of the U.S. sales observations cited by Petitioners in its questionnaire responses. *Id* at 30.

Hyundai states it reported the gross unit price in accordance with the instructions in the Department's questionnaire and notes that because "the contract price is on a lump sum basis, HHI invoices the customer on such basis." *Id.* at 31. Referencing the instructions for reporting gross unit price in the Department's questionnaire Hyundai notes that it was told to "{r}eport the unit price as it appears on the invoice for sales shipped and invoiced in whole or in part."

Thus, for example, where a large power transformer was sold on a DDP to site basis, Hyundai notes that is what it did. Hyundai claims that "{b}ecause the price charged to HHI's customer included "the direct cost incurred to bring the merchandise from the original place of shipment to the customer's place of delivery, HHI reported the respective movement expenses in the relevant expense fields" and "there are no separate revenues which HHI failed to report to the Department." *Id.*

Hyundai disputes Petitioners' claims that because the Department instructed Hyundai to "verify for all sales, that the gross unit price reported only reflects the actual LPT and not any spare parts, unless such parts are needed to assemble an incomplete LPT," that such instruction also applies to freight expenses. Hyundai claims that "{t}his instruction is limited to spare parts" and that Section C of the

Department's questionnaire dated September 28, 2011 instructed Hyundai to report "the information requested concerning the direct cost incurred to bring the merchandise from the original place of shipment to the customer's place of delivery if included in the price charged to its customer." *Id.* at 32. Hyundai concludes that "Petitioners' demand is inconsistent with the statute, the Department's regulations, and the Department's well-established practice."

Id.

Hyundai states that "Petitioners pin their entire argument on the U.S. gross unit price on a fundamental misrepresentation of the record evidence in suggesting that Hyundai does not invoice on a lump-sum, project basis and separately invoices customers for services." *Id.* at 33. Citing to Petitioners' reliance on certain case precedent, Hyundai distinguishes those cases from this case by claiming that in those cases "the respondent made arrangements for the freight and the payment of U.S. customs duties on behalf of the customer and sought reimbursement for its costs for making such arrangements," or "when freight and insurance are not included in the selling price under the applicable terms of delivery but when the respondent arranges and prepays freight and insurance for the customer." *Id.* at 34.

Hyundai stresses that in the sales cited by Petitioners, it "did not make arrangements for freight, etc. on behalf of the U.S. customer, requiring reimbursement for such costs. Rather,

in accordance with the contractual term of sales (*e.g.*, DDP jobsite), Hyundai was required to deliver the large power transformers to the site on its own behalf. Thus, Hyundai did not provide any separate service on behalf of the U.S. customer, which could be viewed as outside the term of sale." *Id.* at 35. Hyundai claims that Petitioners have not cited to a single instance where it provided separate services that were not required by the term of sale. *Id.*

Hyundai also points out that Petitioners' demand that the Department apply total AFA is based on a single page for each of their cited transactions and that "Petitioners offer no analysis or discussion of the entire context of the documents they cite and seek to draw broad, universally- applicable conclusions based on a misunderstanding of the document." *Id.* at 36.

Hyundai alleges that Petitioners' arguments "demonstrate a fundamental misunderstanding of the most basic attributes of the subject merchandise" and Hyundai argues against determining that "components that are incorporated into a {large power transformer} constitute value that must be separated from the reported gross unit price." *Id.* at 37. Citing to various items that are business proprietary in nature, and were raised by Petitioners, Hyundai argues that such items are integral to the large power transformer itself, as evidenced by Petitioners' own submissions to the International Trade Commission when they stated that "{c}omponents such as bushings, cooling systems (*e.g.*, radiators and fans), tap changers, controls,

and indicators are added." *Id.* citing *USITC Publication* 4256[10] at I-10. Hyundai also points out that "HHI properly included the costs for these items in its reported DIRMAT costs, as verified by the Department." *Id.* at 38.

With respect to warranty revenue, Hyundai questions Petitioners' demand for "the universal application of AFA to HHI's entire sales database based on a single sale to a customer that previously had not ordered any transformers from HHI and through a sales process 'not usual' and deviates from the normal sale pattern" as "absurd." *Id.* Hyundai also argues that it previously demonstrated that the revenue in question related directly to the large power transformer itself and "as such, this amount was properly included in the reported sales price." *Id.* at 39. Hyundai concludes that "HHI itself provides warranties and … the price of the {large power transformer} varies based on the customer's 'warranty requirements'." *Id.* at 39 and 40.

Citing to other business proprietary examples, Hyundai again emphasizes that Hyundai addressed the issues raised by Petitioners in its supplemental questionnaire responses. *Id.* at 40. Hyundai admits Petitioners' identification of "one instance that deviated from the pattern for all other sales," and that for this "highly-unusual,

---

[10] *See Large Power Transformers from Korea* (Investigation No. 731- TA-1189 (Preliminary), USITC Publication 4256, September 2011).

post-delivery request from the customer for additional services, . . . it might be appropriate in this case to adjust the selling price for this sale" but strongly argues "there would be no basis to impute this anomalous transaction to all of HHI sales." *Id.* at 41. Because this information is proprietary in nature it cannot be summarized in this public document, but Hyundai provided a suggested correction for this one situation. *Id.* At 41. With respect to a second situation, Hyundai notes that the expense incurred by Hyundai Corporation was the same as the amount of the additional order from the customer. *Id.* Hyundai notes that Petitioners' remaining complaint involves a sales observation for which the customer placed a PO on a lump-sum basis. Hyundai notes that Petitioners "complain that the bid submitted by HHI had an informational breakdown of the components of the delivery term, which required HHI to deliver the transformer to site and offload it to the transformer pad." *Id.* at 42. Hyundai stresses that "the customer awarded the project to HHI on a lump sum basis and HHI invoiced the customer on that basis. *Id.* Hyundai notes that "this was not an instance where HHI procured separate services after the fact not related to the delivery term of the transformer." *Id.* Hyundai claims "HHI was responsible to deliver the transformer to the site and offload it on the transformer pad" and that as "HHI did not make arrangements on behalf of the customer to have the transformer delivered and then receive reimbursement; the

obligation (and the risk) of delivering the transformer to the site was HHI's." *Id.*

Department's Position:

Based on our review of record evidence at verification and comments by interested parties, we have determined to rely upon Hyundai's reported GRSUPRU for purposes of calculating net U.S. price for its U.S. sales. We note Hyundai has reported the U.S. price based on the "lump-sum" of the invoice price, or in the case of non-invoiced sales, the PO or contract price. We find that there is no evidence, based on the invoices and POs examined at verification, to indicate that Hyundai has separate revenues which it has failed to report to the Department. The Department asked Hyundai to verify that for all sales, the gross unit price only reflects the actual large power transformer, and not any spare parts, unless such parts are needed to assemble an incomplete large power transformer.[11] Hyundai argues the Department did not instruct Hyundai to exclude, for example, freight expenses that are built into the gross unit price. As highlighted by Hyundai, we found that it invoices on a lump-sum, project basis and that it does not separately invoice customers for services. *See* Hyundai's CEP

---

[11] *See* "Memorandum to the File, Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea: Phone Conversation with Frank Morgan, counsel to Hyundai Heavy Industries Co., Ltd. (Hyundai)" dated January 11, 2012, and Hyundai's Supplemental Questionnaire Response, dated January 23, 2012 at 43 to 44.

Verification Report at 32 and, *e.g.*, Exhibit 19 at 42, 43, 47, 84, 94, *etc.* We agree that in certain cases where the respondents have made separate arrangements for freight on behalf of the customer, and sought reimbursement for that cost, the Department has, in these instances, excluded separately invoiced charges that are not included in the term of sale or in some cases capped the revenue so that it does not exceed the expense incurred. *See*, *e.g.*, *Wooden Bedroom Furniture From the People's Republic of China: Final Results and Final Rescission in Part*, 75 FR 50992, 50999 (August 18, 2010) in which the Department stated that "{w}ith respect to Fairmont's argument that its freight revenue should be considered as integral to the price of subject merchandise, this argument ignores the fact that Fairmont itself charges separately for freight as separate line items in its invoices." However, in this case, when the contractual term calls for a particular service, and when there is no separate service provided on behalf of the customer and no separate identification of such service on the invoice, such "lump-sum" price is what Hyundai correctly reported to the Department. *See* Hyundai's Rebuttal Brief at 34 and 35. As Hyundai indicated, many of the assertions made by Petitioners are based on internal documents such as an Order Notice, or from a single page from a bid. However, the POs and invoices of such documents identify that the sales are made on a lump-sum basis and there is no separate invoice issued for separate services

that are not part of the terms of sale. *See* Hyundai's Rebuttal Brief at footnote 121.

The Department agrees with Petitioners that there was one instance in which there was a post-delivery request from the customer for additional services and that Hyundai itself concedes this, acknowledging that it might be appropriate to adjust the selling price for this sale. *See* Hyundai's Rebuttal Brief at 41. The Department will therefore make the suggested change with respect to that one instance and will note this change in our analysis memorandum with respect to Hyundai. *See* Memorandum to the File entitled, "Analysis of Data Submitted by Hyundai Heavy Industries (HHI) and Hyundai Corporation, U.S.A. (collectively Hyundai) in the Final Determination of the Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea," dated July 2, 2012.

Based upon its review of record evidence and comments by interested parties, the Department has determined that no changes are needed with respect to Hyundai's reporting of U.S. gross unit prices and that other than the one instance already identified above, there is no evidence that Hyundai provided separate services that were separately invoiced, which would require the Department to rely upon a different U.S. price.

APPENDIX D

19 U.S.C. § 1516a. Judicial review in countervailing duty and antidumping duty proceedings

(a) Review of determination

(1) Review of certain determinations

Within 30 days after the date of publication in the Federal Register of-

(A) a determination by the administering authority, under 1671a(c)[1] or 1673a(c) of this title, not to initiate an investigation,

(B) a determination by the Commission, under section 1675(b) of this title, not to review a determination based upon changed circumstances,

(C) a negative determination by the Commission, under section 1671b(a) or 1673b(a) of this title, as to whether there is reasonable indication of material injury, threat of material injury, or material retardation, or

(D) a final determination by the administering authority or the Commission under section 1675(c)(3) of this title, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing concurrently a summons and complaint,

---

[1] So in original. Probably should be preceded by "section".

each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any factual findings or legal conclusions upon which the determination is based.

(2) Review of determinations on record

(A) In general

Within thirty days after-

(i) the date of publication in the Federal Register of-

(I) notice of any determination described in clause (ii), (iii), (iv), (v), or (viii) of subparagraph (B),

(II) an antidumping or countervailing duty order based upon any determination described in clause (i) of subparagraph (B), or

(III) notice of the implementation of any determination described in clause (vii) of subparagraph (B), or

(ii) the date of mailing of a determination described in clause (vi) of subparagraph (B),

an interested party who is a party to the proceeding in connection with which the matter arises may commence an action in the United States Court of International Trade by filing a summons, and within thirty days thereafter a complaint, each with the content and in the form, manner, and style prescribed by the rules of that court, contesting any

factual findings or legal conclusions upon which the determination is based.

(B) Reviewable determinations

The determinations which may be contested under subparagraph (A) are as follows:

(i) Final affirmative determinations by the administering authority and by the Commission under section 1671d or 1673d of this title, including any negative part of such a determination (other than a part referred to in clause (ii)).

(ii) A final negative determination by the administering authority or the Commission under section 1671d or 1673d of this title, including, at the option of the appellant, any part of a final affirmative determination which specifically excludes any company or product.

(iii) A final determination, other than determination reviewable under paragraph(1), by the administering authority or the Commission under section 1675 of this title.

(iv) A determination by the administering authority, under section 1671c or 1673c of this title, to suspend an antidumping duty or a countervailing duty investigation, including any final determination resulting from a continued investigation which changes the size of the dumping margin or net countervail-able subsidy calculated, or the reasoning underlying such calculations,

at the time the suspension agreement was concluded.

(v) An injurious effect determination byte Commission under section 1671c(h) or1673c(h) of this title.

(vi) A determination by the administering authority as to whether a particular type of merchandise is within the class or kind of merchandise described in an existing finding of dumping or antidumping or counter-vailing duty order.

(vii) A determination by the administering authority or the Commission under section 3538 of this title concerning a determination under subtitle IV of this chapter.

(viii) A determination by the Commission under section 1675b(a)(1) of this title.

(3) Exception

Notwithstanding the limitation imposed by para, graph (2)(A)(i)(II) of this subsection, a final affirmative determination by the administering authority under section 1671d or 1673d of this title may be contested by commencing an action, in accordance with the provisions of paragraph (2)(A), within thirty days after the date of publication in the Federal Register of a final negative determination by the Commission under section 1671d or 1673d of this title.

(4) Procedures and fees

The procedures and fees set forth in chapter 169 of title 28 apply to an action under this section.

(5) Time limits in cases involving merchandise from free trade area countries

Notwithstanding any other provision of this subsection, in the case of a determination to which the provisions of subsection (g) apply, an action under this subsection may not be commenced, and the time limits for commencing an action under this subsection shall not begin to run, until the day specified in whichever of the following subparagraphs applies:

(A) For a determination described in paragraph (1)(B) or clause (i), (ii) or (iii) of paragraph (2)(B), the 31st day after the date on which notice of the determination is published in the Federal Register.

(B) For a determination described in clause (vi) of paragraph (2)(B), the 31st day after the date on which the government of the relevant FTA country receives notice of the determination.

(C) For a determination with respect to which binational panel review has commenced in accordance with subsection (g)(8), the day after the date as of which-

(i) the binational panel has dismissed binational panel review of the determination for lack of jurisdiction, and

(ii) any interested party seeking review of the determination under paragraph (1), (2), or (3) of this subsection has provided timely notice under subsection (g)(3)(B).

If such an interested party files a summons and complaint under this subsection after dismissal by the binational panel, and if a request for an extraordinary challenge committee is made with respect to the decision by the binational panel to dismiss-

(I) judicial review under this subsection shall be stayed during consideration by the committee of the request, and

(II) the United States Court of International Trade shall dismiss the action if the committee vacates or remands the binational panel decision to dismiss.

(D) For a determination for which review by the United States Court of International Trade is provided for-

(i) under subsection (g)(12)(B), the day after the date of publication in the Federal Register of notice that article 1904 of the NAFTA has been suspended, or

(ii) under subsection (g)(12)(D), the day after the date that notice of settlement is published in the Federal Register.

(E) For a determination described in clause "(vii) of paragraph (2)(B), the 31st day after the date on which notice of the implementation

of the determination is published in the Federal Register.

(b) Standards of review

(1) Remedy

The court shall hold unlawful any determination, finding, or conclusion found-

(A) in an action brought under subparagraph (A), (B), or (C) of subsection (a)(1), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law, or

(B)(i) in an action brought under paragraph (2) of subsection (a), to be unsupported by substantial evidence on the record, or otherwise not in accordance with law, or

(ii) in an action brought under paragraph (1)(D) of subsection (a), to be arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law.

(2) Record for review

(A) In general

For the purposes of this subsection, the record, unless otherwise stipulated by the parties, shall consist of-

(i) a copy of all information presented to or obtained by the Secretary, the administering authority, or the Commission during the course of the administrative proceeding, including all

governmental memoranda pertaining to the case and the record of ex parte meetings required to be kept by section 1677f(a)(3) of this title; and

(ii) a copy of the determination, all transcripts or records of conferences or hearings, and all notices published in the Federal Register.

(B) Confidential or privileged material

The confidential or privileged status accorded to any documents, comments, or information shall be preserved in any action under this section. Notwithstanding the preceding sentence, the court may examine, in camera, the confidential or privileged material, and may disclose such material under such terms and conditions as it may order.

(3) Effect of decisions by NAFTA or United States-Canada binational panels

In making a decision in any action brought under subsection (a), a court of the United States is not bound by, but may take into consideration, a final decision of a binational panel or extraordinary challenge committee convened pursuant to article 1904 of the NAFTA or of the Agreement.

(c) Liquidation of entries

(1) Liquidation in accordance with determination

Unless such liquidation is enjoined by the court under paragraph (2) of this subsection, entries of merchandise of the character covered by a determination of the Secretary, the administering authority, or the Commission contested under subsection (a) shall be liquidated in accordance with the determination of the Secretary, the administering authority, or the Commission, if they are entered, or withdrawn from warehouse, for consumption on or before the date of publication in the Federal Register by the Secretary or the administering authority of a notice of a decision of the United States Court of International Trade, or of the United States Court of Appeals for the Federal Circuit, not in harmony with that determination. Such notice of a decision shall be published within ten days from the date of the issuance of the court decision.

(2) Injunctive relief

In the case of a determination described in paragraph (2) of subsection (a) by the Secretary, the administering authority, or the Commission, the United States Court of International Trade may enjoin the liquidation of some or all entries of merchandise covered by a determination of the Secretary, the administering authority, or the Commission, upon a request by an interested party for such relief and a proper

showing that the requested relief should be granted under the circumstances.

(3) Remand for final disposition

If the final disposition of an action brought under this section is not in harmony with the published determination of the Secretary, the administering authority, or the Commission, the matter shall be remanded to the Secretary, the administering authority, or the Commission, as appropriate, for disposition consistent with the final disposition of the court.

(d) Standing

Any interested party who was a party to the proceeding under section 1303 of this title or subtitle IV of this chapter shall have the right to appear and be heard as a party in interest before the United States Court of International Trade. The party filing the action shall notify all such interested parties of the filing of an action under this section, in the form, manner, style, and within the time prescribed by rules of the court.

(e) Liquidation in accordance with final decision

If the cause of action is sustained in whole or in part by a decision of the United States Court of International Trade or of the United States Court of Appeals for the Federal Circuit-

(1) entries of merchandise of the character covered by the published determination of the Secretary, the administering authority, or the Commission, which is entered, or withdrawn from warehouse, for consumption after the date

of publication in the Federal Register by the Secretary or the administering authority of a notice of the court decision, and

(2) entries, the liquidation of which was enjoined under subsection (c)(2),

shall be liquidated in accordance with the final court decision in the action. Such notice of the court decision shall be published within ten days from the date of the issuance of the court decision.

(f) Definitions

For purposes of this section-

(1) Administering authority

The term "administering authority" means the administering authority described in section 1677(1) of this title.

(2) Commission

The term "Commission" means the United States International Trade Commission.

(3) Interested party

The term "interested party" means any person described in section 1677(9) of this title.

(4) Secretary

The term "Secretary" means the Secretary of the Treasury.

(5) Agreement

The term "Agreement" means the United States-Canada Free-Trade Agreement.

(6) United States Secretary

The term "United States Secretary" means-

(A) the secretary for the United States Section referred to in article 1908 of the NAFTA, and

(B) the secretary of the United States Section provided for in article 1909 of the Agreement.

(7) Relevant FTA Secretary

The term "relevant FTA Secretary" means the Secretary-

(A) referred to in article 1908 of the NAFTA, or

(B) provided for in paragraph 5 of article 1909 of the Agreement, of the relevant FTA country.

(8) NAFTA

The term "NAFTA" means the North American Free Trade Agreement.

(9) Relevant FTA country

The term "relevant FTA country" means the free trade area country to which an antidumping or countervailing duty proceeding pertains.

(10) Free trade area country

The term "free trade area country" means the following:

(A) Canada for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Canada.

(B) Mexico for such time as the NAFTA is in force with respect to, and the United States applies the NAFTA to, Mexico.

(C) Canada for such time as-

(i) it is not a free trade area country under subparagraph (A); and

(ii) the Agreement is in force with respect to, and the United States applies the Agreement to, Canada.

(g) Review of countervailing duty and antidumping duty determinations involving free trade area country merchandise

(1) "Determination" defined

For purposes of this subsection, the term "determination" means a determination described in-

(A) paragraph (1)(B) of subsection (a), or

(B) clause (i), (ii), (iii), (vi), or (vii) of paragraph (2)(B) of subsection (a),

if made in connection with a proceeding regarding a class or kind of free trade area country merchandise, as determined by the administering authority.

(2) Exclusive review of determination by binational panels

If binational panel review of a determination is requested pursuant to article 1904 of the NAFTA or of the Agreement, then, except as provided in paragraphs (3) and (4)--

(A) the determination is not reviewable under subsection (a), and

(B) no court of the United States has power or jurisdiction to review the determination on any question of law or fact by an action in the nature of mandamus or otherwise.

(3) Exception to exclusive binational panel review

(A) In general

A determination is reviewable under subsection (a) if the determination sought to be reviewed is

(i) a determination as to which neither the United States nor the relevant FTA country requested review by a binational panel pursuant to article 1904 of the NAFTA or of the Agreement,

(ii) a revised determination issued as a direct result of judicial review, commenced pursuant to subsection (a), if neither the United States nor the relevant FTA country requested review of the original determination,

(iii) a determination issued as a direct result of judicial review that was commenced pursuant to subsection (a) prior to the entry into force of the NAFTA or of the Agreement,

(iv) a determination which a binational panel has determined is not reviewable by the binational panel,

(v) a determination as to which binational panel review has terminated

pursuant to paragraph 12 of article 1905 of the NAFTA, or

(vi) a determination as to which extraordinary challenge committee review has terminated pursuant to paragraph 12 of article 1905 of the NAFTA.

(B) Special rule

A determination described in subparagraph (A)(i) or (iv) is reviewable under subsection (a) only if the party seeking to commence review has provided timely notice of its intent to commence such review to-

(i) the United States Secretary and the relevant FTA Secretary;

(ii) all interested parties who were parties to the proceeding in connection with which the matter arises; and

(iii) the administering authority or the Commission, as appropriate.

Such notice is timely provided if the notice is delivered no later than the date that is 20 days after the date described in subparagraph (A) or (B) of subsection (a)(5) that is applicable to such determination, except that, if the time for requesting binational panel review is suspended under paragraph (8)(A)(ii) of this subsection, any unexpired time for providing notice of intent to commence judicial review shall, during the pendency of any such suspension, also be

suspended. Such notice shall contain such information, and be in such form, manner, and style, as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(4) Exception to exclusive binational panel review for constitutional issues

(A) Constitutionality of binational panel review system

An action for declaratory judgment or injunctive relief, or both, regarding a determination on the grounds that any provision of, or amendment made by, the North American Free Trade Agreement Implementation Act implementing the binational dispute settlement system under chapter 19 of the NAFTA, or the United States-Canada Free-Trade Agreement Implementation Act of 1988 implementing the binational panel dispute settlement system under chapter 19 of the Agreement, violates the Constitution may be brought only in the United States Court of Appeals for the District of Columbia Circuit, which shall have jurisdiction of such action.

(B) Other constitutional review

Review is available under subsection (a) with respect to a determination solely concerning a constitutional issue (other than an issue to which subparagraph (A) applies) arising under any law of the United States as enacted or applied. An action for review under this

subparagraph shall be assigned to a 3-judge panel of the United States Court of International Trade.

(C) Commencement of review

Notwithstanding the time limits in subsection (a), within 30 days after the date of publication in the Federal Register of notice that binational panel review has been completed, an interested party who is a party to the proceeding in connection with which the matter arises may commence an action under subparagraph (A) or (B) by filing an action in accordance with the rules of the court.

(D) Transfer of actions to appropriate court

Whenever an action is filed in a court under subparagraph (A) or (B) and that court finds that the action should have been filed in the other court, the court in which the action was filed shall transfer the action to the other court and the action shall proceed as if it had been filed in the court to which it is transferred on the date upon which it was actually filed in the court from which it is transferred.

(E) Frivolous claims

Frivolous claims brought under subparagraph (A) or (B) are subject to dismissal and sanctions as provided under section 1927 of title 28 and the Federal Rules of Civil Procedure.

(F) Security

(i) Subparagraph (A) actions

The security requirements of rule 65(c) of the Federal Rules of Civil Procedure apply with respect to actions commenced under subparagraph (A).

(ii) Subparagraph (B) actions

No claim shall be heard, and no temporary restraining order or temporary or permanent injunction shall be issued, under an action commenced under subparagraph (B), unless the party seeking review first files an undertaking with adequate security in an amount to be fixed by the court sufficient to recompense parties affected for any loss, expense, or damage caused by the improvident or erroneous issuance of such order or injunction. If a court upholds the constitutionality of the determination in question in such action, the court shall award to a prevailing party fees and expenses, in addition to any costs incurred by that party, unless the court finds that the position of the other party was substantially justified or that special circumstances make an award unjust.

(G) Panel record

The record of proceedings before the binational panel shall not be considered part of the record for review pursuant to subparagraph (A) or (B).

(H) Appeal to Supreme Court of court orders issued in subparagraph (A) actions

Notwithstanding any other provision of law, any final judgment of the United States Court of Appeals for the District of Columbia Circuit which is issued pursuant to an action brought under subparagraph (A) shall be reviewable by appeal directly to the Supreme Court of the United States. Any such appeal shall be taken by a notice of appeal filed within 10 days after such order is entered; and the jurisdictional statement shall be filed within 30 days after such order is entered. No stay of an order issued pursuant to an action brought under subparagraph (A) may be issued by a single Justice of the Supreme Court.

(5) Liquidation of entries

(A) Application

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the rules provided in this paragraph shall apply, notwithstanding the provisions of subsection (c).

(B) General rule

In the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, entries of merchandise covered by such determination shall be liquidated in accordance with the determination of the administering authority or the Commission, if

they are entered, or withdrawn from ware house, for consumption on or before the date of publication in the Federal Register by the administering authority of notice of a final decision of a binational panel, or of an extraordinary challenge committee, not in harmony with that determination. Such notice of a decision shall be published within 10 days of the date of the issuance of the panel or committee decision.

(C) Suspension of liquidation

(i) In general

Notwithstanding the provisions of subparagraph (B), in the case of a determination described in clause (iii) or (vi) of subsection (a)(2)(B) for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the administering authority, upon request of an interested party who was a party to the proceeding in connection with which the matter arises and who is a participant in the binational panel review, shall order the continued suspension of liquidation of those entries of merchandise covered by the determination that are involved in the review pending the final disposition of the review.

(ii) Notice

At the same time as the interested party makes its request to the administering authority under clause (i), that party shall

serve a copy of its request on the United States Secretary, the relevant FTA Secretary, and all interested parties who were parties to the proceeding in connection with which the matter arises.

(iii) Application of suspension

If the interested party requesting continued suspension of liquidation under clause (i) is a foreign manufacturer, producer, or exporter, or a United States importer, the continued suspension of liquidation shall apply only to entries of merchandise manufactured, produced, exported, or imported by that particular manufacturer, producer, exporter, or importer. If the interested party requesting the continued suspension of liquidation under clause (i) is an interested party described in subparagraph (C), (D), (E), or (F) of section 1677(9) of this title, the continued suspension of liquidation shall apply only to entries which could be affected by a decision of the binational panel convened under chapter 19 of the NAFTA or of the Agreement.

(iv) Judicial review

Any action taken by the administering authority or the United States Customs Service under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any

question of law or fact by an action in the nature of mandamus or otherwise.

(6) Injunctive relief

Except for cases under paragraph (4)(B), in the case of a determination for which binational panel review is requested pursuant to article 1904 of the NAFTA or of the Agreement, the provisions of subsection (c)(2) shall not apply.

(7) Implementation of international obligations under article 1904 of the NAFTA or the Agreement

(A) Action upon remand

If a determination is referred to a binational panel or extraordinary challenge committee under the NAFTA or the Agreement and the panel or committee makes a decision remanding the determination to the administering authority or the Commission, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with the decision of the panel or committee. Any action taken by the administering authority or the Commission under this paragraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(B) Application if subparagraph (A) held unconstitutional

In the event that the provisions of subparagraph (A) are held unconstitutional under the provisions of subparagraphs (A) and (H) of paragraph (4), the provisions of this subparagraph shall take effect. In such event, the President is authorized on behalf of the United States to accept, as a whole, the decision of a binational panel or extraordinary challenge committee remanding the determination to the administering authority or the Commission within the period specified by the panel or committee. Upon acceptance by the President of such a decision, the administering authority or the Commission shall, within the period specified by the panel or committee, take action not inconsistent with such decision. Any action taken by the President, the administering authority, or the Commission under this subparagraph shall not be subject to judicial review, and no court of the United States shall have power or jurisdiction to review such action on any question of law or fact by an action in the nature of mandamus or otherwise.

(8) Requests for binational panel review

(A) Interested party requests for binational panel review

(i) General rule

An interested party who was a party to the proceeding in which a determination is

made may request binational panel review of such determination by filing a request with the United States Secretary by no later than the date that is 30 days after the date described in subparagraph (A), (B), or (E) of subsection (a)(5) that is applicable to such determination. Receipt of such request by the United States Secretary shall be deemed to be a request for binational panel review within the meaning of article 1904(4) of the NAFTA or of the Agreement. Such request shall contain such information and be in such form, manner, and style as the administering authority, in consultation with the Commission, shall prescribe by regulations.

(ii) Suspension of time to request binational panel review under the NAFTA

Notwithstanding clause (i), the time for requesting binational panel review shall be suspended during the pendency of any stay of binational panel review that is issued pursuant to paragraph 11(a) of article 1905 of the NAFTA.

(B) Service of request for binational panel review

(i) Service by interested party

If a request for binational panel review of a determination is filed under subparagraph (A), the party making the request shall serve a copy, by mail or

personal service, on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(ii) Service by United States Secretary

If an interested party to the proceeding requests binational panel review of a determination by filing a request with the relevant FTA Secretary, the United States Secretary shall serve a copy of the request by mail on any other interested party who was a party to the proceeding in connection with which the matter arises, and on the administering authority or the Commission, as appropriate.

(C) Limitation on request for binational panel review

Absent a request by an interested party under subparagraph (A), the United States may not request binational panel review of a determination under article 1904 of the NAFTA or the Agreement.

(9) Representation in panel proceedings

In the case of binational panel proceedings convened under chapter 19 of the NAFTA or of the Agreement, the administering authority and the Commission shall be represented by attorneys who are employees of the administering authority or the Commission, respectively. Interested parties who were parties to the proceeding in connection with which the

matter arises shall have the right to appear and be represented by counsel before the binational panel.

(10) Notification of class or kind rulings

In the case of a determination which is described in paragraph (2)(B)(vi) of subsection (a) and which is subject to the provisions of paragraph (2), the administering authority, upon request, shall inform any interested person of the date on which the Government of the relevant FTA country received notice of the determination under paragraph 4 of article 1904 of the NAFTA or the Agreement.

(11) Suspension and termination of suspension of article 1904 of the NAFTA

(A) Suspension of article 1904

If a special committee established under article 1905 of the NAFTA issues an affirmative finding, the Trade Representative may, in accordance with paragraph 8(a) or 9, as appropriate, of article 1905 of the NAFTA, suspend the operation of article 1904 of the NAFTA.

(B) Termination of suspension of article 1904

If a special committee is reconvened and makes an affirmative determination described in paragraph 10(b) of article 1905 of the NAFTA, any suspension of the operation of article 1904 of the NAFTA shall terminate.

(12) Judicial review upon termination of binational panel or committee review under the NAFTA

(A) Notice of suspension or termination of suspension of article 1904

(i) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the operation of article 1904 of the NAFTA has been suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of suspension of article 1904 of the NAFTA.

(ii) Upon notification by the Trade Representative or the Government of a country described in subsection (f)(10)(A) or (B) that the suspension of the operation of article 1904 of the NAFTA is terminated in accordance with paragraph 10 of article 1905 of the NAFTA, the United States Secretary shall publish in the Federal Register a notice of termination of suspension of article 1904 of the NAFTA.

(B) Transfer of final determinations for judicial review upon suspension of article 1904

If the operation of article 1904 of the NAFTA is suspended in accordance with paragraph 8(a) or 9 of article 1905 of the NAFTA-

(i) upon the request of an authorized person described in subparagraph (C), any final de termination that is the subject of a

binational panel review or an extraordinary challenge committee review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a); or

(ii) in a case in which-

(I) a binational panel review was completed fewer than 30 days before the suspension, and

(II) extraordinary challenge committee review has not been requested,

upon the request of an authorized person described in subparagraph (C) which is made within 60 days after the completion of the binational panel review, the final determination that was the subject of the binational panel review shall be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(C) Persons authorized to request transfer of final determinations for judicial review

A request that a final determination be transferred to the Court of International Trade under subparagraph (B) may be made by-

(i) if the United States made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to

paragraph 8(a) of article 1905 of the NAFTA-

(I) the government of the relevant county described in subsection (f)(10)(A) or (B),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired, or

(ii) if a country described in subsection (f)(10)(A) or (B) made an allegation under paragraph 1 of article 1905 of the NAFTA and the operation of article 1904 of the NAFTA was suspended pursuant to paragraph 9 of article 1905 of the NAFTA-

(I) the government of that country,

(II) an interested party that is a person of that country and that was a party to the panel or committee review, or

(III) an interested party that is a person of that country and that was a party to the proceeding in connection with which panel review was requested, but only if the time period for filing notices of appearance in the panel review has not expired.

(D) Transfer for judicial review upon settlement

(i) If the Trade Representative achieves a settlement with the government of a country described in subsection (f)(10)(A) or (B) pursuant to paragraph 7 of article 1905 of the NAFTA, and referral for judicial review is among the terms of such settlement, any final determination that is the subject of a binational panel review or an extraordinary challenge committee review shall, upon a request described in clause (ii), be transferred to the United States Court of International Trade (in accordance with rules issued by the Court) for review under subsection (a).

(ii) A request referred to in clause (i) is a request made by-

(I) the country referred to in clause (i),

(II) an interested party that was a party to the panel or committee review, or

(III) an interested party that was a party to the proceeding in connection with which panel review was requested, but only if the time for filing notices of appearance in the panel review has not expired.

19 U.S.C. § 1673. Imposition of antidumping duties

If-

(1) the administering authority determines that a class or kind of foreign merchandise is being, or is likely to be, sold in the United States at less than its fair value, and

(2) the Commission determines that-

(A) an industry in the United States-

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of that merchandise or by reason of sales (or the likelihood of sales) of that merchandise for importation,

then there shall be imposed upon such merchandise an antidumping duty, in addition to any other duty imposed, in an amount equal to the amount by which the normal value exceeds the export price (or the constructed export price) for the merchandise. For purposes of this section and section 1673d(b)(1) of this title, a reference to the sale of foreign merchandise includes the entering into of any leasing arrangement regarding the merchandise that is equivalent to the sale of the merchandise.

19 U.S.C. § 1673a. Procedures for initiating an antidumping duty investigation

(a) Initiation by administering authority

(1) In general

An antidumping duty investigation shall be initiated whenever the administering authority determines, from information available to it, that a formal investigation is warranted into the question of whether the elements necessary for the imposition of a duty under section 1673 of this title exist.

(2) Cases involving persistent dumping

(A) Monitoring

The administering authority may establish a monitoring program with respect to imports of a class or kind of merchandise from any additional supplier country for a period not to exceed one year if-

(i) more than one antidumping order is in effect with respect to that class or kind of merchandise;

(ii) in the judgment of the administering authority there is reason to believe or suspect an extraordinary pattern of persistent injurious dumping from one or more additional supplier countries; and (iii) in the judgment of the administering authority this extraordinary pattern is causing a serious commercial problem for the domestic industry.

(B) Initiation of investigation

If during the period of monitoring referred to in subparagraph (A), the administering authority determines that there is sufficient information to initiate a formal investigation under this subsection regarding an additional supplier country, the administering authority shall immediately initiate such an investigation.

(C) Definition

For purposes of this paragraph, the term "additional supplier country" means a country regarding which no antidumping investigation is currently pending, and no antidumping duty order is currently in effect, with respect to imports of the class or kind of merchandise covered by subparagraph (A).

(D) Expeditious action

The administering authority and the Commission, to the extent practicable, shall expedite proceedings under this part undertaken as a result of a formal investigation initiated under subparagraph (B).

(b) Initiation by petition

(1) Petition requirements

An antidumping proceeding shall be initiated whenever an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title files a petition with the administering authority, on behalf of an

industry, which alleges the elements necessary for the imposition of the duty imposed by section 1673 of this title, and which is accompanied by information reasonably available to the petitioner supporting those allegations. The petition may be amended at such time, and upon such conditions, as the administering authority and the Commission may permit.

(2) Simultaneous filing with Commission

The petitioner shall file a copy of the petition with the Commission on the same day as it is filed with the administering authority.

(3) Action with respect to petitions

(A) Notification of governments

Upon receipt of a petition filed under paragraph (1), the administering authority shall notify the government of any exporting country named in the petition by delivering a public version of the petition to an appropriate representative of such country.

(B) Acceptance of communications

The administering authority shall not accept any unsolicited oral or written communication from any person other than an interested party described in section 1677(9)(C), (D), (E), (F), or (G) of this title before the administering authority makes its decision whether to initiate an investigation, except as provided in subsection (c)(4)(D), and except for inquiries regarding the status

of the administering authority's consideration of the petition.

(C) Nondisclosure of certain information

The administering authority and the Commission shall not disclose information with regard to any draft petition submitted for review and comment before it is filed under paragraph (1).

(c) Petition determination

(1) In general

(A) Time for initial determination

Except as provided in subparagraph (B), within 20 days after the date on which a petition is filed under subsection (b), the administering authority shall-

(i) after examining, on the basis of sources readily available to the administering authority, the accuracy and adequacy of the evidence provided in the petition, determine whether the petition alleges the elements necessary for the imposition of a duty under section 1673 of this title and contains information reasonably available to the petitioner supporting the allegations, and

(ii) determine if the petition has been filed by or on behalf of the industry.

(B) Extension of time

In any case in which the administering authority is required to poll or otherwise

determine support for the petition by the industry under paragraph (4)(D), the administering authority may, in exceptional circumstances, apply subparagraph (A) by substituting "a maximum of 40 days" for "20 days".

(C) Time limits where petition involves same merchandise as an order that has been revoked

If a petition is filed under this section with respect to merchandise that was the subject merchandise of-

(i) an antidumping duty order or finding that was revoked under section 1675(d) of this title in the 24 months preceding the date the petition is filed, or

(ii) a suspended investigation that was terminated under section 1675(d) of this title in the 24 months preceding the date the petition is filed,

the administering authority and the Commission shall, to the maximum extent practicable, expedite any investigation initiated under this section with respect to the petition.

(2) Affirmative determinations

If the determinations under clauses (i) and (ii) of paragraph (1)(A) are affirmative, the administering authority shall initiate an investigation to determine whether the subject

merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(3) Negative determinations

If the determination under clause (i) or (ii) of paragraph (1)(A) is negative, the administering authority shall dismiss the petition, terminate the proceeding, and notify the petitioner in writing of the reasons for the determination.

(4) Determination of industry support

(A) General rule

For purposes of this subsection, the administering authority shall determine that the petition has been filed by or on behalf of the industry, if-

(i) the domestic producers or workers who support the petition account for at least 25 percent of the total production of the domestic like product, and

(ii) the domestic producers or workers who support the petition account for more than 50 percent of the production of the domestic like product produced by that portion of the industry expressing support for or opposition to the petition.

(B) Certain positions disregarded

(i) Producers related to foreign producers

In determining industry support under subparagraph (A), the administering authority shall disregard the position of

domestic producers who oppose the petition, if such producers are related to foreign producers, as defined in section 1677(4)(B)(ii) of this title, unless such domestic producers demonstrate that their interests as domestic producers would be adversely affected by the imposition of an antidumping duty order. (ii) Producers who are importers The administering authority may disregard the position of domestic producers of a domestic like product who are importers of the subject merchandise.

(C) Special rule for regional industries

If the petition alleges the industry is a regional industry, the administering authority shall determine whether the petition has been filed by or on behalf of the industry by applying subparagraph (A) on the basis of production in the region.

(D) Polling the industry

If the petition does not establish support of domestic producers or workers accounting for more than 50 percent of the total production of the domestic like product, the administering authority shall-

(i) poll the industry or rely on other information in order to determine if there is support for the petition as required by subparagraph (A), or

(ii) if there is a large number of producers in the industry, the administering

authority may determine industry support for the petition by using any statistically valid sampling method to poll the industry.

(E) Comments by interested parties

Before the administering authority makes a determination with respect to initiating an investigation, any person who would qualify as an interested party under section 1677(9) of this title if an investigation were initiated, may submit comments or information on the issue of industry support. After the administering authority makes a determination with respect to initiating an investigation, the determination regarding industry support shall not be reconsidered.

(5) "Domestic producers or workers" defined

For purposes of this subsection, the term "domestic producers or workers" means those interested parties who are eligible to file a petition under subsection (b)(1).

(d) Notification to Commission of determination

The administering authority shall-

(1) notify the Commission immediately of any determination it makes under subsection (a) or (c), and

(2) if the determination is affirmative, make available to the Commission such information as it may have relating to the matter under investigation, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than

with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

(e) Information regarding critical circumstances

If, at any time after the initiation of an investigation under this part, the administering authority finds a reasonable basis to suspect that-

(1) there is a history of dumping in the United States or elsewhere of the subject merchandise, or

(2) the person by whom, or for whose account, the merchandise was imported knew, or should have known, that the exporter was selling the subject merchandise at less than its fair value,

the administering authority may request the Commissioner of U.S. Customs and Border Protection to compile information on an expedited basis regarding entries of the subject merchandise. Upon receiving such request, the Commissioner of U.S. Customs and Border Protection shall collect information regarding the volume and value of entries of the subject merchandise and shall transmit such information to the administering authority at such times as the administering authority shall direct (at least once every 30 days), until a final determination is made under section 1673d(a) of this title, the investigation is terminated, or the administering authority withdraws the request.

19 U.S.C. § 1673b. Preliminary determinations

(a) Determination by Commission of reasonable indication of injury

(1) General rule

Except in the case of a petition dismissed by the administering authority under section 1673a(c)(3) of this title, the Commission, within the time specified in paragraph (2), shall determine, based on the information available to it at the time of the determination, whether there is a reasonable indication that-

(A) an industry in the United States-

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports of the subject merchandise and that imports of the subject merchandise are not negligible. If the Commission finds that imports of the subject merchandise are negligible or otherwise makes a negative determination under this paragraph, the investigation shall be terminated.

(2) Time for Commission determination

The Commission shall make the determination described in paragraph (1)--

(A) in the case of a petition filed under section 1673a(b) of this title-

(i) within 45 days after the date on which the petition is filed, or

(ii) if the time has been extended pursuant to section 1673a(c)(1)(B) of this title, within 25 days after the date on which the Commission receives notice from the administering authority of initiation of the investigation, and

(B) in the case of an investigation initiated under section 1673a(a) of this title, within 45 days after the date on which the Commission receives notice from the administering authority that an investigation has been initiated under such section.

(b) Preliminary determination by administering authority

(1) Period of antidumping duty investigation

(A) In general

Except as provided in subparagraph (B), within 140 days after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title, but not before an affirmative de-termination by the Commission under subsection (a) of this section, the administering authority shall make a determination, based upon the information available to it at the time of the determination, of whether there is a reasonable basis to believe or suspect that

the merchandise is being sold, or is likely to be sold, at less than fair value.

(B) If certain short life cycle merchandise involved

If a petition filed under section 1673a(b) of this title, or an investigation initiated under section 1673a(a) of this title, concerns short life cycle merchandise that is included in a product category established under section 1673h(a) of this title, subparagraph (A) shall be applied-

(i) by substituting "100 days" for "140 days" if manufacturers that are second offenders account for a significant proportion of the merchandise under investigation, and

(ii) by substituting "80 days" for "140 days" if manufacturers that are multiple offenders account for a significant proportion of the merchandise under investigation.

(C) Definitions of offenders

For purposes of subparagraph (B)

(i) The term "second offender" means a manufacturer that is specified in 2 affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is-

(I) specified in both such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(ii) The term "multiple offender" means a manufacturer that is specified in 3 or more affirmative dumping determinations (within the meaning of section 1673h of this title) as the manufacturer of short life cycle merchandise that is-

(I) specified in each of such determinations, and

(II) within the scope of the product category referred to in subparagraph (B).

(2) Preliminary determination under waiver of verification

Within 75 days after the initiation of an investigation, the administering authority shall cause an official designated for such purpose to review the information concerning the case received during the first 60 days of the investigation, and, if there appears to be sufficient information available upon which the preliminary determination can reasonably be based, to disclose to the petitioner and any interested party, then a party to the proceedings that requests such disclosure, all available nonconfidential information and all other information which is disclosed pursuant to section 1677f of this title. Within 3 days (not counting Saturdays, Sundays, or legal public holidays) after such disclosure, the petitioner and each party which. is an interested party described in subparagraph (C), (D), (E), (F), or

(G) of section 1677(9) of this title to whom such disclosure was made may furnish to the administering authority an irrevocable written waiver of verification of the information received by the authority, and an agreement that it is willing to have a preliminary determination made on the basis of the record then available to the authority. If a timely waiver and agreement have been received from the petitioner and each party which is an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title to whom the disclosure was made, and the authority finds that sufficient information is then available upon which the preliminary determination can reasonably be based, a preliminary determination shall be made within 90 days after the initiation of the investigation on the basis of the record established during the first 60 days after the investigation was initiated.

(3) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis. For purposes of the preceding sentence, a weighted average dumping margin is de minimis if the administering authority determines that it is less than 2 percent ad valorem or the equivalent specific rate for the subject merchandise.

(c) Extension of period in extraordinarily complicated cases

(1) In general

If-

(A) the petitioner makes a timely request for an extension of the period within which the determination must be made under subsection (b)(1), or

(B) the administering authority concludes that the parties concerned are cooperating and determines that-

(i) the case is extraordinarily complicated by reason of-

(I) the number and complexity of the transactions to be investigated or adjustments to be considered,

(II) the novelty of the issues presented, or

(III) the number of firms whose activities must be investigated, and

(ii) additional time is necessary to make the preliminary determination, then the administering authority may postpone making the preliminary determination under subsection (b)(1) until not later than the 190th day after the date on which the administering authority initiates an investigation under section 1673a(c) of this title, or an investigation is initiated under section 1673a(a) of this title. No extension of a determination date may be made under this paragraph for any investigation in which a

determination date provided for in subsection (b)(1)(B) applies unless the petitioner submits written notice to the administering authority of its consent to the extension.

(2) Notice of postponement

The administering authority shall notify the parties to the investigation, not later than 20 days before the date on which the preliminary determination would otherwise be required under subsection (b)(1), if it intends to postpone making the preliminary determination under paragraph (1). The notification shall include an explanation of the reasons for the postponement, and notice of the postponement shall be published in the Federal Register.

(d) Effect of determination by the administering authority

If the preliminary determination of the administering authority under subsection (b) of this section is affirmative, the administering authority

(1)(A) shall-

(i) determine an estimated weighted average dumping margin for each exporter and producer individually investigated, and

(ii) determine, in accordance with section 1673d(c)(5) of this title, an estimated all-others rate for all exporters and producers not individually investigated, and

(B) shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable,

(2) shall order the suspension of liquidation of all entries of merchandise subject to the determination which are entered, or withdrawn from warehouse, for consumption on or after the later of-

(A) the date on which notice of the determination is published in the Federal Register, or

(B) the date that is 60 days after the date on which notice of the determination to initiate the investigation is published in the Federal Register, and

(3) shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its injury determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than with the consent of the party providing it or under protective order, of any information to which confidential treatment has been given by the administering authority.

The instructions of the administering authority under paragraphs (1) and (2) may not remain in effect for more than 4 months, except that the

administering authority may, at the request of exporters representing a significant proportion of exports of the subject merchandise, extend that 4-month period to not more than 6 months.

(e) Critical circumstances determinations

(1) In general

If a petitioner alleges critical circumstances in its original petition, or by amendment at any time more than 20 days before the date of a final determination by the administering authority, then the administering authority shall promptly (at any time after the initiation of the investigation under this part) determine, on the basis of the information available to it at that time, whether there is a reasonable basis to believe or suspect that-

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there was likely to be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

The administering authority shall be treated as having made an affirmative determination under subparagraph (A) in any investigation to which subsection (b)(1)(B) is applied.

(2) Suspension of liquidation

If the determination of the administering authority under paragraph (1) is affirmative, then any suspension of liquidation ordered under subsection (d)(2) shall apply, or, if notice of such suspension of liquidation is already published, be amended to apply, to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the later of

(A) the date, which is 90 days before the date on which the suspension of liquidation was first ordered, or

(B) the date on which notice of the determination to initiate the investigation is published in the Federal Register.

(f) Notice of determination

Whenever the Commission or the administering authority makes a determination under this section, the Commission or the administering authority, as the case may be, shall notify the petitioner, and other parties to the investigation, and the Commission or the administering authority (whichever is appropriate) of its determination. The administering authority shall include with such notification the facts and conclusions on which its determination is based. Not later than 5 days

after the date on which the determination is required to be made under subsection (a)(2), the Commission shall transmit to the administering authority the facts and conclusions on which its determination is based.

19 U.S.C. § 1673c. Termination or suspension of investigation

(a) Termination of investigation upon withdrawal of petition

(1) In general

(A) Withdrawal of petition

Except as provided in paragraphs (2) and (3), an investigation under this part may be terminated by either the administering authority or the Commission, after notice to all parties to the investigation, upon withdrawal of the petition by the petitioner or by the administering authority if the investigation was initiated under section 1673a(a) of this title.

(B) Refiling of petition

If, within 3 months after the withdrawal of a petition under subparagraph (A), a new petition is filed seeking the imposition of duties on both the subject merchandise of the withdrawn petition and the subject merchandise from another country, the administering authority and the Commission may use in the investigation initiated pursuant to the new petition any records compiled in an investigation conducted pursuant to the withdrawn petition. This subparagraph applies only with respect to the first withdrawal of a petition.

(2) Special rules for quantitative restriction agreements

(A) In general

Subject to subparagraphs (B) and (C), the administering authority may not terminate an investigation under paragraph (1) by accepting an understanding or other kind of agreement to limit the volume of imports into the United States of the subject merchandise unless the administering authority is satisfied that termination on the basis of that agreement is in the public interest.

(B) Public interest factors

In making a decision under subparagraph (A) regarding the public interest the administering authority shall take into account

(i) whether, based upon the relative impact on consumer prices and the availability of supplies of the merchandise, the agreement would have a greater adverse impact on United States consumers than the imposition of antidumping duties;

(ii) the relative impact on the international economic interests of the United States; and

(iii) the relative impact on the competitiveness of the domestic industry producing the like merchandise, including any such impact on employment and investment in that industry.

(C) Prior consultations

Before making a decision under subparagraph (A) regarding the public interest, the administering authority shall, to the extent practicable, consult with

(i) potentially affected consuming industries; and

(ii) potentially affected producers and workers in the domestic industry producing the like merchandise, including producers and workers not party to the investigation.

(3) Limitation on termination by Commission

The Commission may not terminate an investigation under paragraph (1) before a preliminary determination is made by the administering authority under section 1673b(b) of this title.

(b) Agreements to eliminate completely sales at less than fair value or to cease exports of merchandise

The administering authority may suspend an investigation if the exporters of the subject merchandise who account for substantially all of the imports of that merchandise agree

(1) to cease exports of the merchandise to the United States ,within 6 months after the date on which the investigation is suspended, or

(2) to revise their prices to eliminate completely any amount by which the normal value of the merchandise which is the subject of

the agreement exceeds the export price (or the constructed export price) of that merchandise.

(c) Agreements eliminating injurious effect

(1) General rule

If the administering authority determines that extraordinary circumstances are present in a case, it may suspend an investigation upon the acceptance of an agreement to revise prices from exporters of the subject merchandise who account for substantially all of the imports of that merchandise into the United States, if the agreement will eliminate completely the injurious effect of exports to the United States of that merchandise and if

(A) the suppression or undercutting of price levels of domestic products by imports of that merchandise will be prevented, and

(B) for each entry of each exporter the amount by which the estimated normal value exceeds the export price (or the constructed export price) will not exceed 15 percent of the weighted average amount by which the estimated normal value exceeded the export price (or the constructed export price) for all less-than-fair-value entries of the exporter examined during the course of the investigation.

(2) "Extraordinary circumstances" defined

(A) Extraordinary circumstances

For purposes of this subsection, the term "extraordinary circumstances" means circumstances in which

(i) suspension of an investigation will be more beneficial to the domestic industry than continuation of the investigation, and

(ii) the investigation is complex.

(B) "Complex" defined

For purposes of this paragraph, the term "complex" means

(i) there are a large number of transactions to be investigated or adjustments to be considered,

(ii) the issues raised are novel, or

(iii) the number of firms involved is large.

(d) Additional rules and conditions

The administering authority may not accept an agreement under subsection (b) or (c) unless

(1) it is satisfied that suspension of the investigation is in the public interest, and

(2) effective monitoring of the agreement by the United States is practicable.

Where practicable, the administering authority shall provide to the exporters who would have been subject to the agreement the reasons for not accepting the agreement and, to the extent

possible, an opportunity to submit comments thereon.

(e) Suspension of investigation procedure

Before an investigation may be suspended under subsection (b) or (c) the administering authority shall-

(1) notify the petitioner of, and consult with the petitioner concerning, its intention to suspend the investigation, and notify other parties to the investigation and the Commission not less than 30 days before the date on which it suspends the investigation,

(2) provide a copy of the proposed agreement to the petitioner at the time of the notification, together with an explanation of how the agreement will be carried out and enforced, and of how the agreement will meet the requirements of subsections (b) and (d) or (c) and (d), and

(3) permit all interested parties described in section 1677(9) of this title to submit comments and information for the record before the date on which notice of suspension of the investigation is published under subsection (f)(1)(A).

(f) Effects of suspension of investigation

(1) In general

If the administering authority determines to suspend an investigation upon acceptance of an agreement described in subsection (b) or (c), then

(A) it shall suspend the investigation, publish notice of suspension of the investigation, and issue an affirmative preliminary determination under section 1673b(b) of this title with respect to the subject merchandise, unless it has previously issued such a determination in the same investigation,

(B) the Commission shall suspend any investigation it is conducting with respect to that merchandise, and

(C) the suspension of investigation shall take effect on the day on which such notice is published.

(2) Liquidation of entries

(A) Cessation of exports; complete elimination of dumping margin

If the agreement accepted by the administering authority is an agreement described in subsection (b), then

(i) notwithstanding the affirmative preliminary determination required under paragraph (1)(A), the liquidation of entries of subject merchandise shall not be suspended under section 1673b(d)(2) of this title,

(ii) if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case with respect to such merchandise, that suspension of liquidation shall terminate, and

(iii) the administering authority shall refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title.

(B) Other agreements

If the agreement accepted by the administering authority is an agreement described in subsection (c), the liquidation of entries of the subject merchandise shall be suspended under section 1673b(d)(2) of this title, or, if the liquidation of entries of such merchandise was suspended pursuant to a previous affirmative preliminary determination in the same case, that suspension of liquidation shall continue in effect, subject to subsection (h)(3), but the security required under section 1673b(d)(1)(B) of this title may be adjusted to reflect the effect of the agreement.

(3) Where investigation is continued

If, pursuant to subsection (g), the administering authority and the Commission continue an investigation in which an agreement has been accepted under subsection (b) or (c), then

(A) if the final determination by the administering authority or the Commission under section 1673d of this title is negative, the agreement shall have no force or effect and the investigation shall be terminated, or

(B) if the final determinations by the administering authority and the

Commission under such section are affirmative, the agreement shall remain in force, but the administering authority shall not issue an antidumping duty order in the case so long as

(i) the agreement remains in force,

(ii) the agreement continues to meet the requirements of subsections (b) and (d), or (c) and (d), and

(iii) the parties to the agreement carry out their obligations under the agreement in accordance with its terms.

(g) Investigation to be continued upon request

If the administering authority, within 20 days after the date of publication of the notice of suspension of an investigation, receives a request for the continuation of the investigation from

(1) an exporter or exporters accounting for a significant proportion of exports to the United States of the subject merchandise, or

(2) an interested party described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title which is a party to the investigation,

then the administering authority and the Commission shall continue the investigation.

(h) Review of suspension

(1) In general

Within 20 days after the suspension of an investigation under subsection (c), an

interested party which is a party to the investigation and which is described in subparagraph (C), (D), (E), (F), or (G) of section 1677(9) of this title may, by petition filed with the Commission and with notice to the administering authority, ask for a review of the suspension.

(2) Commission investigation

Upon receipt of a review petition under paragraph (1), the Commission shall, within 75 days after the date on which the petition is filed with it, determine whether the injurious effect of imports of the subject merchandise is eliminated completely by the agreement. If the Commission's determination under this subsection is negative, the investigation shall be resumed on the date of publication of notice of such determination as if the affirmative preliminary determination under section 1673b(b) of this title had been made on that date.

(3) Suspension of liquidation to continue during review period

The suspension of liquidation of entries of the subject merchandise shall terminate at the close of the 20-day period beginning on the day after the date on which notice of suspension of the investigation is published in the Federal Register, or, if a review petition is filed under paragraph (1) with respect to the suspension of 酏 酖investigation, in the case of an affirmative determination by the Commission under paragraph (2), the date on which notice of an

affirmative determination by the Commission is published. If the determination of the Commission under paragraph (2) is affirmative, then the administering authority shall-

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(i) Violation of agreement

(1) In general

If the administering authority determines that an agreement accepted under subsection (b) or (c) is being, or has been, violated, or no longer meets the requirements of such subsection (other than the requirement, under subsection (c)(1), of elimination of injury) and subsection (d), then, on the date of publication of its determination, it shall-

(A) suspend liquidation under section 1673b(d)(2) of this title of unliquidated entries of the merchandise made on the later of

(i) the date which is 90 days before the date of publication of the notice of suspension of liquidation, or

(ii) the date on which the merchandise, the sale or export to the United States of which was in violation of the agreement, or under an agreement which no longer meets

the requirements of subsections (b) and (d), or (c) and (d), was first entered, or withdrawn from warehouse, for consumption,

(B) if the investigation was not completed, resume the investigation as if its affirmative preliminary determination were made on the date of its determination under this paragraph,

(C) if the investigation was completed under subsection (g), issue an antidumping duty order under section 1673e(a) of this title effective with respect to entries of merchandise liquidation of which was suspended,

(D) if it considers the violation to be intentional, notify the Commissioner of U.S. Customs and Border Protection who shall take appropriate action under paragraph (2), and

(E) notify the petitioner, interested parties who are or were parties to the investigation, and the Commission of its action under this paragraph.

(2) Intentional violation to be punished by civil penalty

Any person who intentionally violates an agreement accepted by the administering authority under subsection (b) or (c) shall be subject to a civil penalty assessed in the same amount, in the same manner, and under the same procedures, as the penalty imposed for a

fraudulent violation of section 1592(a) of this title.

(j) Determination not to take agreement into account

In making a final determination under section 1673d of this title, or in conducting a review under section 1675 of this title, in a case in which the administering authority has terminated a suspension of investigation under subsection (i)(1), or continued an investigation under subsection (g), the Commission and the administering authority shall consider all of the subject merchandise without regard to the effect of any agreement under subsection (b) or (c).

(k) Termination of investigation initiated by administering authority

The administering authority may terminate any investigation initiated by the administering authority under section 1673a(a) of this title after providing notice of such termination to all parties to the investigation.

(*l*) Special rule for nonmarket economy countries

(1) In general

The administering authority may suspend an investigation under this part upon acceptance of an agreement with a nonmarket economy country to restrict the volume of imports into the United States of the merchandise under investigation only if the administering authority determines that

(A) such agreement satisfies the requirements of subsection (d), and

(B) will prevent the suppression or undercutting of price levels of domestic products by imports of the merchandise under investigation.

(2) Failure of agreements

If the administering authority determines that an agreement accepted under this subsection no longer prevents the suppression or undercutting of domestic prices of merchandise manufactured in the United States, the provisions of subsection (i) shall apply.

(m) Special rule for regional industry investigations

(1) Suspension agreements

If the Commission makes a regional industry determination under section 1677(4)(C) of this title, the administering authority shall offer exporters of the subject merchandise who account for substantially all exports of that merchandise for sale in the region concerned the opportunity to enter into an agreement described in subsection (b), (c), or (1).

(2) Requirements for suspension agreements

Any agreement described in paragraph (1) shall be subject to all the requirements imposed under this section for other agreements under subsection (b), (c), or (1), except that if the Commission makes a

regional industry determination described in paragraph (1) in the final affirmative determination under section 1673d(b) of this title but not in the preliminary affirmative determination under section 1673b(a) of this title, any agreement described in paragraph (1) may be accepted within 60 days after the antidumping order is published under section 1673e of this title.

(3) Effect of suspension agreement on antidumping duty order

If an agreement described in paragraph (1) is accepted after the antidumping duty order is published, the administering authority shall re-cind the order, refund any cash deposit and release any bond or other security deposited under section 1673b(d)(1)(B) of this title, and instruct the Customs Service that entries of the subject merchandise that were made during the period that the order was in effect shall be liquidated without regard to antidumping duties.

19 U.S.C. § 1673d. Final determinations

(a) Final determination by administering authority

(1) General rule

Within 75 days after the date of its preliminary determination under section 1673b(b) of this title, the administering authority shall make a final determination of whether the subject merchandise is being, or is likely to be, sold in the United States at less than its fair value.

(2) Extension of period for determination

The administering authority may postpone making the final determination under paragraph (1) until not later than the 135th day after the date on which it published notice of its preliminary determination under section 1673b(b) of this title if a request in writing for such a postponement is made by

(A) exporters who account for a significant proportion of exports of the merchandise which is the subject of the investigation, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, or

(B) the petitioner, in a proceeding in which the preliminary determination by the administering authority under section 1673b(b) of this title was negative.

(3) Critical circumstances determinations

If the final determination of the administering authority is affirmative, then that determination, in any investigation in which the presence of critical circumstances has been alleged under section 1673b(e) of this title, shall also contain a finding of whether

(A)(i) there is a history of dumping and material injury by reason of dumped imports in the United States or elsewhere of the subject merchandise, or

(ii) the person by whom, or for whose account, the merchandise was imported knew or should have known that the exporter was selling the subject merchandise at less than its fair value and that there would be material injury by reason of such sales, and

(B) there have been massive imports of the subject merchandise over a relatively short period.

Such findings may be affirmative even though the preliminary determination under section 1673b(e)(1) of this title was negative.

(4) De minimis dumping margin

In making a determination under this subsection, the administering authority shall disregard any weighted average dumping margin that is de minimis as defined in section 1673b(b)(3) of this title.

(b) Final determination by Commission

(1) In general

The Commission shall make a final determination of whether

(A) an industry in the United States

(i) is materially injured, or

(ii) is threatened with material injury, or

(B) the establishment of an industry in the United States is materially retarded,

by reason of imports, or sales (or the likelihood of sales) for importation, of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a)(1). If the Commission determines that imports of the subject merchandise are negligible, the investigation shall be terminated.

(2) Period for injury determination following affirmative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is affirmative, then the Commission shall make the determination required by paragraph (1) before the later of

(A) the 120th day after the day on which the administering authority makes its affirmative preliminary determination under section 1673b(b) of this title, or

(B) the 45th day after the day on which the administering authority makes its affirmative final determination under subsection (a).

(3) Period for injury determination following negative preliminary determination by administering authority

If the preliminary determination by the administering authority under section 1673b(b) of this title is negative, and its final determination under subsection (a) is affirmative, then the final determination by the Commission under this subsection shall be made within 75 days after the date of that affirmative final determination.

(4) Certain additional findings

(A) COMMISSION STANDARD FOR RETROACTIVE APPLICATION.—

(i) IN GENERAL.—If the finding of the administering authority under subsection (a)(3) is affirmative, then the final determination of the Commission shall include a finding as to whether the imports subject to the affirmative determination under subsection (a)(3) are likely to undermine seriously the remedial effect of the antidumping duty order to be issued under section 1673e of this title.

(ii) FACTORS TO CONSIDER.-In making the evaluation under clause (i), the Commission shall consider, among other factors it considers relevant—

(I) the timing and the volume of the imports,

(II) a rapid increase in inventories of the imports, and

(III) any other circumstances indicating that the remedial effect of the antidumping order will be seriously undermined.

(B) If the final determination of the Commission is that there is no material injury but that there is threat of material injury, then its determination shall also include a finding as to whether material injury by reason of the imports of the merchandise with respect to which the administering authority has made an affirmative determination under subsection (a) would have been found but for any suspension of liquidation of entries of the merchandise.

(c) Effect of final determinations

(1) Effect of affirmative determination by the administering authority

If the determination of the administering authority under subsection (a) is affirmative, then-

(A) the administering authority shall make available to the Commission all information upon which such determination was based and which the Commission considers relevant to its determination, under such procedures as the administering authority and the Commission may establish to prevent disclosure, other than

with the consent of the party providing it or under protective order, of any information as to which confidential treatment has been given by the administering authority,

(B)(i) the administering authority shall

(I) determine the estimated weighted average dumping margin for each exporter and producer individually investigated, and

(II) determine, in accordance with paragraph (5), the estimated all-others rate for all exporters and producers not individually investigated, and

(ii) the administering authority shall order the posting of a cash deposit, bond, or other security, as the administering authority deems appropriate, for each entry of the subject merchandise in an amount based on the estimated weighted average dumping margin or the estimated all-others rate, whichever is applicable, and

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, the administering authority shall order the suspension of liquidation under section 1673b(d)(2) of this title.

(2) Issuance of order; effect of negative determination

If the determinations of the administering authority and the Commission under subsections (a)(1) and (b)(1) are affirmative,

then the administering authority shall issue an antidumping duty order under section 1673e(a) of this title. If either of such determinations is negative, the investigation shall be terminated upon the publication of notice of that negative determination and the administering authority shall

(A) terminate the suspension of liquidation under section 1673b(d)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit, required under section 1673b(d)(1)(B) of this title.

(3) Effect of negative determinations under subsections (a)(3) and (b)(4)(A)

If the determination of the administering authority or the Commission under subsection (a)(3) or (b)(4)(A), respectively, is negative, then the administering authority shall

(A) terminate any retroactive suspension of liquidation required under paragraph (4) or section 1673b(e)(2) of this title, and

(B) release any bond or other security, and refund any cash deposit required, under section 1673b(d)(1)(B) of this title with respect to entries of the merchandise the liquidation of which was suspended retroactively under section 1673b(e)(2) of this title.

(4) Effect of affirmative determination under subsection (a)(3)

If the determination of the administering authority under subsection (a)(3) is affirmative, then the administering authority shall

(A) in cases where the preliminary determinations by the administering authority under sections 1673b(b) and 1673b(e)(1) of this title were both affirmative, continue the retroactive suspension of liquidation and the posting of a cash deposit, bond, or other security previously ordered under section 1673b(e)(2) of this title;

(B) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was affirmative, but the preliminary determination under section 1673b(e)(1) of this title was negative, shall modify any suspension of liquidation and security requirement previously ordered under section 1673b(d) of this title to apply to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation was first ordered; or

(C) in cases where the preliminary determination by the administering authority under section 1673b(b) of this title was negative, shall apply any suspension of

liquidation and security requirement ordered under subsection (c)(1)(B) to unliquidated entries of merchandise entered, or withdrawn from warehouse, for consumption on or after the date which is 90 days before the date on which suspension of liquidation is first ordered.

(5) Method for determining estimated all-others rate

(A) General rule

For purposes of this subsection and section1673b(d) of this title, the estimated all-others rate shall be an amount equal to the weighted average of the estimated weighted average dumping margins established for exporters and producers individually investigated, excluding any zero and de minimis margins, and any margins determined entirely under section 1677e of this title.

(B) Exception

If the estimated weighted average dumping margins established for all exporters and producers individually investigated are zero or de minimis margins, or are determined entirely under section 1677e of this title, the administering authority may use any reasonable method to establish the estimated all-others rate for exporters and producers not individually investigated, including averaging the estimated weighted average dumping margins determined for the

exporters and producers individually investigated.

(d) Publication of notice of determinations

Whenever the administering authority or the Commission makes a determination under this section, it shall notify the petitioner, other parties to the investigation, and the other agency of its determination and of the facts and conclusions of law upon which the determination is based, and it shall publish notice of its determination in the Federal Register.

(e) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity or interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

19 U.S.C. § 1675. Administrative review of determinations

(a) Periodic review of amount of duty

(1) In general

At least once during each 12-month period beginning on the anniversary of the date of publication of a countervailing duty order under this subtitle or under section 1303 of this title, an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or a notice of the suspension of an investigation, the administering authority, if a request for such a review has been received and after publication of notice of such review in the Federal Register, shall

(A) review and determine the amount of any net countervailable subsidy,

(B) review, and determine (in accordance with paragraph (2)), the amount of any antidumping duty, and

(C) review the current status of, and compliance with, any agreement by reason of which an investigation was suspended, and review the amount of any net countervailable subsidy or dumping margin involved in the agreement,

and shall publish in the Federal Register the results of such review, together with notice of any duty to be assessed, estimated duty to be deposited, or investigation to be resumed.

(2) Determination of antidumping duties

(A) In general

For the purpose of paragraph (1)(B), the administering authority shall determine

(i) the normal value and export price (or constructed export price) of each entry of the subject merchandise, and

(ii) the dumping margin for each such entry.

(B) Determination of antidumping or countervailing duties for new exporters and producers

(i) In general

If the administering authority receives a request from an exporter or producer of the subject merchandise establishing that

(I) such exporter or producer did not export the merchandise that was the subject of an antidumping duty or countervailing duty order to the United States (or, in the case of a regional industry, did not export the subject merchandise for sale in the region concerned) during the period of investigation, and

(II) such exporter or producer is not affiliated (within the meaning of section 1677(33) of this title) with any exporter or producer who exported the subject merchandise to the United States (or in the case of a regional industry, who

exported the subject merchandise for sale in the region concerned) during that period,

the administering authority shall conduct a review under this subsection to establish an individual weighted average dumping margin or an individual countervailing duty rate (as the case may be) for such exporter or producer.

(ii) Time for review under clause (i)

The administering authority shall commence a review under clause (i) in the calendar month beginning after-(I) the end of the 6-month period beginning on the date of the countervailing duty or antidumping duty order under review, or (II) the end of any 6-month period occurring thereafter, if the request for the review is made during that 6-month period.

(iii) Time limits

The administering authority shall make a preliminary determination in a review conducted under this subparagraph within 180 days after the date on which the review is initiated, and a final determination within 90 days after the date the preliminary determination is issued, except that if the administering authority concludes that the case is extraordinarily complicated, it may extend the 180-day period to 300 days and may extend the 90-day period to 150 days.

(iv) Determinations based on bona fide sales

Any weighted average dumping margin or individual countervailing duty rate determined for an exporter or producer in a review conducted under clause (i) shall be based solely on the bona fide United States sales of an exporter or producer, as the case may be, made during the period covered by the review. In determining whether the United States sales of an exporter or producer made during the period covered by the review were bona fide, the administering authority shall consider, depending on the circumstances surrounding such sales

(I) the prices of such sales;

(II) whether such sales were made in commercial quantities;

(III) the timing of such sales;

(IV) the expenses arising from such sales;

(V) whether the subject merchandise involved in such sales was resold in the United States at a profit;

(VI) whether such sales were made on an arms-length basis; and

(VII) any other factor the administering authority determines to be relevant as to whether such sales are, or are not, likely to be typical of those the exporter or

producer will make after completion of the review.

(C) Results of determinations

The determination under this paragraph shall be the basis for the assessment of countervailing or antidumping duties on entries of merchandise covered by the determination and for deposits of estimated duties.

(3) Time limits

(A) Preliminary and final determinations

The administering authority shall make a preliminary determination under subparagraph (A), (B), or (C) of paragraph (1) within 245 days after the last day of the month in which occurs the anniversary of the date of publication of the order, finding, or suspension agreement for which the review under paragraph (1) is requested, and a final determination under paragraph (1) within 120 days after the date on which the preliminary determination is published. If it is not practicable to complete the review within the foregoing time, the administering authority may extend that 245-day period to 365 days and may extend that 120-day period to 180 days. The administering authority may extend the time for making a final determination without extending the time for making a preliminary determination, if such final determination is made not later than 300 days after the date

on which the preliminary determination is published.

(B) Liquidation of entries

If the administering authority orders any liquidation of entries pursuant to a review under paragraph (1), such liquidation shall be made promptly and, to the greatest extent practicable, within 90 days after the instructions to Customs are issued. In any case in which liquidation has not occurred within that 90-day period, the Secretary of the Treasury shall, upon the request of the affected party, provide an explanation thereof.

(C) Effect of pending review under section 1516a

In a case in which a final determination under paragraph (1) is under review under section 1516a of this title and a liquidation of entries covered by the determination is enjoined under section 1516a(c)(2) of this title or suspended under section 1516a(g)(5)(C) of this title, the administering authority shall, within 10 days after the final disposition of the review under section 1516a of this title, transmit to the Federal Register for publication the final disposition and issue instructions to the Customs Service with respect to the liquidation of entries pursuant to the review. In such a case, the 90-day period referred to in subparagraph (B) shall begin on the day on which the administering authority issues such instructions.

(4) Absorption of antidumping duties

During any review under this subsection initiated 2 years or 4 years after the publication of an antidumping duty order under section 1673e(a) of this title, the administering authority, if requested, shall determine whether antidumping duties have been absorbed by a foreign producer or exporter subject to the order if the subject merchandise is sold in the United States through an importer who is affiliated with such foreign producer or exporter. The administering authority shall notify the Commission of its findings regarding such duty absorption for the Commission to consider in conducting a review under subsection (c).

(b) Reviews based on changed circumstances

(1) In general

Whenever the administering authority or the Commission receives information concerning, or a request from an interested party for a review of

(A) a final affirmative determination that resulted in an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or in a countervailing duty or-der under this subtitle or section 1303 of this title,

(B) a suspension agreement accepted under section 1671c or 1673c of this title, or

(C) a final affirmative determination resulting from an investigation continued pursuant to section 1671c(g) or 1673c(g) of this title,

which shows changed circumstances sufficient to warrant a review of such determination or agreement, the administering authority or the Commission (as the case may be) shall conduct a review of the determination or agreement after publishing notice of the review in the Federal Register.

(2) Commission review

In conducting a review under this subsection, the Commission shall

(A) in the case of a countervailing duty order or antidumping duty order or finding, determine whether revocation of the order or finding is likely to lead to continuation or recurrence of material injury,

(B) in the case of a determination made pursuant to section 1671c(h)(2) or 1673c(h)(2) of this title, determine whether the suspension agreement continues to eliminate completely the injurious effects of imports of the subject merchandise, and

(C) in the case of an affirmative determination resulting from an investigation continued under section 1671c(g) or 1673c(g) of this title, determine whether termination of the suspended investigation is likely to lead to continuation or recurrence of material injury.

(3) Burden of persuasion

During a review conducted by the Commission under this subsection

(A) the party seeking revocation of an order or finding described in paragraph (1)(A) shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such revocation, and

(B) the party seeking termination of a suspended investigation or a suspension agreement shall have the burden of persuasion with respect to whether there are changed circumstances sufficient to warrant such termination.

(4) Limitation on period for review

In the absence of good cause shown

(A) the Commission may not review a determination made under section 1671d(b) or 1673d(b) of this title, or an investigation suspended under section 1671c or 1673c of this title, and

(B) the administering authority may not review a determination made under section 1671d(a) or 1673d(a) of this title, or an investigation suspended under section 1671c or 1673c of this title,

less than 24 months after the date of publication of notice of that determination or suspension.

(c) Five-year review

(1) In general

Notwithstanding subsection (b) and except in the case of a transition order defined in paragraph (6), 5 years after the date of publication of-

(A) a countervailing duty order (other than a countervailing duty order to which subparagraph (B) applies or which was issued without an affirmative determination of injury by the Commission under section 1303 2 of this title), an antidumping duty order, or a notice of suspension of an investigation, described in subsection (a)(1),

(B) a notice of injury determination under section 1675b of this title with respect to a countervailing duty order, or

(C) a determination under this section to continue an order or suspension agreement,

the administering authority and the Commission shall conduct a review to determine, in accordance with section 1675a of this title, whether revocation of the countervailing or antidumping duty order or termination of the investigation suspended under section 1671c or 1673c of this title would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) and of material injury.

(2) Notice of initiation of review

Not later than 30 days before the fifth anniversary of the date described in paragraph (1), the administering authority shall publish in the Federal Register a notice of initiation of a review under this subsection and request that interested parties submit-

(A) a statement expressing their willingness to participate in the review by providing information requested by the administering authority and the Commission,

(B) a statement regarding the likely effects of revocation of the order or termination of the suspended investigation, and

(C) such other information or industry data as the administering authority or the Commission may specify.

(3) Responses to notice of initiation

(A) No response

If no interested party responds to the notice of initiation under this subsection, the administering authority shall issue a final determination, within 90 days after the initiation of a review, revoking the order or terminating the suspended investigation to which such notice relates. For purposes of this paragraph, an interested party means a party described in section 1677(9)(C), (D), (E), (F), or (G) of this title.

(B) Inadequate response

If interested parties provide inadequate responses to a notice of initiation, the administering authority, within 120 days after the initiation of the review, or the Commission, within 150 days after such initiation, may issue, without further investigation, a final determination based on the facts available, in accordance with section 1677e of this title.

(4) Waiver of participation by certain interested parties

(A) In general

An interested party described in section 1677(9)(A) or (B) of this title may elect not to participate in a review conducted by the administering authority under this subsection and to participate only in the review conducted by the Commission under this subsection.

(B) Effect of waiver

In a review in which an interested party waives its participation pursuant to this paragraph, the administering authority shall conclude that revocation of the order or termination of the investigation would be likely to lead to continuation or recurrence of dumping or a countervailable subsidy (as the case may be) with respect to that interested party.

(5) Conduct of review

(A) Time limits for completion of review

Unless the review has been completed pursuant to paragraph (3) or paragraph (4) applies, the administering authority shall make its final determination pursuant to section 1675a(b) or (c) of this title within 240 days after the date on which a review is initiated under this subsection. If the administering authority makes a final affirmative determination, the Commission shall make its final determination pursuant to section 1675a(a) of this title within 360 days after the date on which a review is initiated under this subsection.

(B) Extension of time limit

The administering authority or the Commission (as the case may be) may extend the period of time for making their respective determinations under this subsection by not more than 90 days, if the administering authority or the Commission (as the case may be) determines that the review is extraordinarily complicated. In a review in which the administering authority extends the time for making a final determination, but the Commission does not extend the time for making a determination, the Commission's determination shall be made not later than 120 days after the date on which the final determination of the administering authority is published.

(C) Extraordinarily complicated

For purposes of this subsection, the administering authority or the Commission (as the case may be) may treat a review as extraordinarily complicated if

(i) there is a large number of issues,

(ii) the issues to be considered are complex,

(iii) there is a large number of firms involved,

(iv) the orders or suspended investigations have been grouped as described in subparagraph (D), or

(v) it is a review of a transition order.

(D) Grouped reviews

The Commission, in consultation with the administering authority, may group orders or suspended investigations for review if it considers that such grouping is appropriate and will promote administrative efficiency. Where orders or suspended investigations have been grouped, the Commission shall, subject to subparagraph (B), make its final determination under this subsection not later than 120 days after the date that the administering authority publishes notice of its final determination with respect to the last order or agreement in the group.

(6) Special transition rules

(A) Schedule for reviews of transition orders

(i) Initiation

The administering authority shall begin its review of transition orders in the 42d calendar month after the date such orders are issued. A review of all transition orders shall be initiated not later than the 5th anniversary after the date such orders are issued.

(ii) Completion

A review of a transition order shall be completed not later than 18 months after the date such review is initiated. Reviews of all transition orders shall be completed not later than 18 months after the 5th anniversary of the date such orders are issued.

(iii) Subsequent reviews

The time limits set forth in clauses (i) and (ii) shall be applied to all subsequent 5-year reviews of transition orders by substituting "date of the determination to continue such orders" for "date such orders are issued".

(iv) Revocation and termination

No transition order may be revoked under this subsection before the date that is 5 years after the date the WTO Agreement enters into force with respect to the United States.

(B) Sequence of transition reviews

The administering authority, in consultation with the Commission, shall determine such sequence of review of transition orders as it deems appropriate to promote administrative efficiency. To the extent practicable, older orders shall be reviewed first.

(C) "Transition order" defined

For purposes of this section, the term "transition order" means

(i) a countervailing duty order under this subtitle or under section 1303 of this title,

(ii) an antidumping duty order under this subtitle or a finding under the Antidumping Act, 1921, or

(iii) a suspension of an investigation under section 1671c or 1673c of this title,

which is in effect on the date the WTO Agreement enters into force with respect to the United States.

(D) Issue date for transition orders

For purposes of this subsection, a transition order shall be treated as issued on the date the WTO Agreement enters into force with respect to the United States, if such order is based on an investigation conducted by both the administering authority and the Commission.

(7) Exclusions from computations

(A) In general

Subject to subparagraph (B), there shall be excluded from the computation of the 5-year period described in paragraph (1) and the periods described in paragraph (6) any period during which the importation of the subject merchandise is prohibited on account of the imposition, under the International Emergency Economic Powers Act [50 U.S.C. 1701 et seq.] or other provision of law, of sanctions by the United States against the country in which the subject merchandise originates.

(B) Application of exclusion

Subparagraph (A) shall apply only with respect to subject merchandise which originates in a country that is not a WTO member.

(d) Revocation of order or finding, termination of suspended investigation

(1) In general

The administering authority may revoke, in whole or in part, a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, after review under subsection (a) or (b). The administering authority shall not revoke, in whole or in part, a countervailing duty order or terminate a suspended investigation on the basis of any export taxes, duties, or other

charges levied on the export of the subject merchandise to the United States which are specifically intended to offset the countervailable subsidy received.

(2) Five-year reviews

In the case of a review conducted under subsection (c), the administering authority shall revoke a countervailing duty order or an antidumping duty order or finding, or terminate a suspended investigation, unless

(A) the administering authority makes a determination that dumping or a countervailable subsidy, as the case may be, would be likely to continue or recur, and

(B) the Commission makes a determination that material injury would be likely to continue or recur as described in section 1675a(a) of this title.

(3) Application of revocation or termination

A determination under this section to revoke an order or finding or terminate a suspended investigation shall apply with respect to unliquidated entries of the subject merchandise which are entered, or withdrawn from warehouse, for consumption on or after the date determined by the administering authority.

(e) Hearings

Whenever the administering authority or the Commission conducts a review under this section, it shall, upon the request of an interested party,

hold a hearing in accordance with section 1677c(b) of this title in connection with that review.

(f) Determination that basis for suspension no longer exists

If the determination of the Commission under subsection (b)(2)(B) is negative, the suspension agreement shall be treated as not accepted, beginning on the date of publication of the Commission's determination, and the administering authority and the Commission shall proceed, under section 1671c(i) or 1673c(i) of this title, as if the suspension agreement had been violated on that date, except that no duty under any order subsequently issued shall be assessed on merchandise entered, or withdrawn from warehouse, for consumption before that date.

(g) Reviews to implement results of subsidies enforcement proceeding

(1) Violations of article 8 of the subsidies agreement

If—

(A) the administering authority receives notice from the Trade Representative of a violation of Article 8 of the Subsidies Agreement,

(B) the administering authority has reason to believe that merchandise subject to an existing countervailing duty order or suspended investigation is benefiting from the subsidy or subsidy program found to

have been in violation of Article 8 of the Subsidies Agreement, and

(C) no review pursuant to subsection (a)(1) is in progress,

the administering authority shall conduct a review of the order or suspended investigation to determine whether the subject merchandise benefits from the subsidy or subsidy program found to have been in violation of Article 8 of the Subsidies Agreement. If the administering authority determines that the subject merchandise is benefiting from the subsidy or subsidy program, it shall make appropriate adjustments in the estimated duty to be deposited or appropriate revisions to the terms of the suspension agreement.

(2) Withdrawal of subsidy or imposition of countermeasures

If the Trade Representative notifies the administering authority that, pursuant to Article 4 or Article 7 of the Subsidies Agreement-

(A)(i) the United States has imposed countermeasures, and

(ii) such countermeasures are based on the effects in the United States of imports of merchandise that is the subject of a countervailing duty order, or

(B) a WTO member country has withdrawn a countervailable subsidy provided with

respect to merchandise subject to a countervailing duty order,

the administering authority shall conduct a review to determine if the amount of the estimated duty to be deposited should be adjusted or the order should be revoked.

(3) Expedited review

The administering authority shall conduct reviews under this subsection on an expedited basis, and shall publish the results of such reviews in the Federal Register.

(h) Correction of ministerial errors

The administering authority shall establish procedures for the correction of ministerial errors in final determinations within a reasonable time after the determinations are issued under this section. Such procedures shall ensure opportunity for interested parties to present their views regarding any such errors. As used in this subsection, the term "ministerial error" includes errors in addition, subtraction, or other arithmetic function, clerical errors resulting from inaccurate copying, duplication, or the like, and any other type of unintentional error which the administering authority considers ministerial.

19 U.S.C. § 1677. Definitions; special rules

For purposes of this subtitle

(1) Administering authority

The term "administering authority" means the Secretary of Commerce, or any other officer of the United States to whom the responsibility for carrying out the duties of the administering authority under this subtitle are transferred by law.

(2) Commission

The term "Commission" means the United States International Trade Commission.

(3) Country

The term "country" means a foreign country, a political subdivision, dependent territory, or possession of a foreign country, and, except for the purpose of antidumping proceedings, may include an association of 2 or more foreign countries, political subdivisions, dependent territories, or possessions of countries into a customs union outside the United States.

(4) Industry

(A) In general

The term "industry" means the producers as a whole of a domestic like product, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of the product.

(B) Related parties

(i) If a producer of a domestic like product and an exporter or importer of the subject merchandise are related parties, or if a producer of the domestic like product is also an importer of the subject merchandise, the producer may, in appropriate circumstances, be excluded from the industry.

(ii) For purposes of clause (i), a producer and an exporter or importer shall be considered to be related parties, if

(I) the producer directly or indirectly controls the exporter or importer,

(II) the exporter or importer directly or indirectly controls the producer,

(III) a third party directly or indirectly controls the producer and the exporter or importer, or

(IV) the producer and the exporter or importer directly or indirectly control a third party and there is reason to believe that the relationship causes the producer to act differently than a nonrelated producer.

For purposes of this subparagraph, a party shall be considered to directly or indirectly control another party if the party is legally or operationally in a position to exercise restraint or direction over the other party.

(C) Regional industries

In appropriate circumstances, the United States, for a particular product market, may

be divided into 2 or more markets and the producers within each market may be treated as if they were a separate industry if

(i) the producers within such market sell all or almost all of their production of the domestic like product in question in that market, and

(ii) the demand in that market is not supplied, to any substantial degree, by producers of the product in question located elsewhere in the United States.

In such appropriate circumstances, material injury, the threat of material injury, or material retardation of the establishment of an industry may be found to exist with respect to an industry even if the domestic industry as a whole, or those producers whose collective output of a domestic like product constitutes a major proportion of the total domestic production of that product, is not injured, if there is a concentration of dumped imports or imports of merchandise benefiting from a countervailable subsidy into such an isolated market and if the producers of all, or almost all, of the production within that market are being materially injured or threatened by material injury, or if the establishment of an industry is being materially retarded, by reason of the dumped imports or imports of merchandise benefiting from a countervailable subsidy. The term "regional industry" means the domestic producers within a region who are

treated as a separate industry under this subparagraph.

(D) Product lines

The effect of dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed in relation to the United States production of a domestic like product if available data permit the separate identification of production in terms of such criteria as the production process or the producer's profits. If the domestic production of the domestic like product has no separate identity in terms of such criteria, then the effect of the dumped imports or imports of merchandise benefiting from a countervailable subsidy shall be assessed by the examination of the production of the narrowest group or range of products, which includes a domestic like product, for which the necessary information can be provided.

(E) Industry producing processed agricultural products

(i) In general

Subject to clause (v), in an investigation involving a processed agricultural product produced from any raw agricultural product, the producers or growers of the raw agricultural product may be considered part of the industry producing the processed product if

(I) the processed agricultural product is produced from the raw agricultural product through a single continuous line of production; and

(II) there is a substantial coincidence of economic interest between the producers or growers of the raw agricultural product and the processors of the processed agricultural product based upon relevant economic factors, which may, in the discretion of the Commission, include price, added market value, or other economic interrelationships (regardless of whether such coincidence of economic interest is based upon any legal relationship).

(ii) Processing

For purposes of this subparagraph, the processed agricultural product shall be considered to be processed from a raw agricultural product through a single continuous line of production if

(I) the raw agricultural product is substantially or completely devoted to the production of the processed agricultural product; and

(II) the processed agricultural product is produced substantially or completely from the raw product.

(iii) Relevant economic factors

For purposes of clause (i)(II), in addition to such other factors it considers relevant to the question of coincidence of economic interest, the Commission shall-

(I) if price is taken into account, consider the degree of correlation between the price of the raw agricultural product and the price of the processed agricultural product; and

(II) if added market value is taken into account, consider whether the value of the raw agricultural product constitutes a significant percentage of the value of the processed agricultural product.

(iv) Raw agricultural product

For purposes of this subparagraph, the term "raw agricultural product" means any farm or fishery product.

(v) Termination of this subparagraph

This subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(5) Countervailable subsidy

(A) In general

Except as provided in paragraph (5B), a countervailable subsidy is a subsidy described in this paragraph which is specific as described in paragraph (5A).

(B) Subsidy described

A subsidy is described in this paragraph in the case in which an authority

(i) provides a financial contribution,

(ii) provides any form of income or price support within the meaning of Article XVI of the GATT 1994, or

(iii) makes a payment to a funding mechanism to provide a financial contribution, or entrusts or directs a private entity to make a financial contribution, if providing the contribution would normally be vested in the government and the practice does not differ in substance from practices normally followed by governments,

to a person and a benefit is thereby conferred. For purposes of this paragraph and paragraphs (5A) and (5B), the term "authority" means a government of a country or any public entity within the territory of the country.

(C) Other factors

The determination of whether a subsidy exists shall be made without regard to whether the recipient of the subsidy is publicly or privately owned and without regard to whether the subsidy is provided directly or indirectly on the manufacture, production, or export of merchandise. The administering authority is not required to consider the effect of the subsidy in determining whether a subsidy exists under this paragraph.

(D) Financial contribution

The term "financial contribution" means

(i) the direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfer of funds or liabilities, such as loan guarantees,

(ii) foregoing or not collecting revenue that is otherwise due, such as granting tax credits or deductions from taxable income,

(iii) providing goods or services, other than general infrastructure, or

(iv) purchasing goods.

(E) Benefit conferred

A benefit shall normally be treated as conferred where there is a benefit to the recipient, including

(i) in the case of an equity infusion, if the investment decision is inconsistent with the

usual investment practice of private investors, including the practice regarding the provision of risk capital, in the country in which the equity infusion is made,

(ii) in the case of a loan, if there is a difference between the amount the recipient of the loan pays on the loan and the amount the recipient would pay on a comparable commercial loan that the recipient could actually obtain on the market,

(iii) in the case of a loan guarantee, if there is a difference, after adjusting for any difference in guarantee fees, between the amount the recipient of the guarantee pays on the guaranteed loan and the amount the recipient would pay for a comparable commercial loan if there were no guarantee by the authority, and

(iv) in the case where goods or services are provided, if such goods or services are provided for less than adequate remuneration, and in the case where goods are purchased, if such goods are purchased for more than adequate remuneration.

For purposes of clause (iv), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service being provided or the goods being purchased in the country which is subject to the investigation or review. Prevailing market conditions include price, quality,

availability, marketability, transportation, and other conditions of purchase or sale.

(F) Change in ownership

A change in ownership of all or part of a foreign enterprise or the productive assets of a foreign enterprise does not by itself require a determination by the administering authority that a past countervailable subsidy received by the enterprise no longer continues to be countervailable, even if the change in ownership is accomplished through an arm's length transaction.

(5A) Specificity

(A) In general

A subsidy is specific if it is an export subsidy described in subparagraph (B) or an import substitution subsidy described in subparagraph (C), or if it is determined to be specific pursuant to subparagraph (D).

(B) Export subsidy

An export subsidy is a subsidy that is, in law or in fact, contingent upon export performance, alone or as 1 of 2 or more conditions.

(C) Import substitution subsidy

An import substitution subsidy is a subsidy that is contingent upon the use of domestic goods over imported goods, alone or as 1 of 2 or more conditions.

(D) Domestic subsidy

In determining whether a subsidy (other than a subsidy described in subparagraph (B) or (C)) is a specific subsidy, in law or in fact, to an enterprise or industry within the jurisdiction of the authority providing the subsidy, the following guidelines shall apply:

(i) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, expressly limits access to the subsidy to an enterprise or industry, the subsidy is specific as a matter of law.

(ii) Where the authority providing the subsidy, or the legislation pursuant to which the authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, the subsidy is not specific as a matter of law, if

(I) eligibility is automatic,

(II) the criteria or conditions for eligibility are strictly followed, and

(III) the criteria or conditions are clearly set forth in the relevant statute, regulation, or other official document so as to be capable of verification.

For purposes of this clause, the term "objective criteria or conditions" means criteria or conditions that are neutral and

that do not favor one enterprise or industry over another.

(iii) Where there are reasons to believe that a subsidy may be specific as a matter of fact, the subsidy is specific if one or more of the following factors exist:

(I) The actual recipients of the subsidy, whether considered on an enterprise or industry basis, are limited in number.

(II) An enterprise or industry is a predominant user of the subsidy.

(III) An enterprise or industry receives a disproportionately large amount of the subsidy.

(IV) The manner in which the authority providing the subsidy has exercised discretion in the decision to grant the subsidy indicates that an enterprise or industry is favored over others.

In evaluating the factors set forth in subclauses (I), (II), (III), and (IV), the administering authority shall take into account the extent of diversification of economic activities within the jurisdiction of the authority providing the subsidy, and the length of time during which the subsidy program has been in operation.

(iv) Where a subsidy is limited to an enterprise or industry located within a designated geographical region within the

jurisdiction of the authority providing the subsidy, the subsidy is specific.

For purposes of this paragraph and paragraph (5B), any reference to an enterprise or industry is a reference to a foreign enterprise or foreign industry and includes a group of such enterprises or industries.

(5B) Categories of noncountervailable subsidies

(A) In general

Notwithstanding the provisions of paragraphs (5) and (5A), in the case of merchandise imported from a Subsidies Agreement country, a subsidy shall be treated as noncountervailable if the administering authority determines in an investigation under part I of this subtitle or a review under part I of this subtitle that the subsidy meets all of the criteria described in subparagraph (B), (C), or (D), as the case may be, or the provisions of subparagraph (E)(i) apply.

(B) Research subsidy

(i) In general

Except for a subsidy provided on the manufacture, production, or export of civil aircraft, a subsidy for research activities conducted by a person, or by a higher education or research establishment on a contract basis with a person, shall be treated as noncountervailable, if the

subsidy covers not more than 75 percent of the costs of industrial research or not more than 50 percent of the costs of precompetitive development activity, and such subsidy is limited exclusively to

(I) the costs of researchers, technicians, and other supporting staff employed exclusively in the research activity,

(II) the costs of instruments, equipment, land, or buildings that are used exclusively and permanently (except when disposed of on a commercial basis) for the research activity,

(III) the costs of consultancy and equivalent services used exclusively for the research activity, including costs for bought-in research, technical knowledge, and patents,

(IV) additional overhead costs incurred directly as a result of the research activity, and

(V) other operating costs (such as materials and supplies) incurred directly as a result of the research activity.

(ii) Definitions

For purposes of this subparagraph

(I) Industrial research

The term "industrial research" means planned search or critical investigation aimed at the discovery of new knowledge, with the objective that such

knowledge may be useful in developing new products, processes, or services, or in bringing about a significant improvement to existing products, processes, or services.

(II) Precompetitive development activity

The term "precompetitive development activity" means the translation of industrial research findings into a plan, blueprint, or design for new, modified, or improved products, processes, or services, whether intended for sale or use, including the creation of a first prototype that would not be capable of commercial use. The term also may include the conceptual formulation and design of products, processes, or services alternatives and initial demonstration or pilot projects, if these same projects cannot be converted or used for industrial application or commercial exploitation. The term does not include routine or periodic alterations to existing products, production lines, manufacturing processes, services, or other ongoing operations even if those alterations may represent improvements.

(iii) Calculation rules

(I) In general

In the case of a research activity that spans both industrial research and precompetitive development activity, the allow-able level of the noncountervailable subsidy shall not exceed 62.5 percent of the costs set forth in subclauses (I), (H), (III), (IV), and (V) of clause (i).

(II) Total eligible costs

The allowable level of a noncountervailable subsidy described in clause (i) shall be based on the total eligible costs incurred over the duration of a particular project.

(C) Subsidy to disadvantaged regions

(i) In general

A subsidy provided, pursuant to a general framework of regional development, to a person located in a disadvantaged region within a country shall be treated as noncountervailable, if it is not specific (within the meaning of paragraph (5A)) within eligible regions and if the following conditions are met:

(I) Each region identified as disadvantaged within the territory of a country is a clearly designated, contiguous geographical area with a

definable economic and administrative identity.

(II) Each region is considered a disadvantaged region on the basis of neutral and objective criteria indicating that the region is disadvantaged because of more than temporary circumstances, and such criteria are clearly stated in the relevant statute, regulation, or other official document so as to be capable of verification.

(III) The criteria described in subclause (II) include a measurement of economic development.

(IV) Programs provided within a general framework of regional development include ceilings on the amount of assistance that can be granted to a subsidized project. Such ceilings are differentiated according to the different levels of development of assisted regions, and are expressed in terms of investment costs or costs of job creation. Within such ceilings, the distribution of assistance is sufficiently broad and even to avoid the predominant use of a subsidy by, or the provision of disproportionately large amounts of a subsidy to, an enterprise or industry as described in paragraph (5A)(D).

(ii) Measurement of economic development

For purposes of clause (i), the measurement of economic development shall be based on one or more of the following factors:

(I) Per capita income, household per capita income, or per capita gross domestic product that does not exceed 85 percent of the average for the country subject to investigation or review.

(II) An unemployment rate that is at least 110 percent of the average unemployment rate for the country subject to investigation or review.

The measurement of economic development shall cover a 3-year period, but may be a composite measurement and may include factors other than those set forth in this clause.

(iii) Definitions

For purposes of this subparagraph

(I) General framework of regional development

The term "general framework of regional development" means that the regional subsidy programs are part of an internally consistent and generally applicable regional development policy, and that regional development subsidies are not granted in isolated

geographical points having no, or virtually no, influence on the development of a region.

(II) Neutral and objective criteria

The term "neutral and objective criteria" means criteria that do not favor certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy.

(D) Subsidy for adaptation of existing facilities to new environmental requirements

(i) In general

A subsidy that is provided to promote the adaptation of existing facilities to new environmental requirements that are imposed by statute or by regulation, and that result in greater constraints and financial burdens on the recipient of the subsidy, shall be treated as noncountervailable, if the subsidy

(I) is a one-time nonrecurring measure,

(II) is limited to 20 percent of the cost of adaptation,

(III) does not cover the cost of replacing and operating the subsidized investment, a cost that must be fully borne by the recipient,

(IV) is directly linked and proportionate to the recipient's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings that may be achieved, and

(V) is available to all persons that can adopt the new equipment or production processes.

(ii) Existing facilities

For purposes of this subparagraph, the term "existing facilities" means facilities that have been in operation for at least 2 years before the date on which the new environmental requirements are imposed.

(E) Notified subsidy program

(i) General rule

If a subsidy is provided pursuant to a program that has been notified in accordance with Article 8.3 of the Subsidies Agreement, the subsidy shall be treated as noncountervailable and shall not be subject to investigation or review under this subtitle.

(ii) Exception

Notwithstanding clause (i), a subsidy shall be treated as countervailable if

(I) the Trade Representative notifies the administering authority that a determination has been made pursuant to Article 8.4 or 8.5 of the Subsidies Agreement that the subsidy, or the

program pursuant to which the subsidy was provided, does not satisfy the conditions and criteria of Article 8.2 of the Subsidies Agreement; and

(II) the subsidy is specific within the meaning of paragraph (5A).

(F) Certain subsidies on agricultural products

Domestic support measures that are provided with respect to products listed in Annex 1 to the Agreement on Agriculture, and that the administering authority determines conform fully to the provisions of Annex 2 to that Agreement, shall be treated as noncountervailable. Upon request by the administering authority, the Trade Representative shall provide advice regarding the interpretation and application of Annex 2.

(G) Provisional application

(i) Subparagraphs (B), (C), (D), and (E) shall not apply on or after the first day of the month that is 66 months after the WTO Agreement enters into force, unless the provisions of such subparagraphs are extended pursuant to section 3572(c) of this title.

(ii) Subparagraph (F) shall not apply to imports from a WTO member country at the end of the 9-year period beginning on January 1, 1995. The Trade Representative shall determine the precise termination date

for each WTO member country in accordance with paragraph (i) of Article 1 of the Agreement on Agriculture and such date shall be notified to the administering authority.

(6) Net countervailable subsidy

For the purpose of determining the net countervailable subsidy, the administering authority may subtract from the gross countervailable subsidy the amount of

(A) any application fee, deposit, or similar payment paid in order to qualify for, or to receive, the benefit of the countervailable subsidy,

(B) any loss in the value of the countervailable subsidy resulting from its deferred receipt, if the deferral is mandated by Government order, and

(C) export taxes, duties, or other charges levied on the export of merchandise to the United States specifically intended to offset the countervailable subsidy received.

(7) Material injury

(A) In general

The term "material injury" means harm which is not inconsequential, immaterial, or unimportant.

(B) Volume and consequent impact

In making determinations under sections 1671b(a), 1671d(b), 1673b(a), and 1673d(b) of this title, the Commission, in each case

(i) shall consider

(I) the volume of imports of the subject merchandise,

(II) the effect of imports of that merchandise on prices in the United States for domestic like products, and

(III) the impact of imports of such merchandise on domestic producers of domestic like products, but only in the context of production operations within the United States; and

(ii) may consider such other economic factors as are relevant to the determination regarding whether there is material injury by reason of imports.

In the notification required under section 1671d(d) or 1673d(d) of this title, as the case may be, the Commission shall explain its analysis of each factor considered under clause (i), and identify each factor considered under clause (ii) and explain in full its relevance to the determination.

(C) Evaluation of relevant factors

For purposes of subparagraph (B)

(i) Volume

In evaluating the volume of imports of merchandise, the Commission shall

consider whether the volume of imports of the merchandise, or any increase in that volume, either in absolute terms or relative to production or consumption in the United States, is significant.

(ii) Price

In evaluating the effect of imports of such merchandise on prices, the Commission shall consider whether

(I) there has been significant price underselling by the imported merchandise as compared with the price of domestic like products of the United States, and

(II) the effect of imports of such merchandise otherwise depresses prices to a significant degree or prevents price increases, which otherwise would have occurred, to a significant degree.

(iii) Impact on affected domestic industry

In examining the impact required to be considered under subparagraph (B)(i)(III), the Commission shall evaluate all relevant economic factors which have a bearing on the state of the industry in the United States, including, but not limited to

(I) actual and potential decline in output, sales, market share, gross profits, operating profits, net profits, ability to service debt, productivity,

return on investments, return on assets, and utilization of capacity,

(II) factors affecting domestic prices,

(III) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital, and investment,

(IV) actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(V) in a proceeding under part II of this subtitle, the magnitude of the margin of dumping.

The Commission shall evaluate all relevant economic factors described in this clause within the context of the business cycle and con-ditions of competition that are distinctive to the affected industry.

(iv) Captive production

If domestic producers internally transfer significant production of the domestic like product for the production of a downstream article and sell significant production of the domestic like product in the merchant market, and the Commission finds that

(I) the domestic like product produced that is internally transferred for processing into that downstream article does not enter the merchant market for the domestic like product, and

(II) the domestic like product is the predominant material input in the production of that downstream article,

then the Commission, in determining market share and the factors affecting financial performance set forth in clause (iii), shall focus primarily on the merchant market for the domestic like product.

(D) Special rules for agricultural products

(i) The Commission shall not determine that there is no material injury or threat of material injury to United States producers of an agricultural commodity merely because the prevailing market price is at or above the minimum support price.

(ii) In the case of agricultural products, the Commission shall consider any increased burden on government income or price support programs.

(E) Special rules

For purposes of this paragraph

(i) Nature of countervailable subsidy

In determining whether there is a threat of material injury, the Commission shall consider information provided to it by the administering authority regarding

the nature of the countervailable subsidy granted by a foreign country (particularly whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement) and the effects likely to be caused by the countervailable subsidy.

(ii) Standard for determination

The presence or absence of any factor which the Commission is required to evaluate under subparagraph (C) or (D) shall not necessarily give decisive guidance with respect to the determination by the Commission of material injury.

(F) Threat of material injury

(i) In general

In determining whether an industry in the United States is threatened with material injury by reason of imports (or sales for importation) of the subject merchandise, the Commission shall consider, among other relevant economic factors

(I) if a countervailable subsidy is involved, such information as may be presented to it by the administering authority as to the nature of the subsidy (particularly as to whether the countervailable subsidy is a subsidy described in Article 3 or 6.1 of the Subsidies Agreement), and whether

imports of the subject merchandise are likely to increase,

(II) any existing unused production capacity or imminent, substantial increase in production capacity in the exporting country indicating the likelihood of substantially increased imports of the subject merchandise into the United States, taking into account the availability of other export markets to absorb any additional exports,

(III) a significant rate of increase of the volume or market penetration of imports of the subject merchandise indicating the likelihood of substantially increased imports,

(IV) whether imports of the subject merchandise are entering at prices that are likely to have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports,

(V) inventories of the subject merchandise,

(VI) the potential for product-shifting if production facilities in the foreign country, which can be used to produce the subject merchandise, are currently being used to produce other products,

(VII) in any investigation under this subtitle which involves imports of both a raw agricultural product (within the

meaning of paragraph (4)(E)(iv)) and any product processed from such raw agricultural product, the likelihood that there will be increased imports, by reason of product shifting, if there is an affirmative determination by the Commission under section 1671d(b)(1) or 1673d(b)(1) of this title with respect to either the raw agricultural product or the processed agricultural product (but not both),

(VIII) the actual and potential negative effects on the existing development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product, and

(IX) any other demonstrable adverse trends that indicate the probability that there is likely to be material injury by reason of imports (or sale for importation) of the subject merchandise (whether or not it is actually being imported at the time).

(ii) Basis for determination

The Commission shall consider the factors set forth in clause (i) as a whole in making a determination of whether further dumped or subsidized imports are imminent and whether material injury by reason of imports would occur unless an order is issued or a suspension agreement is accepted under this subtitle. The

presence or absence of any factor which the Commission is required to consider under clause (i) shall not necessarily give decisive guidance with respect to the determination. Such a determination may not be made on the basis of mere conjecture or supposition.

(iii) Effect of dumping in third-country markets

(I) In general

In investigations under part II of this subtitle, the Commission shall consider whether dumping in the markets of foreign countries (as evidenced by dumping findings or antidumping remedies in other WTO member markets against the same class or kind of merchandise manufactured or exported by the same party as under investigation) suggests a threat of material injury to the domestic industry. In the course of its investigation, the Commission shall request information from the foreign manufacturer, exporter, or United States importer concerning this issue.

(II) WTO member market

For purposes of this clause, the term "WTO member market" means the market of any country which is a WTO member.

(III) European Communities

For purposes of this clause, the European Communities shall be treated as a foreign country.

(G) Cumulation for determining material injury

(i) In general

For purposes of clauses (i) and (ii) of subparagraph (C), and subject to clause (ii), the Commission shall cumulatively assess the volume and effect of imports of the subject merchandise from all countries with respect to which

(I) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(II) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(III) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(ii) Exceptions

The Commission shall not cumulatively assess the volume and effect of imports under clause (i)

(I) with respect to which the administering authority has made a preliminary negative determination, unless the administering authority subsequently made a final affirmative determination with respect to those imports before the Commission's final determination is made;

(II) from any country with respect to which the investigation has been terminated;

(III) from any country designated as a beneficiary country under the Caribbean Basin Economic Recovery Act (19 U.S.C. 2701 et seq.) for purposes of making a determination with respect to that country, except that the volume and effect of imports of the subject merchandise from such country may be cumulatively assessed with imports of the subject merchandise from any other country designated as such a beneficiary country to the extent permitted by clause (i); or

(IV) from any country that is a party to an agreement with the United States establishing a free trade area, which entered into force and effect before

January 1, 1987, unless the Commission determines that a domestic industry is materially injured or threatened with material injury by reason of imports from that country.

(iii) Records in final investigations

In each final determination in which it cumulatively assesses the volume and effect of imports under clause (i), the Commission shall make its determinations based on the record compiled in the first investigation in which it makes a final determination, except that when the administering authority issues its final determination in a subsequently completed investigation, the Commission shall permit the parties in the subsequent investigation to submit comments concerning the significance of the administering authority's final determination, and shall include such comments and the administering authority's final determination in the record for the subsequent investigation.

(iv) Regional industry determinations

In an investigation which involves a regional industry, and in which the Commission decides that the volume and effect of imports should be cumulatively assessed under this subparagraph, such assessment shall be based upon the volume and effect of imports into the region or regions determined by the

Commission. The provisions of clause (iii) shall apply to such investigations.

(H) Cumulation for determining threat of material injury

To the extent practicable and subject to subparagraph (G)(ii), for purposes of clause (i)(III) and (IV) of subparagraph (F), the Commission may cumulatively assess the volume and price effects of imports of the subject merchandise from all countries with respect to which

(i) petitions were filed under section 1671a(b) or 1673a(b) of this title on the same day,

(ii) investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day, or

(iii) petitions were filed under section 1671a(b) or 1673a(b) of this title and investigations were initiated under section 1671a(a) or 1673a(a) of this title on the same day,

if such imports compete with each other and with domestic like products in the United States market.

(I) Consideration of post-petition information

The Commission shall consider whether any change in the volume, price effects, or impact of imports of the subject merchandise since the filing of the petition in an investigation under part I or II of this

subtitle is related to the pendency of the investigation and, if so, the Commission may reduce the weight accorded to the data for the period after the filing of the petition in making its determination of material injury, threat of material injury, or material retardation of the establishment of an industry in the United States.

(J) Effect of profitability

The Commission may not determine that there is no material injury or threat of material injury to an industry in the United States merely because that industry is profitable or because the performance of that industry has recently improved.

(8) Subsidies Agreement; Agreement on Agriculture

(A) Subsidies Agreement

The term "Subsidies Agreement" means the Agreement on Subsidies and Countervailing Measures referred to in section 3511(d)(12) of this title.

(B) Agreement on Agriculture

The term "Agreement on Agriculture" means the Agreement on Agriculture referred to in section 3511(d)(2) of this title.

(9) Interested party

The term "interested party" means

(A) a foreign manufacturer, producer, or exporter, or the United States importer, of

subject merchandise or a trade or business association a majority of the members of which are producers, exporters, or importers of such merchandise,

(B) the government of a country in which such merchandise is produced or manufactured or from which such merchandise is exported,

(C) a manufacturer, producer, or wholesaler in the United States of a domestic like product,

(D) a certified union or recognized union or group of workers which is representative of an industry engaged in the manufacture, production, or wholesale in the United States of a domestic like product,

(E) a trade or business association a majority of whose members manufacture, produce, or wholesale a domestic like product in the United States,

(F) an association, a majority of whose members is composed of interested parties described in subparagraph (C), (D), or (E) with respect to a domestic like product, and

(G) in any investigation under this subtitle involving an industry engaged in producing a processed agricultural product, as defined in paragraph (4)(E), a coalition or trade association which is representative of either

(i) processors,

(ii) processors and producers, or

(iii) processors and growers,

but this subparagraph shall cease to have effect if the United States Trade Representative notifies the administering authority and the Commission that the application of this subparagraph is inconsistent with the international obligations of the United States.

(10) Domestic like product

The term "domestic like product" means a product which is like, or in the absence of like, most similar in characteristics and uses with, the article subject to an investigation under this subtitle.

(11) Affirmative determinations by divided Commission

If the Commissioners voting on a determination by the Commission, including a determination under section 1675 of this title, are evenly divided as to whether the determination should be affirmative or negative,-the Commission shall be deemed to have made an affirmative determination. For the purpose of applying this paragraph when the issue before the Commission is to determine whether there is

(A) material injury to an industry in the United States,

(B) threat of material injury to such an industry, or

(C) material retardation of the establishment of an industry in the United States,

by reason of imports of the merchandise, an affirmative vote on any of the issues shall be

treated as a vote that the determination should be affirmative.

(12) Attribution of merchandise to country of manufacture or production

For purposes of part I of this subtitle, merchandise shall be treated as the product of the country in which it was manufactured or produced without regard to whether it is imported directly from that country and without regard to7 whether it is imported in the same condition as when exported from that country or in a changed condition by reason of remanufacture or otherwise.

(13) Repealed. Pub. L. 103-465, title I1, § 222(i)(2), Dec. 8, 1994, 108 Stat. 4876

(14) Sold or, in the absence of sales, offered for sale

The term "sold or, in the absence of sales, offered for sale" means sold or, in the absence of sales, offered

(A) to all purchasers in commercial quantities, or

(B) in the ordinary course of trade to one or more selected purchasers in commercial quantities at a price which fairly reflects the market value of the merchandise,

without regard to restrictions as to the disposition or use of the merchandise by the purchaser except that, where such restrictions are found to affect the market value of the merchandise, adjustment

shall be made therefor in calculating the price at which the merchandise is sold oroffered for sale.

(15) Ordinary course of trade

The term "ordinary course of trade" means the conditions and practices which, for a reasonable time prior to the exportation of the subject merchandise, have been normal in the trade under consideration with respect to merchandise of the same class or kind. The administering authority shall consider the following sales and transactions, among others, to be outside the ordinary course of trade:

(A) Sales disregarded under section 1677b(b)(1) of this title.

(B) Transactions disregarded under section 1677b(f)(2) of this title.

(C) Situations in which the administering authority determines that the particular market situation prevents a proper comparison with the export price or constructed export price.

(16) Foreign like product

The term "foreign like product" means merchandise in the first of the following categories in respect of which a determination for the purposes of part II of this subtitle can be satisfactorily made:

(A) The subject merchandise and other merchandise which is identical in physical characteristics with, and was produced in the same country by the same person as, that merchandise.

(B) Merchandise

(i) produced in the same country and by the same person as the subject merchandise,

(ii) like that merchandise in component material or materials and in the purposes for which used, and

(iii) approximately equal in commercial value to that merchandise.

(C) Merchandise

(i) produced in the same country and by the same person and of the same general class or kind as the subject merchandise,

(ii) like that merchandise in the purposes for which used, and

(iii) which the administering authority determines may reasonably be compared with that merchandise.

(17) Usual commercial quantities

The term "usual commercial quantities", in any case in which the subject merchandise is sold in the market under consideration at different prices for different quantities, means the quantities in which such merchandise is there sold at the price or prices for one quantity in an aggregate volume which is greater than the aggregate volume sold at the price or prices for any other quantity.

(18) Nonmarket economy country

(A) In general

The term "nonmarket economy country" means any foreign country that the administering authority determines does not operate on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise.

(B) Factors to be considered

In making determinations under subparagraph (A) the administering authority shall take into account

(i) the extent to which the currency of the foreign country is convertible into the currency of other countries; 1

(ii) the extent to which wage rates in the foreign country are determined by free bargaining between labor and management, 1 So In original. The semicolon probably should be a comma.

(iii) the extent to which joint ventures or other investments by firms of other foreign countries are permitted in the foreign country,

(iv) the extent of government ownership or control of the means of production,

(v) the extent of government control over the allocation of resources and over the price and output decisions of enterprises, and

(vi) such other factors as the administering authority considers appropriate.

(C) Determination in effect

(i) Any determination that a foreign country is a nonmarket economy country shall remain in effect until revoked by the administering authority.

(ii) The administering authority may make a determination under subparagraph (A) with respect to any foreign country at any time.

(D) Determinations not in issue

Notwithstanding any other provision of law, any determination made by the administering authority under subparagraph (A) shall not be subject to judicial review in any investigation conducted under part II of this subtitle.

(E) Collection of information

Upon request by the administering authority, the Commissioner of U.S. Customs and Border Protection shall provide the administering authority a copy of all public and proprietary information submitted to, or obtained by, the Commissioner of U.S. Customs and Border Protection that the administering authority considers relevant to proceedings involving merchandise from nonmarket economy countries. The administering authority shall protect proprietary information obtained under this section from public disclosure in accordance with section 1677f of this title.

(19) Equivalency of leases to sales

In determining whether a lease is equivalent to a sale for purposes of this subtitle, the administering authority shall consider

(A) the terms of the lease,

(B) commercial practice within the industry,

(C) the circumstances of the transaction,

(D) whether the product subject to the lease is integrated into the operations of the lessee or importer,

(E) whether in practice there is a likelihood that the lease will be continued or renewed for a significant period of time, and

(F) other relevant factors, including whether the lease transaction would permit avoidance of antidumping or countervailing duties.

(20) Application to governmental importations

(A) In general

Except as otherwise provided by this paragraph, merchandise imported by, or for the use of, a department or agency of the United States Government (including merchandise provided for under chapter 98 of the Harmonized Tariff Schedule of the United States) is subject to the imposition of countervailing duties or antidumping duties under this subtitle or section 1303 of this title.

(B) Exceptions

Merchandise imported by, or for the use of, the Department of Defense shall not be subject to the imposition of countervailing or antidumping duties under this subtitle if

(i) the merchandise is acquired by, or for use of, such Department

(I) from a country with which such Department had a Memorandum of Understanding which was in effect on January 1, 1988, and has continued to have a comparable agreement (including renewals) or superceding agreements, and

(II) in accordance with terms of the Memorandum of Understanding in effect at the time of importation, or

(ii) the merchandise has no substantial nonmilitary use.

(21) United States-Canada Agreement

The term "United States-Canada Agreement" means the United States-Canada Free-Trade Agreement.

(22) NAFTA

The term "NAFTA" means the North American Free Trade Agreement.

(23) Entry

The term "entry" includes, in appropriate circumstances as determined by the administering authority, a reconciliation entry created under a reconciliation process, defined in

section 1401(s) of this title, that is initiated by an importer. The liability of an importer under an antidumping or countervailing duty proceeding for entries of merchandise subject to the proceeding will attach to the corresponding reconciliation entry or entries. Suspension of liquidation of the reconciliation entry or entries, for the purpose of enforcing this subtitle, is equivalent to the suspension of liquidation of the corresponding individual entries; but the suspension of liquidation of the reconciliation entry or entries for such purpose does not preclude liquidation for any other purpose.

(24) Negligible imports

(A) In general

(i) Less than 3 percent

Except as provided in clauses (ii) and (iv), imports from a country of merchandise corresponding to a domestic like product identified by the Commission are "negligible" if such imports account for less than 3 percent of the volume of all such merchandise imported into the United States in the most recent 12-month period for which data are available that precedes

(I) the filing of the petition under section 1671a(b) or 1673a(b) of this title, or

(II) the initiation of the investigation, if the investigation was initiated under section 1671a(a) or 1673a(a) of this title.

(ii) Exception

Imports that would otherwise be negligible under clause (i) shall not be negligible if the aggregate volume of imports of the merchandise from all countries described in clause (i) with respect to which investigations were initiated on the same day exceeds 7 percent of the volume of all such merchandise imported into the United States during the applicable 12-month period.

(iii) Determination of aggregate volume

In determining aggregate volume under clause (ii) or (iv), the Commission shall not consider imports from any country specified in paragraph (7)(G)(ii).

(iv) Negligibility in threat analysis

Notwithstanding clauses (i) and (ii), the Commission shall not treat imports as negligible if it determines that there is a potential that imports from a country described in clause (i) will imminently account for more than 3 percent of the volume of all such merchandise imported into the United States, or that the aggregate volumes of imports from all countries described in clause (ii) will imminently exceed 7 percent of the volume of all such merchandise imported into the United States. The Commission shall consider such imports only for purposes of determining threat of material injury.

(B) Negligibility for certain countries in countervailing duty investigations

In the case of an investigation under section 1671 of this title, subparagraph (A) shall be applied to imports of subject merchandise from developing countries by substituting "4 percent" for "3 percent" in subparagraph (A)(i) and by substituting "9 percent" for "7 percent" in subparagraph (A)(ii).

(C) Computation of import volumes

In computing import volumes for purposes of subparagraphs (A) and (B), the Commission may make reasonable estimates on the basis of available statistics.

(D) Regional industries

In an investigation in which the Commission makes a regional industry determination under paragraph (4)(C), the Commission's examination under subparagraphs (A) and (B) shall be based upon the volume of subject merchandise exported for sale in the regional market in lieu of the volume of all subject merchandise imported into the United States.

(25) Subject merchandise

The term "subject merchandise" means the class or kind of merchandise that is within the scope of an investigation, a review, a suspension agreement, an order under this subtitle or section 1303 of this title, or a finding under the Antidumping Act, 1921.

(26) Section 1303

The terms "section 1303" and "1303" mean section 1303 of this title as in effect on the day before the effective date of title II of the Uruguay Round Agreements Act.

(27) Suspension agreement

The term "suspension agreement" means an agreement described in section 1671c(b), 1671c(c), 1673c(b), 1673c(c), or 1673c(l) of this title.

(28) Exporter or producer

The term "exporter or producer" means the exporter of the subject merchandise, the producer of the subject merchandise, or both where appropriate. For purposes of section 1677b of this title, the term "exporter or producer" includes both the exporter of the subject merchandise and the producer of the same subject merchandise to the extent necessary to accurately calculate the total amount incurred and realized for costs, expenses, and profits in connection with production and sale of 'that merchandise.

(29) WTO Agreement

The term "WTO Agreement" means the Agreement defined in section 3501(9) of this title.

(30) WTO member and WTO member country

The terms "WTO member" and "WTO member country" mean a state, or separate customs territory (within the meaning of Article XII of the WTO Agreement), with respect to which the United States applies the WTO Agreement.

(31) GATT 1994

The term "GATT 1994" means the General Agreement on Tariffs and Trade annexed to the WTO Agreement.

(32) Trade representative

The term "Trade Representative" means the United States Trade Representative.

(33) Affiliated persons

The following persons shall be considered to be "affiliated" or "affiliated persons":

(A) Members of a family, including brothers and sisters (whether by the whole or half blood), spouse, ancestors, and lineal descendants.

(B) Any officer or director of an organization and such organization.

(C) Partners.

(D) Employer and employee.

(E) Any person directly or indirectly owning, controlling, or holding with power to vote, 5 percent or more of the outstanding voting stock or shares of any organization and such organization.

(F) Two or more persons directly or indirectly controlling, controlled by, or under common control with, any person.

(G) Any person who controls any other person and such other person.

For purposes of this paragraph, a person shall be considered to control another person if the person

is legally or operationally in a position to exercise restraint or direction over the other person.

(34) Dumped, dumping

The terms "dumped" and "dumping" refer to the sale or likely sale of goods at less than fair value.

(35) Dumping margin; weighted average dumping margin

(A) Dumping margin

The term "dumping margin" means the amount by which the normal value exceeds the export price or constructed export price of the subject merchandise.

(B) Weighted average dumping margin

The term "weighted average dumping margin" is the percentage determined by dividing the aggregate dumping margins determined for a specific exporter or producer by the aggregate export prices and constructed export prices of such exporter or producer.

(C) Magnitude of the margin of dumping

The magnitude of the margin of dumping used by the Commission shall be

(i) in making a preliminary determination under section 1673b(a) of this title in an investigation (including any investigation in which the Commission cumulatively assesses the volume and effect of imports under paragraph (7)(G)(i)), the dumping margin or margins published by the administering

authority in its notice of initiation of the investigation;

(ii) in making a final determination under section 1673d(b) of this title, the dumping margin or margins most recently published by the administering authority prior to the closing of the Commission's administrative record;

(iii) in a review under section 1675(b)(2) of this title, the most recent dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title, if any, or under section 1673b(b) or 1673d(a) of this title; and

(iv) in a review under section 1675(c) of this title, the dumping margin or margins determined by the administering authority under section 1675a(c)(3) of this title.

(36) Developing and least developed country

(A) Developing country

The term "developing country" means a country designated as a developing country by the Trade Representative.

(B) Least developed country

The term "least developed country" means a country which the Trade Representative determines is

(i) a country referred to as a least developed country within the meaning of paragraph (a) of Annex VII to the Subsidies Agreement, or

(ii) any other country listed in Annex VII to the Subsidies Agreement, but only if the country has a per capita gross national product of less than $1,000 per annum as measured by the most recent data available from the World Bank.

(C) Publication of list

The Trade Representative shall publish in the Federal Register, and update as necessary, a list of

(i) developing countries that have eliminated their export subsidies on an expedited basis within the meaning of Article 27.11 of the Subsidies Agreement, and

(ii) countries determined by the Trade Representative to be least developed or developing countries.

(D) Factors to consider

In determining whether a country is a developing country under subparagraph (A), the Trade Representative shall consider such economic, trade, and other factors which the Trade Representative considers appropriate, including the level of economic development of such country (the assessment of which shall include a review of the country's per capita gross national product) and the country's share of world trade.

(E) Limitation on designation

A determination that a country is a developing or least developed country

pursuant to this paragraph shall be for purposes of this subtitle only and shall not affect the determination of a country's status as a developing or least developed country with respect to any other law.

19 U.S.C. § 1677a. Export price and constructed export price

(a) Export price

The term "export price" means the price at which the subject merchandise is first sold (or agreed to be sold) before the date of importation by the producer or exporter of the subject merchandise outside of the United States to an unaffiliated purchaser in the United States or to an unaffiliated purchaser for exportation to the United States, as adjusted under subsection (c).

(b) Constructed export price

The term "constructed export price" means the price at which the subject merchandise is first sold (or agreed to be sold) in the United States before or after the date of importation by or for the account of the producer or exporter of such merchandise or by a seller affiliated with the producer or exporter, to a purchaser not affiliated with the producer or exporter, as adjusted under subsections (c) and (d).

(c) Adjustments for export price and constructed export price

The price used to establish export price and constructed export price shall be

(1) increased by

(A) when not included in such price, the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition

packed ready for shipment to the United States,

(B) the amount of any import duties imposed by the country of exportation which have * been rebated, or which have not been collected, by reason of the exportation of the subject merchandise to the United States, and

(C) the amount of any countervailing duty imposed on the subject merchandise under part I of this subtitle to offset an export subsidy, and

(2) reduced by

(A) except as provided in paragraph (1)(C), the amount, if any, included in such price, attributable to any additional costs, charges, or expenses, and United States import duties, which are incident to bringing the subject merchandise from the original place of shipment in the exporting country to the place of delivery in the United States, and

(B) the amount, if included in such price, of any export tax, duty, or other charge imposed by the exporting country on the exportation of the subject merchandise to the United States, other than an export tax, duty, or other charge described in section 1677(6)(C) of this title.

(d) Additional adjustments to constructed export price

For purposes of this section, the price used to establish constructed export price shall also be reduced by

(1) the amount of any of the following expenses generally incurred by or for the account of the producer or exporter, or the affiliated seller in the United States, in selling the subject merchandise (or subject merchandise to which value has been added)

(A) commissions for selling the subject merchandise in the United States;

(B) expenses that result from, and bear a direct relationship to, the sale, such as credit expenses, guarantees and warranties;

(C) any selling expenses that the seller pays on behalf of the purchaser; and

(D) any selling expenses not deducted under subparagraph (A), (B), or (C);

(2) the cost of any further manufacture or assembly (including additional material and labor), except in circumstances described in subsection (e); and

(3) the profit allocated to the expenses described in paragraphs (1) and (2).

(e) Special rule for merchandise with value added after importation

Where the subject merchandise is imported by a person affiliated with the exporter or producer, and the value added in the United States by the affiliated person is likely to exceed substantially the value of the subject merchandise, the administering authority shall determine the constructed export price for such merchandise by

using one of the following prices if there is a sufficient quantity of sales to provide a reasonable basis for comparison and the administering authority determines that the use of such sales is appropriate:

(1) The price of identical subject merchandise sold by the exporter or producer to an unaffiliated person.

(2) The price of other subject merchandise sold by the exporter or producer to an unaffiliated person.

If there is not a sufficient quantity of sales to provide a reasonable basis for comparison under paragraph (1) or (2), or the administering authority determines that neither of the prices described in such paragraphs is appropriate, then the constructed export price may be determined on any other reasonable basis.

(f) Special rule for determining profit

(1) In general

For purposes of subsection (d)(3), profit shall be an amount determined by multiplying the total actual profit by the applicable percentage.

(2) Definitions

For purposes of this subsection:

(A) Applicable percentage

The term "applicable percentage" means the percentage determined by dividing the total United States expenses by the total expenses.

(B) Total United States expenses

The term "total United States expenses" means the total expenses described in subsection (d)(1) and (2).

(C) Total expenses

The term "total expenses" means all expenses in the first of the following categories which applies and which are incurred by or on behalf of the foreign producer and foreign exporter of the subject merchandise and by or on behalf of the United States seller affiliated with the producer or exporter with respect to the production and sale of such merchandise:

(i) The expenses incurred with respect to the subject merchandise sold in the United States and the foreign like product sold in the exporting country if such expenses were requested by the administering authority for the purpose of establishing normal value and constructed export price.

(ii) The expenses incurred with respect to the narrowest category of merchandise sold in the United States and the exporting country which includes the subject merchandise.

(iii) The expenses incurred with respect to the narrowest category of merchandise sold in all countries which includes the subject merchandise.

(D) Total actual profit

The term "total actual profit" means the total profit earned by the foreign producer, exporter, and affiliated parties described in subparagraph (C) with respect to the sale of the same merchandise for which total expenses are determined under such subparagraph.

19 U.S.C. § 1677b. Normal value

(a) Determination

In determining under this subtitle whether subject merchandise is being, or is likely to be, sold at less than fair value, a fair comparison shall be made between the export price or constructed export price and normal value. In order to achieve a fair comparison with the export price or constructed export price, normal value shall be determined as follows:

(1) Determination of normal value

(A) In general

The normal value of the subject merchandise shall be the price described in subparagraph (B), at a time reasonably corresponding to the time of the sale used to determine the export price or constructed export price under section 1677a(a) or (b) of this title.

(B) Price

The price referred to in subparagraph (A) is

(i) the price at which the foreign like product is first sold (or, in the absence of a sale, offered for sale) for consumption in the exporting country, in the usual commercial quantities and in the ordinary course of trade and, to the extent practicable, at the same level of trade as the export price or constructed export price, or

(ii) in a case to which subparagraph (C) applies, the price at which the foreign like

product is so sold (or offered for sale) for consumption in a country other than the exporting country or the United States, if

(I) such price is representative,

(II) the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold by the exporter or producer in such other country is 5 percent or more of the aggregate quantity (or value) of the subject merchandise sold in the United States or for export to the United States, and

(III) the administering authority does not determine that the particular market situation prevents a proper comparison with the export price or constructed export price.

(C) Third country sales

This subparagraph applies when

(i) the foreign like product is not sold (or offered for sale) for consumption in the exporting country as described in subparagraph (B)(i),

(ii) the administering authority determines that the aggregate quantity (or, if quantity is not appropriate, value) of the foreign like product sold in the exporting country is insufficient to permit a proper comparison with the sales of the subject merchandise to the United States, or

(iii) the particular market situation in the exporting country does not permit a proper comparison with the export price or constructed export price.

For purposes of clause (ii), the aggregate quantity (or value) of the foreign like product sold in the exporting country shall normally be considered to be insufficient if such quantity (or value) is less than 5 percent of the aggregate quantity (or value) of sales of the subject merchandise to the United States.

(2) Fictitious markets

No pretended sale or offer for sale, and no sale or offer for sale intended to establish a fictitious market, shall be taken into account in determining normal value. The occurrence of different movements in the prices at which different forms of the foreign like product are sold (or, in the absence of sales, offered for sale) in the exporting country after the issuance of an antidumping duty order may be considered by the administering authority as evidence of the establishment of a fictitious market for the foreign like product if the movement in such prices appears to reduce the amount by which the normal value exceeds the export price (or the constructed export price) of the subject merchandise.

(3) Exportation from an intermediate country

Where the subject merchandise is exported to the United States from an intermediate

country, normal value shall be determined in the intermediate country, except that normal value may be determined in the country of origin of the subject merchandise if

(A) the producer knew at the time of the sale that the subject merchandise was destined for exportation;

(B) the subject merchandise is merely transshipped through the intermediate country;

(C) sales of the foreign like product in the intermediate country do not satisfy the conditions of paragraph (1)(C); or

(D) the foreign like product is not produced in the intermediate country.

(4) Use of constructed value

If the administering authority determines that the normal value of the subject merchandise cannot be determined under paragraph (1)(B)(i), then, notwithstanding paragraph (1)(B)(ii), the normal value of the subject merchandise may be the constructed value of that merchandise, as determined under subsection (e).

(5) Indirect sales or offers for sale

If the foreign like product is sold or, in the absence of sales, offered for sale through an affiliated party, the prices at which the foreign like product is sold (or offered for sale) by such affiliated party may be used in determining normal value.

(6) Adjustments

The price described in paragraph (1)(B) shall be

(A) increased by the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the subject merchandise in condition packed ready for shipment to the United States;

(B) reduced by

(i) when included in the price described in paragraph (1)(B), the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the foreign like product in condition packed ready for shipment to the place of delivery to the purchaser,

(ii) the amount, if any, included in the price described in paragraph (1)(B), attributable to any additional costs, charges, and expenses incident to bringing the foreign like product from the original place of shipment to the place of delivery to the purchaser, and

(iii) the amount of any taxes imposed directly upon the foreign like product or components thereof which have been rebated, or which have not been collected, on the subject merchandise, but only to the extent that such taxes are added to or included in the price of the foreign like product, and

(C) increased or decreased by the amount of any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise provided under this section) that is established to the satisfaction of the administering authority to be wholly or partly due to

(i) the fact that the quantities in which the subject merchandise is sold or agreed to be sold to the United States are greater than or less than the quantities in which the foreign like product is sold, agreed to be sold, or offered for sale,

(ii) the fact that merchandise described in subparagraph (B) or (C) of section 1677(16) of this title is used in determining normal value, or

(iii) other differences in the circumstances of sale.

(7) Additional adjustments

(A) Level of trade

The price described in paragraph (1)(B) shall also be increased or decreased to make due allowance for any difference (or lack thereof) between the export price or constructed export price and the price described in paragraph (1)(B) (other than a difference for which allowance is otherwise made under this section) that is shown to be wholly or partly due to a difference in level of

trade between the export price or constructed export price and normal value, if the difference in level of trade

(i) involves the performance of different selling activities; and

(ii) is demonstrated to affect price comparability, based on a pattern of consistent price differences between sales at different levels of trade in the country in which normal value is determined.

In a case described in the preceding sentence, the amount of the adjustment shall be based on the price differences between the two levels of trade in the country in which normal value is determined.

(B) Constructed export price offset

When normal value is established at a level of trade which constitutes a more advanced stage of distribution than the level of trade of the constructed export price, but the data available do not provide an appropriate basis to determine under subparagraph (A)(ii) a level of trade adjustment, normal value shall be reduced by the amount of indirect selling expenses incurred in the country in which normal value is determined on sales of the foreign like product but not more than the amount of such expenses for which a deduction is made under section 1677a(d)(1)(D) of this title.

(8) Adjustments to constructed value

Constructed value as determined under subsection (e), may be adjusted, as appropriate, pursuant to this subsection.

(b) Sales at less than cost of production

(1) Determination; sales disregarded

Whenever the administering authority has reasonable grounds to believe or suspect that sales of the foreign like product under consideration for the determination of normal value have been made at prices which represent less than the cost of production of that product, the administering authority shall determine whether, in fact, such sales were made at less than the cost of production. If the administering authority determines that sales made at less than the cost of production

(A) have been made within an extended period of time in substantial quantities, and

(B) were not at prices which permit recovery of all costs within a reasonable period of time,

such sales may be disregarded in the determination of normal value. Whenever such sales are disregarded, normal value shall be based on the remaining sales of the foreign like product in the ordinary course of trade. If no sales made in the ordinary course of trade remain, the normal value shall be based on the constructed value of the merchandise.

(2) Definitions and special rules

For purposes of this subsection-

(A) Reasonable grounds to believe or suspect

(i) Review

In a review conducted under section 1675 of this title involving a specific exporter, there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that are less than the cost of production of the product if the administering authority disregarded some or all of the exporter's sales pursuant to paragraph (1) in the investigation or, if a review has been completed, in the most recently completed review.

(ii) Requests for information

In an investigation initiated under section 1673a of this title or a review conducted under section 1675 of this title, the administering authority shall request information necessary to calculate the constructed value and cost of production under subsections (e) and (f) to determine whether there are reasonable grounds to believe or suspect that sales of the foreign like product have been made at prices that represent less than the cost of production of the product.

(B) Extended period of time

The term "extended period of time" means a period that is normally 1 year, but not less than 6 months.

(C) Substantial quantities

Sales made at prices below the cost of production have been made in substantial quantities if

(i) the volume of such sales represents 20 percent or more of the volume of sales under consideration for the determination of normal value, or

(ii) the weighted average per unit price of the sales under consideration for the determination of normal value is less than the weighted average per unit cost of production for such sales.

(D) Recovery of costs

If prices which are below the per unit cost of production at the time of sale are above the weighted average per unit cost of production for the period of investigation or review, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(3) Calculation of cost of production

For purposes of this part, the cost of production shall be an amount equal to the sum of

(A) the cost of materials and of fabrication or other processing of any kind employed in producing the foreign like product, during a period which would ordinarily permit the production of that foreign like product in the ordinary course of business;

(B) an amount for selling, general, and administrative expenses based on actual data pertaining to production and sales of the foreign like product by the exporter in question; and

(C) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the foreign like product in condition packed ready for shipment. For purposes of subparagraph (A), if the normal value is based on the price of the foreign like product sold for consumption in a country other than the exporting country, the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition which are remitted or refunded upon exportation.

(c) Nonmarket economy countries

(1) In general

If

(A) the subject merchandise is exported from a nonmarket economy country, and

(B) the administering authority finds that available information does not permit the

normal value of the subject merchandise to be determined under subsection (a),

the administering authority shall determine the normal value of the subject merchandise on the basis of the value of the factors of production utilized in producing the merchandise and to which shall be added an amount for general expenses and profit plus the cost of containers, coverings, and other expenses. Except as provided in paragraph (2), the valuation of the factors of production shall be based on the best available information regarding the values of such factors in a market economy country or countries considered to be appropriate by the administering authority.

(2) Exception

If the administering authority finds that the available information is inadequate for purposes of determining the normal value of subject merchandise under paragraph (1), the administering authority shall determine the normal value on the basis of the price at which merchandise that is

(A) comparable to the subject merchandise, and

(B) produced in one or more market economy countries that are at a level of economic development comparable to that of the nonmarket economy country,

is sold in other countries, including the United States.

(3) Factors of production

For purposes of paragraph (1), the factors of production utilized in producing merchandise include, but are not limited to

(A) hours of labor required,

(B) quantities of raw materials employed,

(C) amounts of energy and other utilities consumed, and

(D) representative capital cost, including depreciation.

(4) Valuation of factors of production

The administering authority, in valuing factors of production under paragraph (1), shall utilize, to the extent possible, the prices or costs of factors of production in one or more market economy countries that are

(A) at a level of economic development comparable to that of the nonmarket economy country, and

(B) significant producers of comparable merchandise.

(5) Discretion to disregard certain price or cost values

In valuing the factors of production under paragraph (1) for the subject merchandise, the .administering authority may disregard price or cost values without further investigation if the administering authority has determined that broadly available export subsidies existed or particular instances of

subsidization occurred with respect to those price or cost values or if those price or cost values were subject to an antidumping order.

(d) Special rule for certain multinational corporations

Whenever, in the course of an investigation under this subtitle, the administering authority determines that

(1) subject merchandise exported to the United States is being produced in facilities which are owned or controlled, directly or indirectly, by a person, firm, or corporation which also owns or controls, directly or indirectly, other facilities for the production of the foreign like product which are located in another country or countries,

(2) subsection (a)(1)(C) applies, and

(3) the normal value of the foreign like product produced in one or more of the facilities outside the exporting country is higher than the normal value of the foreign like product produced in the facilities located in the exporting country,

it shall determine the normal value of the subject merchandise by reference to the normal value at which the foreign like product is sold in substantial quantities from one or more facilities outside the exporting country. The administering authority, in making any determination under this paragraph, shall make adjustments for the difference between the cost of production (including taxes, labor,

materials, and overhead) of the foreign like product produced, in facilities outside the exporting country and costs of production of the foreign like product produced in facilities in the exporting country, if such differences are demonstrated to its satisfaction. For purposes of this subsection, in determining the normal value of the foreign like product produced in a country outside of the exporting country, the administering authority shall determine its price at the time of exportation from the exporting country and shall make any adjustments required by subsection (a) for the cost of all containers and coverings and all other costs, charges, and expenses incident to placing the merchandise in condition packed ready for shipment to the United States by reference to such costs in the exporting country.

(e) Constructed value

For purposes of this subtitle, the constructed value of imported merchandise shall be an amount equal to the sum of

(1) the cost of materials and fabrication or other processing of any kind employed in producing the merchandise, during a period which would ordinarily permit the production of the merchandise in the ordinary course of trade;

(2)(A) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and

administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(B) if actual data are not available with respect to the amounts described in subparagraph (A), then

(i) the actual amounts incurred and realized by the specific exporter or producer being examined in the investigation or review for selling, general, and administrative expenses, and for profits, in connection with the production and sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise,

(ii) the weighted average of the actual amounts incurred and realized by exporters or producers that are subject to the investigation or review (other than the exporter or producer described in clause (i)) for selling, general, and administrative expenses, and for profits, in connection with the production and sale of a foreign like product, in the ordinary course of trade, for consumption in the foreign country, or

(iii) the amounts incurred and realized for selling, general, and administrative expenses, and for profits, based on any other reasonable method, except that the

amount allowed for profit may not exceed the amount normally realized by exporters or producers (other than the exporter or producer described in clause (i)) in connection with the sale, for consumption in the foreign country, of merchandise that is in the same general category of products as the subject merchandise; and

(3) the cost of all containers and coverings of whatever nature, and all other expenses incidental to placing the subject merchandise in condition packed ready for shipment to the United States.

For purposes of paragraph (1), if a particular market situation exists such that the cost of materials and fabrication or other processing of any kind does not accurately reflect the cost of production in the ordinary course of trade, the administering authority may use another calculation methodology under this part or any other calculation methodology. For purposes of paragraph (1), the cost of materials shall be determined without regard to any internal tax in the exporting country imposed on such materials or their disposition that is remitted or refunded upon exportation of the subject merchandise produced from such materials.

(f) Special rules for calculation of cost of production and for calculation of constructed value

For purposes of subsections (b) and (e).[2]

(1) Costs

(A) In general

Costs shall normally be calculated based on the records of the exporter or producer of the merchandise, if such records are kept in accordance with the generally accepted accounting principles of the exporting country (or the producing country, where appropriate) and reasonably reflect the costs associated with the production and sale of the merchandise. The administering authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer on a timely basis, if such allocations have been historically used by the exporter or producer, in particular for establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

---

[2] So in original. The period preceding the dash probably should not appear.

(B) Nonrecurring costs

Costs shall be adjusted appropriately for those nonrecurring costs that benefit current or future production, or both.

(C) Startup costs

(i) In general

Costs shall be adjusted appropriately for circumstances in which costs incurred during the time period covered by the investigation or review are affected by startup operations.

(ii) Startup operations

Adjustments shall be made for startup operations only where

(I) a producer is using new production facilities or producing a new product that requires substantial additional investment, and

(II) production levels are limited by technical factors associated with the initial phase of commercial production.

For purposes of subclause (II), the initial phase of commercial production ends at the end of the startup period. In determining whether commercial production levels have been achieved, the administering authority shall consider factors unrelated to startup operations that might affect the volume of production processed, such as

demand, seasonality, or business cycles.

(iii) Adjustment for startup operations

The adjustment for startup operations shall be made by substituting the unit production costs incurred with respect to the merchandise at the end of the startup period for the unit production costs incurred during the startup period. If the startup period extends beyond the period of the investigation or review under this subtitle, the administering authority shall use the most recent cost of production data that it reasonably can obtain, analyze, and verify without delaying the timely completion of the investigation or review. For purposes of this subparagraph, the startup period ends at the point at which the level of commercial production that is characteristic of the merchandise, producer, or industry concerned is achieved.

(2) Transactions disregarded

A transaction directly or indirectly between affiliated persons may be disregarded if, in the case of any element of value required to be considered, the amount representing that element does not fairly reflect the amount usually reflected in sales of merchandise under consideration in the market under consideration. If a transaction is disregarded

under the preceding sentence and no other transactions are available for consideration, the determination of the amount shall be based on the information available as to what the amount would have been if the transaction had occurred between persons who are not affiliated.

(3) Major input rule

If, in the case of a transaction between affiliated persons involving the production by one of such persons of a major input to the merchandise, the administering authority has reasonable grounds to believe or suspect that an amount represented as the value of such input is less than the cost of production of such input, then the administering authority may determine the value of the major input on the basis of the information available regarding such cost of production, if such cost is greater than the amount that would be determined for such input under paragraph (2).

19 U.S.C. § 1677e. Determinations on basis of facts available

(a) In general

If-

(1) necessary information is not available on the record, or

(2) an interested party or any other person-

(A) withholds information that has been requested by the administering authority or the Commission under this subtitle,

(B) fails to provide such information by the deadlines for submission of the information or in the form and manner requested, subject to subsections (c)(1) and (e) of section 1677m of this title,

(C) significantly impedes a proceeding under this subtitle, or

(D) provides such information but the information cannot be verified as provided in section 1677m(i) of this title,

the administering authority and the Commission shall, subject to section 1677m(d) of this title, use the facts otherwise available in reaching the applicable determination under this subtitle.

(b) Adverse inferences

(1) In general

If the administering authority or the Commission (as the case may be) finds that an interested party has failed to cooperate by not

acting to the best of its ability to comply with a request for information from the administering authority or the Commission, the administering authority or the Commission (as the case may be), in reaching the applicable determination under this subtitle-

(A) may use an inference that is adverse to the interests of that party in selecting from among the facts otherwise available; and

(B) is not required to determine, or make any adjustments to, a countervailable subsidy rate or weighted average dumping margin based on any assumptions about information the interested party would have provided if the interested party had complied with the request for information.

(2) Potential sources of information for adverse inferences

An adverse inference under paragraph (1)(A) may include reliance on information derived from-

(A) the petition,

(B) a final determination in the investigation under this subtitle,

(C) any previous review under section 1675 of this title or determination under section 1675b of this title, or

(D) any other information placed on the record.

(c) Corroboration of secondary information

(1) In general

Except as provided in paragraph (2), when the administering authority or the Commission relies on secondary information rather than on information obtained in the course of an investigation or review, the administering authority or the Commission, as the case may be, shall, to the extent practicable, corroborate that information from independent sources that are reasonably at their disposal.

(2) Exception

The administrative authority and the Commission shall not be required to corroborate any dumping margin or countervailing duty applied in a separate segment of the same proceeding.

(d) Subsidy rates and dumping margins in adverse inference determinations

(1) In general

If the administering authority uses an inference that is adverse to the interests of a party under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority may-

(A) in the case of a countervailing duty proceeding-

(i) use a countervailable subsidy rate applied for the same or similar program in

a countervailing duty proceeding involving the same country; or

(ii) if there is no same or similar program, use a countervailable subsidy rate for a subsidy program from a proceeding that the administering authority considers reasonable to use; and

(B) in the case of an antidumping duty proceeding, use any dumping margin from any segment of the proceeding under the applicable antidumping order.

(2) Discretion to apply highest rate

In carrying out paragraph (1), the administering authority may apply any of the countervailable subsidy rates or dumping margins specified under that paragraph, including the highest such rate or margin, based on the evaluation by the administering authority of the situation that resulted in the administering authority using an adverse inference in selecting among the facts otherwise available.

(3) No obligation to make certain estimates or address certain claims

If the administering authority uses an adverse inference under subsection (b)(1)(A) in selecting among the facts otherwise available, the administering authority is not required, for purposes of subsection (c) or for any other purpose-

(A) to estimate what the countervailable subsidy rate or dumping margin would have been if the interested party found to have failed to cooperate under subsection (b)(1) had cooperated; or

(B) to demonstrate that the countervailable subsidy rate or dumping margin used by the administering authority reflects an alleged commercial reality of the interested party.

19 U.S.C. § 1677f-1. Sampling and averaging;, determination of weighted average dumping margin and countervailable subsidy rate

(a) In general

For purposes of determining the export price (or constructed export price) under section 1677a of this title or the normal value under section 1677b of this title, and in carrying out reviews under section 1675 of this title, the administering authority may

(1) use averaging and statistically valid samples, if there is a significant volume of sales of the subject merchandise or a significant number or types of products, and

(2) decline to take into account adjustments which are insignificant in relation to the price or value of the merchandise.

(b) Selection of averages and samples

The authority to select averages and statistically valid samples shall rest exclusively with the administering authority. The administering authority shall, to the greatest extent possible, consult with the exporters and producers regarding the method to be used to select exporters, producers, or types of products under this section.

(c) Determination of dumping margin

(1) General rule

In determining weighted average dumping margins under section 1673b(d), 1673d(c), or 1675(a) of this title, the administering

authority shall determine the individual weighted average dumping margin for each known exporter and producer of the subject merchandise.

(2) Exception

If it is not practicable to make individual weighted average dumping margin determinations under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may determine the weighted average dumping margins for a reasonable number of exporters or producers by limiting its examination to

(A) a sample of exporters, producers, or types of products that is statistically valid based on the information available to the administering authority at the time of selection, or

(B) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country that can be reasonably examined.

(d) Determination of less than fair value

(1) Investigations

(A) In general

In an investigation under part H of this subtitle, the administering authority shall de-termine whether the subject merchandise is being sold in the United States at less than fair value(i) by comparing the weighted

average of the normal values to the weighted average of the export prices (and constructed export prices) for comparable merchandise, or (ii) by comparing the normal values of individual transactions to the export prices (or constructed export prices) of individual transactions for comparable merchandise.

(B) Exception

The administering authority may determine whether the subject merchandise is being sold in the United States at less than fair value by comparing the weighted average of the normal values to the export prices (or constructed export prices) of individual transactions for comparable merchandise, if

(i) there is a pattern of export prices (or constructed export prices) for comparable merchandise that differ significantly among purchasers, regions, or periods of time, and

(ii) the administering authority explains why such differences cannot be taken into account using a method described in paragraph (1)(A)(i) or (ii).

(2) Reviews

In a review under section 1675 of this title, when comparing export prices (or constructed export prices) of individual transactions to the weighted average price of sales of the foreign like product, the administering authority shall limit its averaging of prices to a period not exceeding the calendar month that

corresponds most closely to the calendar month of the individual export sale.

(e) Determination of countervailable subsidy rate

(1) General rule

In determining countervailable subsidy rates under section 1671b(d), 1671d(c), or 1675(a) of this title, the administering authority shall determine an individual countervailable subsidy rate for each known exporter or producer of the subject merchandise.

(2) Exception

If the administering authority determines that it is not practicable to determine individual countervailable subsidy rates under paragraph (1) because of the large number of exporters or producers involved in the investigation or review, the administering authority may

(A) determine individual countervailable subsidy rates for a reasonable number of exporters or producers by limiting its examination to

(i) a sample of exporters or producers that the administering authority determines is statistically valid based on the information available to the administering authority at the time of selection, or

(ii) exporters and producers accounting for the largest volume of the subject merchandise from the exporting country

that the administering authority determines can be reasonably examined; or

(B) determine a single country-wide subsidy rate to be applied to all exporters and producers. The individual countervailable subsidy rates determined under subparagraph (A) shall be used to determine the all-others rate under section 1671d(c)(5) of this title.

(f) Adjustment of antidumping duty in certain proceedings relating to imports from nonmarket economy countries

(1) In general

If the administering authority determines, with respect to a class or kind of merchandise from a nonmarket economy country for which an antidumping duty is determined using normal value pursuant to section 1677b(c) of this title, that

(A) pursuant to section 1671(a)(1) of this title, a countervailable subsidy (other than an export subsidy referred to in section 1677a(c)(1)(C) of this title) has been provided with respect to the class or kind of merchandise,

(B) such countervailable subsidy has been demonstrated to have reduced the average price of imports of the class or kind of merchandise during the relevant period, and

(C) the administering authority can reasonably estimate the extent to which the

countervailable subsidy referred to in subparagraph (B), in combination with the use of normal value determined pursuant to section 1677b(c) of this title, has increased the weighted average dumping margin for the class or kind of merchandise,

the administering authority shall, except as provided in paragraph (2), reduce the antidumping duty by the amount of the increase in the weighted average dumping margin estimated by the administering authority under subparagraph (C).

(2) Maximum reduction in antidumping duty

The administering authority may not reduce the antidumping duty applicable to a class or kind of merchandise from a nonmarket economy country under this subsection by more than the portion of the countervailing duty rate attributable to a countervailable subsidy that is provided with respect to the class or kind of merchandise and that meets the conditions described in subparagraphs (A), (B), and (C) of paragraph (1).

19 U.S.C. § 1677m. Conduct of investigations and administrative reviews

(a) Treatment of voluntary responses in countervailing or antidumping duty investigations and reviews

(1) In general

In any investigation under part I or II of this subtitle or a review under section 1675(a) of this title in which the administering authority has, under section 1677f-1(c)(2) of this title or section 1677f-l(e)(2)(A) of this title (whichever is applicable), limited the number of exporters or producers examined, or determined a single countrywide rate, the administering authority shall establish an individual countervailable subsidy rate or an individual weighted average dumping margin for any exporter or producer not initially selected for individual examination under such sections who submits to the administering authority the information requested from exporters or producers selected for examination, if-

(A) such information is so submitted by the date specified-

(i) for exporters and producers that were initially selected for examination, or

(ii) for the foreign government, in a countervailing duty case where the administering authority has determined a single countrywide rate; and

(B) the number of exporters or producers subject to the investigation or review is not so large that any additional individual examination of such exporters or producers would be unduly burdensome to the administering authority and inhibit the timely completion of the investigation or review.

(2) Determination of unduly burdensome

In determining if an individual examination under paragraph (1)(B) would be unduly burdensome, the administering authority may consider the following:

(A) The complexity of the issues or information presented in the proceeding, including questionnaires and any responses thereto.

(B) Any prior experience of the administering authority in the same or similar proceeding.

(C) The total number of investigations under part I or II and reviews under section 1675 of this title being conducted by the administering authority as of the date of the determination.

(D) Such other factors relating to the timely completion of each such investigation and review as the administering authority considers appropriate.

(b) Certification of submissions

Any person providing factual information to the administering authority or the Commission in connection with a proceeding under this subtitle on behalf of the petitioner or any other interested party shall certify that such information is accurate and complete to the best of that person's knowledge.

(c) Difficulties in meeting requirements

(1) Notification by interested party

If an interested party, promptly after receiving a request from the administering authority or the Commission for information, notifies the administering authority or the Commission (as the case may be) that such party is unable to submit the information requested in the requested form and manner, together with a full explanation and suggested alternative forms in which such party is able to submit the information, the administering authority or the Commission (as the case may be) shall consider the ability of the interested party to submit the information in the requested form and manner and may modify such requirements to the extent necessary to avoid imposing an unreasonable burden on that party.

(2) Assistance to interested parties

The administering authority and the Commission shall take into account any difficulties experienced by interested parties, particularly small companies, in supplying

information requested by the administering authority or the Commission in connection with investigations and reviews under this subtitle, and shall provide to such interested parties any assistance that is practicable in supplying such information.

(d) Deficient submissions

If the administering authority or the Commission determines that a response to a request for information under this subtitle does not comply with the request, the administering authority or the Commission (as the case may be) shall promptly inform the person submitting the response of the nature of the deficiency and shall, to the extent practicable, provide that person with an opportunity to remedy or explain the deficiency in light of the time limits established for the completion of investigations or reviews under this subtitle. If that person submits further information in response to such deficiency and either

(1) the administering authority or the Commission (as the case may be) finds that such response is not satisfactory, or

(2) such response is not submitted within the applicable time limits,

then the administering authority or the Commission (as the case may be) may, subject to subsection (e), disregard all or part of the original and subsequent responses.

(e) Use of certain information

In reaching a determination under section 1671b, 1671d, 1673b, 1673d, 1675, or 1675b of this title the administering authority and the Commission shall not decline to consider information that is submitted by an interested party and is necessary to the determination but does not meet all the applicable requirements established by the administering authority or the Commission, if

(1) the information is submitted by the deadline established for its submission,

(2) the information can be verified,

(3) the information is not so incomplete that it cannot serve as a reliable basis for reaching the applicable determination,

(4) the interested party has demonstrated that it acted to the best of its ability in providing the information and meeting the requirements established by the administering authority or the Commission with respect to the information, and (5) the information can be used without undue difficulties.

(f) Nonacceptance of submissions

If the administering authority or the Commission declines to accept into the record any information submitted in an investigation or review under this subtitle, it shall, to the extent practicable, provide to the person submitting the information a written explanation of the reasons for not accepting the information.

(g) Public comment on information

Information that is submitted on a timely basis to the administering authority or the Commission during the course of a proceeding under this subtitle shall be subject to comment by other parties to the proceeding within such reasonable time as the administering authority or the Commission shall provide. The administering authority and the Commission, before making a final determination under section 1671d, 1673d, 1675, or 1675b of this title shall cease collecting information and shall provide the parties with a final opportunity to comment on the information obtained by the administering authority or the Commission (as the case may be) upon which the parties have not previously had an opportunity to comment. Comments containing new factual information shall be disregarded.

(h) Termination of investigation or revocation of order for lack of interest

The administering authority may

(1) terminate an investigation under part I or II of this subtitle with respect to a domestic like product if, prior to publication of an order under section 1671e or 1673e of this title, the administering authority determines that producers accounting for substantially all of the production of that domestic like product have expressed a lack of interest in issuance of an order; and

(2) revoke an order issued under section 1671e or 1673e of this title with respect to a domestic

like product, or terminate an investigation suspended under section 1671c or 1673c of this title with respect to a domestic like product, if the administering authority determines that producers accounting for substantially all of the production of that domestic like product, have expressed a lack of interest in the order or suspended investigation.

(i) Verification

The administering authority shall verify all information relied upon in making

(1) a final determination in an investigation,

(2) a revocation under section 1675(d) of this title, and

(3) a final determination in a review under section 1675(a) of this title, if

(A) verification is timely requested by an interested party as defined in section 1677(9)(C), (D), (E), (F), or (G) of this title, and

(B) no verification was made under this subparagraph during the 2 immediately preceding reviews and determinations under section 1675(a) of this title of the same order, finding, or notice, except that this clause shall not apply if good cause for verification is shown.

28 U.S.C. § 1254. Courts of appeals; certiorari; certified questions

Cases in the courts of appeals may be reviewed by the Supreme Court by the following methods:

(1) By writ of certiorari granted upon the petition of any party to any civil or criminal case, before or after rendition of judgment or decree;

(2) By certification at any time by a court of appeals of any question of law in any civil or criminal case as to which instructions are desired, and upon such certification the Supreme Court may give binding instructions or require the entire record to be sent up for decision of the entire matter in controversy.

28 U.S.C. § 1295. Jurisdiction of the United States Court of Appeals for the Federal Circuit

(a) The United States Court of Appeals for the Federal Circuit shall have exclusive jurisdiction-

(1) of an appeal from a final decision of a district court of the United States, the District Court of Guam, the District Court of the Virgin Islands, or the District Court of the Northern Mariana Islands, in any civil action arising under, or in any civil action in which a party has asserted a compulsory counterclaim arising under, any Act of Congress relating to patents or plant variety protection;

(2) of an appeal from a final decision of a district court of the United States, the United States District Court for the District of the Canal Zone, the District Court of Guam, the District Court of the Virgin Islands, or the District Court for the Northern Mariana Islands, if the jurisdiction of that court was based, in whole or in part, on section 1346 of this title, except that jurisdiction of an appeal in a case brought in a district court under section 1346(a)(1), 1346(b), 1346(e), or 1346(f) of this title or under section 1346(a)(2) when the claim is founded upon an Act of Congress or a regulation of an executive department providing for internal revenue shall be governed by sections 1291, 1292, and 1294 of this title;

(3) of an appeal from a final decision of the United States Court of Federal Claims;

(4) of an appeal from a decision of-

(A) the Patent Trial and Appeal Board of the United States Patent and Trademark Office with respect to a patent application, derivation proceeding, reexamination, post-grant review, or inter partes review under title 35, at the instance of a party who exercised that party's right to participate in the applicable proceeding before or appeal to the Board, except that an applicant or a party to a derivation proceeding may also have remedy by civil action pursuant to section 145 or 146 of title 35; an appeal under this subparagraph of a decision of the Board with respect to an application or derivation proceeding shall waive the right of such applicant or party to proceed under section 145 or 146 of title 35;

(B) the Under Secretary of Commerce for Intellectual Property and Director of the United States Patent and Trademark Office or the Trademark Trial and Appeal Board with respect to applications for registration of marks and other proceedings as provided in section 21 of the Trademark Act of 1946 (15 U.S.C. 1071); or

(C) a district court to which a case was directed pursuant to section 145, 146, or 154(b) of title 35;

(5) of an appeal from a final decision of the United States Court of International Trade;

(6) to review the final determinations of the United States International Trade Commission relating to unfair practices in import trade,

made under section 337 of the Tariff Act of 1930 (19 U.S.C. 1337);

(7) to review, by appeal on questions of law only, findings of the Secretary of Commerce under U.S. note 6 to subchapter X of chapter 98 of the Harmonized Tariff Schedule of the United States (relating to importation of instruments or apparatus);

(8) of an appeal under section 71 of the Plant Variety Protection Act (7 U.S.C. 2461);

(9) of an appeal from a final order or final decision of the Merit Systems Protection Board, pursuant to sections 7703(b)(1) and 7703(d) of title 5;

(10) of an appeal from a final decision of an agency board of contract appeals pursuant to section 7107(a)(1) of title 41;

(11) of an appeal under section 211 of the Economic Stabilization Act of 1970;

(12) of an appeal under section 5 of the Emergency Petroleum Allocation Act of 1973;

(13) of an appeal under section 506(c) of the Natural Gas Policy Act of 1978; and

(14) of an appeal under section 523 of the Energy Policy and Conservation Act.

(b) The head of any executive department or agency may, with the approval of the Attorney General, refer to the Court of Appeals for the Federal Circuit for judicial review any final decision rendered by a board of contract appeals pursuant to the terms of any contract with the

United States awarded by that department or agency which the head of such department or agency has concluded is not entitled to finality pursuant to the review standards specified in section 7107(b) of title 41. The head of each executive department or agency shall make any referral under this section within one hundred and twenty days after the receipt of a copy of the final appeal decision.

(c) The Court of Appeals for the Federal Circuit shall review the matter referred in accordance with the standards specified in section 7107(b) of title 41. The court shall proceed with judicial review on the administrative record made before the board of contract appeals on matters so referred as in other cases pending in such court, shall determine the issue of finality of the appeal decision, and shall, if appropriate, render judgment thereon, or remand the matter to any administrative or executive body or official with such direction as it may deem proper and just.

28 U.S.C. § 1581. Civil actions against the United States and agencies and officers thereof

(a) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to contest the denial of a protest, in whole or in part, under section 515 of the Tariff Act of 1930.

(b) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516 of the Tariff Act of 1930.

(c) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced under section 516A or 517 of the Tariff Act of 1930.

(d) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review-

(1) any final determination of the Secretary of Labor under section 223 of the Trade Act of 1974 with respect to the eligibility of workers for adjustment assistance under such Act;

(2) any final determination of the Secretary of Commerce under section 251 of the Trade Act of 1974 with respect to the eligibility of a firm for adjustment assistance under such Act;

(3) any final determination of the Secretary of Commerce under section 2731 of the Trade Act of 1974 with respect to the eligibility of a community for adjustment assistance under such Act; and

(4) any final determination of the Secretary of Agriculture under section 293 or 296 of the Trade Act of 1974 (19 U.S.C. 2401b) with respect to the eligibility of a group of agricultural commodity producers for adjustment assistance under such Act.

(e) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review any final determination of the Secretary of the Treasury under section 305(b)(1) of the Trade Agreements Act of 1979.

(f) The Court of International Trade shall have exclusive jurisdiction of any civil action involving an application for an order directing the administering authority or the International Trade Commission to make confidential information available under section 777(c)(2) of the Tariff Act of 1930.

(g) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review-

(1) any decision of the Secretary of the Treasury to deny a customs broker's license under section 641(b)(2) or (3) of the Tariff Act of 1930, or to deny a customs broker's permit under section 641(c)(1) of such Act, or to revoke a license or permit under section 641(b)(5) or (c)(2) of such Act;

(2) any decision of the Secretary of the Treasury to revoke or suspend a customs broker's license or permit, or impose a monetary

penalty in lieu thereof, under section 641(d)(2)(B) of the Tariff Act of 1930; and

(3) any decision or order of the Customs Service to deny, suspend, or revoke accreditation of a private laboratory under section 499(b) of the Tariff Act of 1930.

(h) The Court of International Trade shall have exclusive jurisdiction of any civil action commenced to review, prior to the importation of the goods involved, a ruling issued by the Secretary of the Treasury, or a refusal to issue or change such a ruling, relating to classification, valuation, rate of duty, marking, restricted merchandise, entry requirements, drawbacks, vessel repairs, or similar matters, but only if the party commencing the civil action demonstrates to the court that he would be irreparably harmed unless given an opportunity to obtain judicial review prior to such importation.

(i) In addition to the jurisdiction conferred upon the Court of International Trade by subsections (a)-(h) of this section and subject to the exception set forth in subsection (j) of this section, the See References in Text note below. Court of International Trade shall have exclusive jurisdiction of any civil action commenced against the United States, its agencies, or its officers, that arises out of any law of the United States providing for-

(1) revenue from imports or tonnage;

(2) tariffs, duties, fees, or other taxes on. the importation of merchandise for reasons other than the raising of revenue;

(3) embargoes or other quantitative restrictions on the importation of merchandise for reasons other than the protection of the public health or safety; or

(4) administration and enforcement with respect to the matters referred to in paragraphs (1)-(3) of this subsection and subsections (a)-(h) of this section.

This subsection shall not confer jurisdiction over an antidumping or countervailing duty determination which is reviewable either by the Court of International Trade under section 516A(a) of the Tariff Act of 1930 or by a binational panel under article 1904 of the North American Free Trade Agreement or the United States-Canada Free-Trade Agreement and section 516A(g) of the Tariff Act of 1930.

(j) The Court of International Trade shall not have jurisdiction of any civil action arising under section 305 of the Tariff Act of 1930.

19 C.F.R. § 351.221 Review procedures.

(a) *Introduction.* The procedures for reviews are similar to those followed in investigations. This section details the procedures applicable to reviews in general, as well as procedures that are unique to certain types of reviews.

(b) In general. After receipt of a timely request for a review, or on the Secretary's own initiative when appropriate, the Secretary will:

(1) Promptly publish in the FEDERAL REGISTER notice of initiation of the review;

(2) Before or after publication of notice of initiation of the review, send to appropriate interested parties or other persons (or, if appropriate, a sample of interested parties or other persons) questionnaires requesting factual information for the review;

(3) Conduct, if appropriate, a verification under §351.307;

(4) Issue preliminary results of review, based on the available information, and publish in the FEDERAL REGISTER notice of the preliminary results of review that include:

(i) The rates determined, if the review involved the determination of rates; and

(ii) An invitation for argument consistent with §351.309;

(5) Issue final results of review and publish in the FEDERAL REGISTER notice of the final results of review that include the rates

determined, if the review involved the determination of rates;

(6) If the type of review in question involves a determination as to the amount of duties to be assessed, promptly after publication of the notice of final results instruct the Customs Service to assess antidumping duties or countervailing duties (whichever is applicable) on the subject merchandise covered by the review, except as otherwise provided in §351.106(c) with respect to *de minimis* duties; and

(7) If the review involves a revision to the cash deposit rates for estimated antidumping duties or countervailing duties, instruct the Customs Service to collect cash deposits at the revised rates on future entries.

(c) *Special rules* (1) *Administrative reviews and new shipper reviews*. In an administrative review under section 751(a)(1) of the Act and §351.213 and a new shipper review under section 751(a)(2)(B) of the Act and §351.214 the Secretary:

(i) Will publish the notice of initiation of the review no later than the last day of the month following the anniversary month or the semiannual anniversary month (as the case may be); and

(ii) Normally will send questionnaires no later than 30 days after the date of publication of the notice of initiation.

(2) *Expedited antidumping review*. In an expedited antidumping review under section 736(c) of the Act and §351.215, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with §351.309, and a statement that the Secretary is permitting the posting of a bond or other security instead of a cash deposit of estimated antidumping duties;

(ii) Will instruct the Customs Service to accept, instead of the cash deposit of estimated antidumping duties under section 736(a)(3) of the Act, a bond for each entry of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the notice of initiation of the investigation and through the date not later than 90 days after the date of publication of the order; and

(iii) Will not issue preliminary results of review.

(3) *Changed circumstances review*. In a changed circumstances review under section 751(b) of the Act and §351.216, the Secretary:

(i) Will include in the preliminary results of review and the final results of review a description of any action the Secretary proposed based on the preliminary or final results;

(ii) May combine the notice of initiation of the review and the preliminary results of review in a single notice if the Secretary concludes that expedited action is warranted; and

(iii) May refrain from issuing questionnaires under paragraph (b)(2) of this section.

(4) *Article 8 Violation review and Article 4/Article 7 review*. In an Article 8 Violation review or an Article 4/Article 7 review under section 751(g) of the Act and §351.217, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with §351.309 and will notify all parties to the proceeding at the time the Secretary initiates the review;

(ii) Will not issue preliminary results of review; and

(iii) In the final results of review will indicate the amount, if any, by which the estimated duty to be deposited should be adjusted, and, in an Article 4/ Article 7 review, any action, including revocation, that the Secretary will take based on the final results. 19 CFR Ch. III (4-1-20 Edition)

(5) *Sunset review*. In a sunset review under section 751(c) of the Act and § 351.218:

(i) The notice of initiation of a sunset review will contain a request for the information described in §351.218(d); and

(ii) The Secretary, without issuing preliminary results of review, may issue final results of review under paragraphs (3) or (4) of subsection 751(c) of the Act if the conditions of those paragraphs are satisfied.

(6) *Section 753 review*. In a section 753 review under section 753 of the Act and §351.219, the Secretary:

(i) Will include in the notice of initiation of the review an invitation for argument consistent with §351.309, and will notify all parties to the proceeding at the time the Secretary initiates the review; and

(ii) May decline to issue preliminary results of review.

(7) *Countervailing duty review at the direction of the President*. In a countervailing duty review at the direction of the President under section 762 of the Act and § 351.220, the Secretary will:

(i) Include in the notice of initiation of the review a description of the merchandise, the period under review, and a summary of the available information which, if accurate, would support the imposition of countervailing duties;

(ii) Notify the Commission of the initiation of the review and the preliminary results of review;

(iii) Include in the preliminary results of review the countervailable subsidy, if any, during the period of review and a description of official changes in the subsidy programs made by the government of the affected country that affect the estimated countervailable subsidy; and

(iv) Include in the final results of review the countervailable subsidy, if any, during the period of review and a description of official changes in

the subsidy programs, made by the government of the affected country not later than the date of publication of the notice of preliminary results, that affect the estimated countervailable subsidy.

19 C.F.R. §351.301 Time limits for submission of factual information.

(a) *Introduction.* This section sets forth the time limits for submitting factual information, as defined by §351.102(b)(21). The Department obtains most of its factual information in antidumping and countervailing duty proceedings from submissions made by interested parties during the course of the proceeding. Notwithstanding paragraph (b) of this section, the Secretary may request any person to submit factual information at any time during a proceeding or provide additional opportunities to submit factual information. Section 351.302 sets forth the procedures for requesting an extension of such time limits, and provides that, unless expressly precluded by statute, the Secretary may, for good cause, extend any time limit established in the Department's regulations. Section 351.303 contains the procedural rules regarding filing (including procedures for filing on non-business days), format, translation, service, and certification of documents. In the Secretary's written request to an interested party for a response to a questionnaire or for other factual information, the Secretary will specify the following: The time limit for the response; the information to be provided; the form and manner in which the interested party must submit the information; and that failure to submit the requested information in the requested form and manner by the date specified may result in use of the facts available under section 776 of the Act and § 351.308.

(b) *Submission of factual information.* Every submission of factual information must be accompanied by a written explanation identifying the subsection of §351.102(b)(21) under which the information is being submitted.

(1) If an interested party states that the information is submitted under §351.102(b)(21)(v), the party must explain why the information does not satisfy the definitions described in § 351.102(b)(21)(i) (iv).

(2) If the factual information is being submitted to rebut, clarify, or correct factual information on the record, the submitter must provide a written explanation identifying the information which is already on the record that the factual information seeks to rebut, clarify, or correct, including the name of the interested party that submitted the information and the date on which the information was submitted.

(c) *Time limits.* The type of factual information determines the time limit for submission to the Department.

(1) *Factual information submitted in response to questionnaires.* During a proceeding, the Secretary may issue to any person questionnaires, which includes both initial and supplemental questionnaires. The Secretary will not consider or retain in the official record of the proceeding unsolicited questionnaire responses, except as provided under §351.204(d)(2), or untimely filed questionnaire responses. The Secretary will reject any untimely filed or unsolicited questionnaire response and provide, to the extent practicable,

written notice stating the reasons for rejection (see § 351.302(d)).

(i) Initial questionnaire responses are due 30 days from the date of receipt of such questionnaire. The time limit for response to individual sections of the questionnaire, if the Secretary requests a separate response to such sections, may be less than the 30 days allotted for response to the full questionnaire. In general, the date of receipt will be considered to be seven days from the date on which the initial questionnaire was transmitted.

(ii) Supplemental questionnaire responses are due on the date specified by the Secretary.

(iii) A notification by an interested party, under section 782(c)(1) of the Act, of difficulties in submitting information in response to a questionnaire issued by the Secretary is to be submitted in writing within 14 days after the date of the questionnaire or, if the questionnaire is due in 14 days or less, within the time specified by the Secretary.

(iv) A respondent interested party may request in writing that the Secretary conduct a questionnaire presentation. The Secretary may conduct a questionnaire presentation if the Secretary notifies the government of the affected country and that government does not object.

(v) *Factual information submitted to rebut, clarify, or correct questionnaire responses.* Within 14 days after an initial questionnaire response and within 10 days after a supplemental

questionnaire response has been filed with the Department, an interested party other than the original submitter is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information contained in the questionnaire response. Within seven days of the filing of such rebuttal, clarification, or correction to a questionnaire response, the original submitter of the questionnaire response is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in the interested party's rebuttal, clarification or correction. The Secretary will reject any untimely filed rebuttal, clarification, or correction submission and provide, to the extent practicable, written notice stating the reasons for rejection (see §351.302). If insufficient time remains before the due date for the final determination or final results of review, the Secretary may specify shorter deadlines under this section.

(2) *Factual information submitted in support of allegations.* Factual information submitted in support of allegations must be accompanied by a summary, not to exceed five pages, of the allegation and supporting data.

(i) *Market viability and the basis for determining normal value.* Allegations regarding market viability in an antidumping investigation or administrative review, including the exceptions in §351.404(c)(2), are due, with all supporting factual information, 10 days after the respondent interested party files the response to the relevant

section of the questionnaire, unless the Secretary alters this time limit.

(ii) *Sales at prices below the cost of production.* Allegations of sales at prices below the cost of production made by the petitioner or other domestic interested party are due within:

(A) In an antidumping investigation, on a country-wide basis, 20 days after the date on which the initial questionnaire was issued to any person, unless the Secretary alters this time limit; or, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit;

(B) In an administrative review, new shipper review, or changed circumstances review, on a company-specific basis, 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limit; or

(C) In an expedited antidumping review, on a company-specific basis, 10 days after the date of publication of the notice of initiation of the review.

(iii) *Purchases of major inputs from an affiliated party at prices below the affiliated party's cost of production.* An allegation of purchases of major inputs from an affiliated party at prices below the affiliated party's cost of

production made by the petitioner or other domestic interested party is due within 20 days after a respondent interested party files the response to the relevant section of the questionnaire, unless the relevant questionnaire response is, in the Secretary's view, incomplete, in which case the Secretary will determine the time limits.

(iv) *Countervailable subsidy; upstream subsidy.* A countervailable subsidy allegation made by the petitioner or other domestic interested party is due no later than:

(A) In a countervailing duty investigation, 40 days before the scheduled date of the preliminary determination, unless the Secretary extends this time limit for good cause; or

(B) In an administrative review, new shipper review, or changed circumstances review, 20 days after all responses to the initial questionnaire are filed with the Department, unless the Secretary alters this time limit.

(C) Exception for upstream subsidy allegation in an investigation. In a countervailing duty investigation, an allegation of upstream subsidies made by the petitioner or other domestic interested party is due no later than 60 days after the date of the preliminary determination.

(v) *Other allegations.* An interested party may submit factual information in support of other allegations not specified in paragraphs (c)(2)(i) (iv) of this section. Upon receipt of factual information under this subsection, the Secretary will issue a

memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection. If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

(vi) *Rebuttal, clarification, or correction of factual information submitted in support of allegations.* An interested party is permitted one opportunity to submit factual information to rebut, clarify, or correct factual information submitted in support of allegations 10 days after the date such factual information is served on an interested party.

(3) *Factual information submitted to value factors under §351.408(c) or to measure the adequacy of remuneration under 351.511(a) (2).*

(i) *Antidumping or countervailing duty investigations.* All submissions of factual information to value factors of production under §351.408(c) in an antidumping investigation, or to measure the adequacy of remuneration under §351.511(a)(2) in a countervailing duty investigation, are due no later than 30 days before the scheduled date of the preliminary determination;

(ii) *Administrative review, new shipper review, or changed circumstances review.* All submissions of factual information to value factors under §351.408(c), or to measure the adequacy of remuneration under §351.511(a)(2), are due no

later than 30 days before the scheduled date of the preliminary results of review; and

(iii) *Expedited antidumping review.* All submissions of factual information to value factors under §351.408(c) are due on a date specified by the Secretary.

(iv) *Rebuttal, clarification, or correction of factual information submitted to value factors under §351.408(c) or to measure the adequacy of remuneration under §351.511(a)(2).* An interested party is permitted one opportunity to submit publicly available information to rebut, clarify, or correct such factual information submitted pursuant to §351.408(c) or §351.511(a)(2) 10 days after the date such factual information is served on the interested party. An interested party may not submit additional, previously absent-from-the record alternative surrogate value information under this subsection. Additionally, all factual information submitted under this subsection must be accompanied by a written explanation identifying what information already on the record of the ongoing proceeding the factual information is rebutting, clarifying, or correcting. Information submitted to rebut, clarify, or correct factual information submitted pursuant to §351.408(c) will not be used to value factors under §351.408(c).

(4) *Factual information placed on the record of the proceeding by the Department.* The Department may place factual information on the record of the proceeding at any time. An interested party is permitted one opportunity to

submit factual information to rebut, clarify, or correct factual information placed on the record of the proceeding by the Department by a date specified by the Secretary.

(5) *Factual information not directly responsive to or relating to paragraphs (c)(1) (4) of this section).* Paragraph (c)(5) applies to factual information other than that described in § 351.102(b)(21)(i) (iv). The Secretary will reject information filed under paragraph (c)(5) that satisfies the definition of information described in §351.102(b)(21)(i) (iv) and that was not filed within the deadlines specified above. All submissions of factual information under this subsection are required to clearly explain why the information contained therein does not meet the definition of factual information described in §351.102(b)(21)(i)-(iv), and must provide a detailed narrative of exactly what information is contained in the submission and why it should be considered. The deadline for filing such information will be 30 days before the scheduled date of the preliminary determination in an investigation, or 14 days before verification, whichever is earlier, and 30 days before the scheduled date of the preliminary results in an administrative review, or 14 days before verification, whichever is earlier.

(i) Upon receipt of factual information under this subsection, the Secretary will issue a memorandum accepting or rejecting the information and, to the extent practicable, will provide written notice stating the reasons for rejection.

(ii) If the Secretary accepts the information, the Secretary will issue a schedule providing deadlines for submission of factual information to rebut, clarify or correct the factual information.

APPENDIX E

Response of Hyundai Heavy Industries, Co., Ltd. to Questions 13 and 17 of the Third Supplemental Sections A, B, C, and D Questionnaire (Nov. 10, 2016) (relevant excerpt)

13. Please provide complete sales and expenses documentation (including all sales and expenses related documentation generated in the sales process) for all U.S. SEQUs. For example, please provide (1) a complete set of sales and contract documents (including requests for quote, evidence of negotiations, contracts, amendments to contracts (where applicable), purchase orders, amendments to purchase orders, invoices, etc. (2), proposals, design blueprints, or documents showing the process by which Hyundai and the customer arrived at a final price, (3) correspondence between HHI and Hyundai USA, (4) Korean export documents or U.S. Customs Entry documents, (5) documents relating to transportation costs or bills of lading, (6) installation services documentation, (7) documents relating to any commissions or other fees that may be paid for this sale, (8) any documents related to the purchase of [ ], etc., (9) any test documents or documents relating to testing or testing expenses of the LPT, or (10) any clear documentation demonstrating that payment was received for this sample sale (including each recording in your accounting system regarding the sale and payment of the subject merchandise for

> **both HHI and Hyundai USA (for U.S. sales)). Finally, please also be sure to provide a description of each of the documents generated in the sales process for each sale.**

[. . .]

Terms of Sale

Here, as the Department found in Second Review, "{n}one of these expenses are inconsistent with the reported terms of sale (i.e., the freight expenses are consistent with the terms of delivery)." 2013-2014 I&D Memo at 40 (Comment 10). Once again, Petitioner cherry-picks out-of-context figures in Hyundai's sales documentation and ignores the contractual terms of sale. There is nothing usual about Hyundai's terms of sale. Indeed, ABB's own Transformer Handbook explains the normal terms of sale for a transformer:

> For power transformers, the installation and commissioning are normally performed by ABB. … In some cases the installation and commissioning is . . . performed by the customer and supervised by ABB.
>
> Installation and commissioning should be preferably performed by the supplier or in close cooperation with the supplier. . . .
>
> *Allocation of responsibilities between supplier and purchaser*
>
> ***Terms of delivery are included in the contract between the supplier and the purchaser.*** … When ABB supplies new

> power- and large distribution transformers, the preferred terms of delivery normally are DDP or DDU. In this case the supplier (ABB) is responsible for the transformer until the arrival at the agreed destination. ….
>
> If it is specified that all handling, lifting, installation, oil filing and oil processing shall be carried out by the supplier or under supervision of a representative from the supplier or under supervision from the supplier the warranty is only valid when this requirement is fulfilled.

ABB Handbook at 110-111 (Attachment 3S-39).

When the contractual term requires installation or supervision, Petitioner itself has recognized that the installation cannot be separated from the transformer itself:

> ***No customer delivery is completed until the transformer has been successfully energized.*** ABB installation engineers are therefore ***always on site to supervise installation and startup***. On arrival, they will prepare the transformer by carefully reassembling all parts dismantled for transit, refill it with oil and conduct all necessary on-site tests to ensure long and trouble-free service.

ABB Brochure at 7 (Attachment 3S-40).

Petitioner previously requested that the Department find transportation delivery, installation, and provisions relating to risk of loss

(e.g., transfer of title) are "material terms of sale" in the LPTs industry:

> ***In the LPTs industry***, the Department should find that ***the material terms of sale include***, *inter alia*: price, specifications, loss evaluations (without the load-loss and no-load loss evaluations, a producer's price is of limited value to a customer), price adjustment mechanisms, ***transportation and general delivery schedules, installation terms,*** warranty terms, ***risk of loss,*** and payment schedules.

Petitioner's January 23, 2012 Comments Concerning Respondents' Reporting of Incorrect Dates of Sale for Large, Custom-Made Equipment at 7-8 (internal citation omitted) (Attachment 3S-41). Petitioner's complaints in the current administrative review are inconsistent with its own explanation of the normal terms of sale for transformers.

Assembled Transformers

Petitioner also ignores those instances where it is the customer's intent to purchase an assembled transformer. Assembled transformers are clearly within the scope of the antidumping duty order: "The scope of this investigation covers large liquid dielectric power transformers (LPTs) …, whether ***assembled*** or unassembled, ***complete*** or incomplete." The Department has recognized that the gross unit price properly includes those elements that are "needed to assemble an incomplete LPT." 2013-2014 I&D Memo at 39, fn. 178 ("In the current review, as in previous

segments of the proceeding, the Department instructed respondents to report gross unit price to only reflect the price of the LPT and not any spare parts, unless such parts were needed to assemble an incomplete LPT."). *See also* "Memorandum to the File, Antidumping Duty Investigation of Large Power Transformers from the Republic of Korea: Phone Conversation with Frank Morgan, counsel to Hyundai Heavy Industries Co., Ltd. (Hyundai)" dated January 11, 2012.

POR 3 U.S. Sales Agreements

Hyundai next addresses the contractual terms of its U.S. Sales by customer.

[ ] SEQU [ ]

On [ ], [ ] issued a purchase order to Hyundai with the following terms of sale: [ ]. *See* Hyundai Proposal at 1-2. Hyundai's reported gross unit price reflects the contractual terms of sale. Under a delivered term of sale (*e.g.*, DDP), the seller remains responsible for the good until delivery is made and retains the risk of loss.

[ ] SEQU [ ]

On [ ], [ ] issued a purchase order to Hyundai, stating [ ] Thus, the purchase order was issued on a lump-sum basis for [ ] The terms of sale were: [ ]. Although the purchase order contained additional details for the line item values for [ ], such values are not severable from the lump-sum price. First, the terms of sale unambiguously require Hyundai to [ ]. Indeed, the customer's acceptance of the transformer was predicated on

its delivery to the customer. *See* [ ]. Second, Hyundai's proposal made clear that its offer was on a total, lump-sum basis, stating that the line items were part of the total [ ] and, thus, not severable from the lump-sum price. Hyundai's proposal also contrasted the elements of the [ ] (*e.g.*, [ ]) from the optional, [ ] items (*e.g.*, [ ]). Third, the request for quotation from the customer required that the price include [ ].

Hyundai based its proposal on the required terms of sale.

[ ] ([ ]) SEQUs [ ]

[ ] issued [ ] purchase orders, each specifying that the purchases were on a [ ] inclusive of oil and supervision. Hyundai based its proposal on the required terms of sale.

The terms and conditions for these sales, specified in the purchase order and [ ] make clear that Hyundai is responsible for delivery, retaining title and risk of loss on its own account until it fulfills the delivery terms:

[ ]

[ ].

[ ]

[ ] Moreover, the [ ] integrates [ ] into the proposal for the transformer:

[ ]

[ ] Thus, under the contractual terms, [ ] cannot be treated as "separate" from the transformer.

In one instance (*i.e.*, SEQU [ ]), the customer issued a change order. Because the change order modified the original purchase order, Hyundai included the amount in the change order as part of the gross unit price. The change at issue was related to Hyundai's obligations under the terms of sale (*i.e.*, to [ ] Hyundai already has provided an explanation of the treatment of the change order:

> Unlike SEQU [ ], Hyundai did not receive a separate, additional purchase order for this sale. Rather, Hyundai received only a change order, amending the original order.
>
> Under the purchase order, Hyundai was required to [ ]. However, the customer's site [ ] The change order issued by the customer addressed [ ] Thus, the change order did not relate to separate services provided by Hyundai; rather the [ ].
>
> ***Hyundai notes that the amount of the change order (i.e., USD [ ]) is equal to the amount charged by the [ ] (i.e., USD [ ]).*** Thus, the change order has no impact on the calculation of the net U.S. price. Hyundai included this expense as part of the brokerage and handling incurred in the US (USBROKU) expense as shown in the table below:
>
> > SEQU [ ] Brokerage and handling incurred in the US (USBROKU)

Item	Amount
Customs broker fee	[ ]
Wharfage	[ ]
[ ]	[ ]
Reported in USBROKU field	[ ]

Hyundai's August 10, 2016 Response to the Second Supplemental Sections A, B, C and D Questionnaire ("2SQR") at 17-18 (emphasis added). Because the [ ] was within Hyundai's term of sale (*i.e.*, [ ]), there is no "separate" service provided by Hyundai; until Hyundai fulfills its obligations under the terms of sale, Hyundai is not performing a separate service on behalf of the customer. Rather, unless it performs all of the obligations under the term of sale, Hyundai cannot complete its sale of the transformer. Thus, Hyundai properly included this amount in the reported gross unit price.

As already demonstrated by Hyundai, the change order has no impact on the calculation of Hyundai's dumping margin, contrary to Petitioner's claims. Once again, Petitioner ignores Hyundai's questionnaire response and misrepresents the record, claiming that Hyundai reported [ ] for the change order despite the fact that Hyundai has reported the expense and provided a full explanation. *Compare* Petitioner's Comments at 8, fn. 17 *with* 2SQR at 17-18. Petitioner exacerbates its misrepresentation by further claiming that "a similar analysis of the other sales for which Hyundai provided

documentation, shows a similar overstatement of revenues in excess of expenses." Petitioner's Comments at 8. Even if Petitioner's claim of an error in Hyundai's sales reporting methodology were correct, there would be no overstatement of the gross unit price: the amount of the change order (*i.e.*, USD [ ]) is equal to the amount charged by the [ ] (*i.e.*, USD [ ]) and included in the reported selling expenses. As demonstrated above, Hyundai provided the explanation of the [ ] and the corresponding expense information, and Petitioner has had access to such information since August 2016. Despite the availability of this information, Petitioner alleges that Hyundai did not report any expenses. Petitioner's Comments at 8. Other than to waste the time and resources of the Department and Hyundai, Petitioner's claim of an overstatement of revenues for SEQU [ ] is pointless.

([ ]) SEQUs [ ]

[ ] issued [ ] purchase orders, each for a [ ]. The customer also required that the transformers each have a [ ], components which are supplied by unaffiliated [ ] manufacturers. Hyundai based its proposal on the required terms of sale.

Petitioner claims that Hyundai improperly included non-subject merchandise in the gross unit price for these sales. Petitioner's Comments at 5-6 and 8-9. Petitioner misunderstands the evidence and has misrepresented the requirements for reporting the gross unit price. First, Petitioner's claim that Hyundai improperly included separate "non-subject merchandise" in

the gross unit price is inconsistent with the scope of the antidumping duty order. Petitioner argues that the [ ] and the [ ] are non-subject merchandise. Petitioner's Comments at 9. However, the sales documentation provided by Hyundai in Hyundai's August 18, 2016 Response to the Second Supplemental Sections A, B, C and D Questionnaire ("2SQR-2") at Attachment 2S-17 (*i.e.*, HHI invoice to Hyundai USA, packing list, and USCBP Form 7501 Entry Documentation) demonstrates that the [ ] and the [ ] were "imported with the active parts" of the transformer. On this basis alone, these transformer components are subject merchandise.

Petitioner also overlooks the fact that Hyundai invoiced the US customer on a lump-sum basis (*e.g.*, inclusive of the [ ]). For example, for SEQU [ ], the customer issued Hyundai a purchase order, inclusive of the [ ] in the amount of USD [ ] and the total of the installment invoices issues by Hyundai was the same USD [ ]. Thus, the [ ] was "invoiced with the active parts" of the LPTs and is subject merchandise under the written description of the scope of the investigation.

Moreover, as Petitioner should be well aware, the [ ] and the [ ] are "attached to the active parts" of the LPT. Hyundai provides in **Attachment 3S-42** the technical drawings of the relevant transformers demonstrating that these components are, in fact, "attached to the active parts" of the LPT. As Petitioner surely knows, the [ ] is an integrated monitoring device that analyzes the combustible dissolved gases in the power transformer oil. It is attached to the

mechanical frame of the LPT and is connected with sensors inside the transformer oil. Indeed, ABB's own "Transformer Handbook" describes the function of a combustible gas detector:

> The combustible gas detector indicates hydrogen in the oil. The hydrogen is picked up through a dialytic membrane. The system gives an early indication of slow gas generation before free gas in the oil starts bubbling towards the gas accumulation relay. It may be used in addition to a gas-actuated relay because it gives an earlier warning. In transformers without separate conservator tanks this detector substitutes the gas accumulation function of a gas actuated relay.

ABB Transformer Handbook at 107 (**Attachment 3S-39**).

When a customer requires a combustible gas detector in the transformer, the manufacturer must design and engineer the transformer to have the component attached to it and connected with the sensors inside the tank. Thus, the "cost" of the combustible gas detector also includes the design and engineering labor and overhead to integrate it into the transformer, and the necessary parts. Also, as noted in the ABB Transformer Handbook, the detector has a function in the operation of the transformer. Inclusion or exclusion of the combustible gas detector, thus, would affect the operation of the transformer.

Petitioner itself has held out such monitoring systems to be normal components of transformers. For example, in Exhibit 4 of the Petition, titled "ABB Information on Transformers/Production," Petitioner included "Monitoring & protection" as component in "Transformer Construction." *See* **Attachment 3S-43**. Based on Petitioner's explanation of transformers, the International Trade Commission noted that "{c}omponents such as bushings, cooling systems (*e.g.*, radiators and fans), tap changers, controls, and **indicators** are added." USITC Pub. 4256 at I-10. Indeed, at the site visit to petitioner PTTI during the Original Investigation, Petitioner explained that "Labor expenses can vary greatly by . . . additions of . . . monitoring equipment." Petitioner's September 6, 2011 Letter (PTTI Site Visit Public Version) ("PTTI Site Visit") (**Attachment 3S-44**). Despite the fact that the transformer must be designed and engineered to incorporate the combustible gas detector and the [ ] and that these components are attached to the transformer, Petitioner claims that these transformer components are non-subject merchandise. The combustible gas detectors and monitoring systems cannot be compared to floor mats on a new car that can be treated as separate, unrelated "accessories."

Had Hyundai incorrectly treated the [ ] and the [ ] as non-subject merchandise and not paid the corresponding cash deposits, Petitioner likely would claim that Hyundai sought to understate the entered value and make insufficient antidumping duty cash deposits. Such a "heads I win; tails, you lose" approach is inconsistent with

the clear description of the scope of the antidumping duty order. Petitioner made similar claims regarding functional transformer components in the original investigation and the Second Administrative Review. In both instances, the Department rejected Petitioner's claim. In response to Petitioner's claim in the Original Investigation that Hyundai incorrectly included the value of transformer components in the gross unit price, Hyundai argued:

> that such items are integral to the large power transformer itself, as evidenced by Petitioners' own submissions to the International Trade Commission when {Petitioners} stated that "{c}omponents such as bushings, cooling systems (*e.g.*, radiators and fans), tap changers, ***controls***, and ***indicators*** are added." . . . Hyundai also point{ed} out that "HHI properly included the costs for these items in its reported DIRMAT costs, as verified by the Department."

OI I&D Memo at 28 (Comment 4). The Department agreed that Hyundai correctly included the components in the gross unit price. *See id.* at 29-30. Similarly, in the Second Administrative Review, Petitioner argued that the value of components should not be included in Hyundai's gross unit price because they are [ ]. *See* Petitioner's February 10, 2016 Comments at 7-8 (copying Petitioner's case brief arguments from the Second Administrative Review, which claimed that components (*i.e.*, [ ]) should not be included in the gross unit price). The Department

found that Hyundai's inclusion of the components in the gross unit price was "appropriate" and that:

> Based on our review of the sales traces, ***we find that the expenses with which Petitioner takes issue represent a main component of a LPT***, freight expenses, and other costs related to shipment or production of the LPTs. … we find that ***Hyundai was not obligated to report separate expenses and revenues*** for reimbursed services related to its U.S. sales and that ***its reported gross unit price for each sale is the appropriate basis*** for the calculation of CEP for its final dumping margin.

2013-2014 I&D Memo at 39-40 (emphasis added). Here again, the components with which Petitioner takes issue are main components of the transformer and not severable.

As it has since the Original Investigation, Petitioner unabashedly changes its claims on fundamental issues. For example, in the Original Investigation, Petitioner clarified that it intended to include ***all*** parts of the transformer within the scope of the investigation:

> {T}here is no need to exclude ***any parts*** from the scope of this investigation. … Petitioners ***intentionally*** did not exclude ... "replacement" parts or ***parts "separately invoiced,"*** as all of these mechanisms can be used to evade or circumvent any antidumping order that may issue.

Petitioner's September 2, 2011 Rebuttal Comments on Respondents' Proposed Revisions to the Scope ("Petitioner's Comments on Parts") at 2-3 (emphasis added) (**Attachment 3S-45**). With respect to parts manufactured by ABB, Petitioner has explained:

> For instance, many utilities specify the use of Reinhausen load tap changers, or bushings manufactured by PCORE or ABB. . . . ABB bushings, however, are not made in Korea, and would not be subject to antidumping duties when sourced from the U.S. or Sweden, unless they are first transported to, and installed on, LPTs fabricated in Korea. That these bushings are removed for shipment to the United States does not make them spare/replacement parts. In fact, it is obvious that the need to import, install and test ABB bushings on a specific LPT made in, and shipped from, Korea means that those bushings are "integral" to a completed LPT and are not spare/replacement parts - notwithstanding that a respondent might . . . separately identify bushings in a sales contract.

Petitioner's Comments on Parts at 4-5. Indeed, Petitioner's demand that transformer components be excluded from the gross unit price cannot be reconciled with Petitioner's own clarification of the scope of the investigation:

> {Allowing Respondents not to treat parts as subject merchandise} would allow Korean

> LPT manufacturers to manipulate assessment rates on LPT parts imported from Korea. For instance, in a price-to-price case, any non-active part identified by respondents as "separately" invoiced would either be deducted from normal value (NV) or not added to constructed value (CV), providing respondents with incentives to identify components separately as "parts" in sales contracts, regardless of their purpose.

Petitioner's Comments on Parts at 4.

Petitioner also explained that they treat [ ] as transformer costs. In explaining "How do we cost," Petitioner made explicit that [ ] are part of the transformer, noting "Labor expenses can vary greatly by size of unit and additions of load tap changers, cooling requirements, monitoring equipment etc." PTTI Site Visit (**Attachment 3S-44**).

Petitioner's suggestion that the [ ] are not part of the transformer and can be treated separately also lacks any basis in commercial logic. Why would a customer seek from a Korean supplier parts which are made in the United States, having to bear the shipping costs to Korea and then back to the United States, when it could buy the parts directly from the US manufacturer? The answer is explained above. The parts are integrated into the transformer in Korea and are not separable from the transformer.

[ ] SEQUs [ ]

[ ] issued [ ] purchase orders, each with a [ ]. In other words, the customer sought to purchase fully-assembled transformers.

Moreover, the contractual obligations made clear that the customer would not accept the transformer unless installation was completed:

[ ]

[ ] [ ] makes explicit that installation was a requirement for the transformer:

[ ]

[ ] *See also* [ ](emphasis added).

Thus, the installation for which delivery and oil installation are necessary cannot be severed from the transformer. Without the installation, the contract makes clear there can be no transformer for the customer to accept.

[ ] ([ ]) SEQU [ ]

On [ ], Hyundai quoted on a per-unit, lump-sum basis USD [ ] for [ ], inclusive of [ ] on a [ ]. Under the delivered term of sale and because [ ], title passed to the customer upon delivery.

[ ] ([ ]) SEQUs [ ]

[ ], the U.S. customer for SEQUs [ ] issued purchase orders with the same terms of sale and the [ ] provided the general terms and conditions for these sales. The [ ] and purchase orders make clear that the delivery and installation are part of, and inseparable from, the transformer.

[ ] will not [ ] *See* Request for Proposal and Purchase Order. The customer's [ ] mandated that Hyundai provide [ ] In turn, Hyundai specified in its proposal that the quoted prices are [ ] with [ ] and that the proposal was inclusive of [ ].

It is not disputable that the shipping term for the [ ] sales is [ ]. Moreover, there is no ambiguity in the [ ] that the [ ] [ ].

The [ ] does not allow Hyundai to supply an unassembled transformer. Rather, Article [ ] of the [ ] makes clear that the transformer can be accepted only ***after*** [ ]:

[ ]

In other words, Hyundai must complete all of its obligations under the purchase order before the customer will accept the transformer. Indeed, there is no question that the customer can reject the transformer if the ***installed*** transformer does not meet the specifications:

[ ]

[ ] *Compare* [ ] with ABB Handbook at 110-111 (**Attachment 3S-39**) ("For power transformers, the installation and commissioning are normally performed by ABB. … Installation and commissioning should be preferably performed by the supplier or in close cooperation with the supplier. . . . If it is specified that all handling, lifting, installation, oil filing and oil processing shall be carried out by the supplier or under supervision of a representative from the supplier or under supervision from the supplier, the

warranty is only valid when this requirement is fulfilled.") and ABB Brochure at 7 (**Attachment 3S-40**) ("No customer delivery is completed until the transformer has been successfully energized. ABB installation engineers are therefore always on site to supervise installation and startup. On arrival, they prepare the transformer by carefully reassembling all parts dismantled for transit, refill it with oil and conduct all necessary on-site tests to ensure long and trouble-free service.").

Contrary to Petitioner's claim, the delivery of the transformers cannot be separated from the transformer. Indeed, the [ ] treats all of Hyundai's obligations as [ ].

Moreover, the [ ] purchase order makes explicit that the [ ] are requisite to the transformer itself and predicate the [ ] (*i.e.*, the transformer) on the [ ] of the transformer. *See* [ ].

The Department verified the [ ] and a [ ] purchase order in the Second Administrative Review. *See* Verification of the Sales and Cost Responses of Hyundai Heavy Industries Co., Ltd., in the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea, dated August 31, 2015, at 17-18 and Sales Verification Exhibit 13. Having examined nearly identical documents in the prior review, the Department concluded that its "review of sales documentation on this record, including the sales traces reviewed at verification, show no indication that Hyundai improperly reported its sales data." 2013-2014

I&D Memo at 39 (Comment 10). In doing so, the Department recognized the terms of sale:

> Although some expense amounts . . . may have been broken out in the purchase orders, ***the totals in the purchase orders are lump-sum amounts*** and these amounts tie to the invoice totals. Based on our review of the sales traces, we find that the expenses with which Petitioner takes issue represent a main component of a{n} LPT, freight expenses, and costs related to shipment or production of the LPTs. ***None of these expenses are inconsistent with the reported terms of sale*** (*i.e.*, the freight expenses are consistent with the terms of delivery) ….

2013-2014 I&D Memo at 39-40 (Comment 10). Hyundai's reporting methodology of the sales price and expenses for the [ ] sales in this review is identical to that specifically reviewed and approved by the Department.

In addition to the reasons discussed above, the [ ] itself is properly included in the gross unit price because it is within the stated scope of the antidumping duty order as it is attached to ***and*** invoiced with the active part of the transformer.

[ ] ([ ]) SEQU [ ]

[ ] purchase order states:

{Hyundai's bid has} [ ]

[ ] issued the purchase order pursuant to the [ ] between [ ] and Hyundai, which specified the [ ]

[ ]. The [ ] make clear that the customer sought to purchase a complete, installed transformer:

[ ]

[ ] (emphasis added).

[ ] ([ ]) SEQUs [ ]

[ ] issued a purchase order for two transformers to Hyundai with a [ ] term of sale and did not require [ ]. Hyundai previously provided [ ] of transformers, which entered the United States prior to the POR. The customer's [ ] in the contract documents clarified Hyundai's obligations under the term of sale:

[ ]

[ ] [ ] terms of sale (*i.e.*, [ ]) stands in contrast to the sales for which the transformer is sold on an [ ] and for which the customer predicates [ ].

[ ] ([ ]) SEQU [ ]

[ ] issued a purchase order for a delivered and installed transformer. The purchase order clarifies that the [ ] is required for the customer's acceptance of the transformer:

[ ]

[ ]. The contractual terms predicate the customer's [ ] *See* [ ]); Purchase Order at 3. Thus, the [ ] is not severable from the transformer.

Notwithstanding Hyundai's demonstration above that Hyundai did not have any "separate" revenues for separate services or non-subject

merchandise, Hyundai provides in **Attachment 3S-46** a worksheet listing on a category basis the values listed anywhere in the sales documentation for the breakdowns of the price of the LPTs and the corresponding expenses.

17. **In its September 13, 2016, comments, Petitioner asserts the HHI incurred expenses and obtained revenues for separately-negotiated services and non-subject merchandise for the sales identified as SEQUs [ ]. Please revise your U.S. sales database to report all such expenses and revenues for these sales in separate fields. If, in your opinion, there were no additional expenses or revenues related to a sale, please comment on each of the items cited by the Petitioner on pages 8 and 9 of its September 13, 2016, comments.**

ANSWER: Please see the Answer to Question 13 above.

Supplemental Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corporation USA's Questionnaire Responses (Oct. 7, 2016) ("*Post-Preliminary Questionnaire*") (relevant excerpt)

17. In its September 13, 2016, comments, Petitioner asserts the HHI incurred expenses and obtained revenues for separately-negotiated services and non-subject merchandise for the sales identified as SEQUs []. Please revise your U.S. sales database to report all such expenses and revenues for these sales in separate fields. If, in your opinion, there were no additional expenses or revenues related to a sale, please comment on each of the items cited by the Petitioner on pages 8 and 9 of its September 13, 2016, comments.

Large Power Transformers from South Korea: Response to the Second Supplemental Sections A, B, C and D Questionnaire (Aug. 10, 2016) (relevant excerpt)

15. Please clarify whether HHI received revenue related to international freight, inland freight, oil, installation, or any other expenses on home market sales. If so, please report this revenue in a field separate from the related expense.

ANSWER: In accordance with the Department's review and treatment of Hyundai's sales documentation in prior segments of this proceeding, Hyundai did not receive separate revenue related to international freight, inland freight, oil, installation, or any other expenses on home-market sales or U.S. sales. Of note, the Department found in the prior administrative review:

> A review of sales documentation on the record, including the sales traces reviewed at verification, show ***no indication that Hyundai improperly reported its sales data***. Although some expense amounts (and spare part amounts) may have been broken out in the purchase orders, the totals on the purchase orders are lump-sum amounts and these amounts all tie to the invoice takes issue represent a main component of a LPT, freight expenses, and other costs related to shipment or production of the LPTs. None of these expenses are

> inconsistent with the reported terms of sale (*i.e.*, the freight expenses are consistent with the terms of delivery) . . . . Petitioner has noted that some of the expense amounts exceed those actually incurred by Hyundai for the services, resulting in a profit for Hyundai. This finding, however, is immaterial to the question of whether Hyundai obtained reimbursement from its customers. Petitioner also cited Department determinations supporting our practice of capping revenues by the amount of directly-associated expenses. This practice is not relevant to the discussion, however, because Hyundai has not reported revenues from reimbursements and the record does not suggest it should have done so.
>
> As observed by Hyundai, Petitioner raised a similar argument in the investigation of this proceeding. . . . Based on the record of the current review, ***we again reach this conclusion***. Thus, ***we find that Hyundai was not obligated to report separate expenses and revenues for reimbursed services related to its U.S. sales and that its reported gross unit price for each sale is the appropriate basis*** for the calculation of CEP for its final dumping margin.

2013-2014 I&D Memo at 39-40 (Comment 10). The Department reiterated this conclusion when it rejected Petitioner's ministerial error allegation in the prior administrative review.

> There, we found that no such capping was indicated as Hyundai did not report revenues from reimbursement expenses and ***the record did not suggest it should have done so***. We therefore found that ***Hyundai had not been obligated to report separate expenses and revenues for reimbursed services related to its U.S. sales*** and that its reported gross unit price for each sale was the appropriate basis for the calculation of CEP for its final dumping margin.

Ministerial Error Memorandum for the Amended Final Results of the 2013/2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea (A-580-867), dated April 29, 2016, at 7. *See also* OI I&D Memo at 30 (Comment 4) ("Based upon its review of record evidence and comments by interested parties, the Department has determined that no changes are needed with respect to Hyundai's reporting of U.S. gross unit prices."). Hyundai's sales documentation is essentially the same in this review as in prior segments of this proceeding. Thus, Hyundai's reporting of home-market and U.S. gross unit prices is appropriate and in accordance with the Department's prior consideration of Hyundai's sales.

In those instances where Hyundai received a purchase order for a separate service, Hyundai reported the sales revenue and corresponding expenses separately in accordance with the Department's requirements:

> Following the Department's analysis in the I&D Memo, Hyundai has reported, since the first administrative review, separate revenue and expenses where the customer issues a separate purchase order for services that are not part of the original term of sale. Specifically, in the U.S. sales list, Hyundai has reported the sales amount from additional purchase orders in the ADDPOPRU field and the associated additional expenses under the separate purchase order in the ADDPOEXPU field….

Hyundai's January 27, 2016 Response to the Section C Questionnaire ("BQR") at B-4. *See also* Hyundai's January 27, 2016 Response to the Section C Questionnaire ("CQR") at C-28.

Supplemental Questionnaire for Hyundai Heavy Industries Co., Ltd., and Hyundai Corporation USA's Questionnaire Responses (July 27, 2016) ("*Supplemental Questionnaire*") (relevant excerpt)

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

Third Administrative Review of Large Power Transformers from Korea – Deficiency Comments on Hyundai's Section B and C Questionnaire Response (Feb. 10, 2016) (relevant excerpt)

A. Hyundai Failed to Separately Report the Components of the Gross Unit Price in Separate Fields, as Required by the Department

In its initial questionnaire, the Department instructed Hyundai to abide by the following reporting guidelines for its home and U.S. sales files:

> Please report revenue in separate fields (e.g., ocean freight revenue, inland freight revenue, oil revenue, installation, etc.) and identify the related expense(s) for each revenue.[2]

The question did not provide Hyundai the option not to separately report revenues and expenses, or make such reporting conditional on certain facts. Hyundai has nonetheless refused to report selling expenses and related revenues in the form and manner requested. Instead, Hyundai has provided an argument as to why it should not be required to report these data as requested in the questionnaire. While Hyundai is free to make any arguments it deems relevant as to how the Department treats certain data that it is required to submit, it does not have the option to fail to

---

[2] Hyundai BCQR at B-2, C-3.

comply with the Department's data request. A continued failure to provide data in the form and manner requested should be met with the application of facts available.

Further, the rational provided by Hyundai does not justify its refusal to provide revenues and expenses separately. Hyundai argues that it is not reporting selling expenses and related revenues in separate fields because only expenses that are not included in the terms of sale require such reporting.[3] In this regard, Hyundai claims that it "is not making freight arrangements on behalf of the customer, rather Hyundai is required to deliver the LPT to the customer's site on Hyundai's own behalf."[4] Hyundai misstates both the law and the facts.

It is the Department's long-established practice to cap revenues for such services related to the sale at the amount of the expense incurred for that service because it is inappropriate to increase gross unit price on the subject merchandise by the profits earned on services:

> Based on the plain language of the law and the Department's regulations, it is the Department's practice to decline to treat freight-related revenue as an addition to U.S. price under section 772(c)(1) of the Act or as a price adjustment under 19 CFR 351.102(b)(38). The term "price adjustment"

---

[3] Hyundai BCQR at B-3.

[4] Id.

> is defined at 19 CFR 351.102(b)(38) as "any change in the price charged for subject merchandise or the foreign like product, such as discounts, rebates and post-sale price adjustments, that are reflected in the purchaser's net outlay." The Department has stated that, although we will offset freight expenses with freight revenue, where freight revenue earned by a respondent exceeds the freight charge incurred for the same type of activity, the Department will cap freight revenue at the corresponding amount of freight charges incurred because it is inappropriate to increase gross unit selling price for subject merchandise as a result of profit earned on the sale of services (i.e., freight).[5]

The Department has extended this same logic to cap other sales-related revenues by the associated sales expenses.[6] Indeed in the on-going 2013/14

---

[5] Issues and Decision Memorandum for the Final Results of Antidumping Duty Administrative Review: Circular Welded Carbon Steel Pipes and Tubes from Thailand: 2011- 2012 Administrative Review, dated Oct. 23, 2013, at 8-9 (Comment 5), referenced in 78 Fed. Reg. 65,272 (Dep't Commerce Oct. 31, 2013) (final results) (citing Multilayered Wood Flooring from the People's Republic of China: Final Determination of Sales at Less Than Fair Value, 76 Fed. Reg. 64,318 (Oct. 18, 2011) and accompanying Issues and Decision Memorandum at Comment 39).

[6] Issues and Decision Memorandum for the Final Results of the Antidumping Duty Administrative Review of Light-Walled Rectangular Pipe and Tube from Mexico, dated Feb. l 0, 2011, at 16 (Comment 6), referenced in 76 Fed. Reg. 9547 (Dep't Commerce Feb. 18, 2011) (capping interest

Preliminary Results, the Department did just that for all sales-related expenses and revenues for Hyosung:[7]

> Consistent with the Department's normal practice, we have capped sale-related revenues to offset directly associated sales expenses *(i.e.,* with respect to fields INTNFRU/REV OCNFRT, DINLFTPU/REV INLFT, INSTALL1U/REV, and OILUREV OIL).

Thus, the Department's recent precedent in this case and other cases contradicts the legal position taken by Hyundai.

The distinction drawn by Hyundai between expenses made on behalf of the customer and those made on behalf of Hyundai in a DDP sale is misplaced. If such a distinction were relevant to how to treat such expenses and revenues, respondents could simply move profit to and from freight and other service revenues in the home and U.S. markets to manipulate the reporting of gross unit price as a means to mask dumping.

---

revenue, insurance and handling revenues). See, e.g., Purified Carboxymethylcellulose from the Netherlands; Preliminary Results of Antidumping Duty Administrative Review, 75 Fed. Reg. 48,310, 48,314 (Dep't Commerce Aug. 10, 2010), unchanged in Purified Carboxymethylcellulose from the Netherlands: Final Results of Antidumping Duty Review, 75 Fed. Reg. 77,829 (Dep't Commerce Dec. 14, 2010).

[7] Hyosung 2013/14 Prelim. Analysis Memo dated Aug. 31, 2015, at 3-4 (www.trade.gov, public document number 3301736-01).

Nor is the distinction claimed by Hyundai supported by the facts of record in this review. Exhibit A-13 of Hyundai's AQR provides the sales documents related to [ ][8] [ ][9] Finally, the [ ][10] Thus, the [ ] as follows:

[ ][11] REDACTED

[ ][12] [ ][13] Hyundai has reported in its U.S. sales response [ ][14] In addition, [ ][15] Applying [ ]

This is precisely the type of [ ] as summarized in the following charts (by U.S. sale):

SEQU	Line Item Description	Revenue ($/unit)	Expenses ($/unit)	Overstatement ($/unit)	% Overstmt of GRSUPRU
[REDACTED]					[16]

[8] Hyundai AQR at Ex. A-13.

[9] Hyundai AQR at Ex. A-13 ([ ]).

[10] Id. At [].

[11] Id.

[12] Id.

[13] [ ]

[14] Hyundai BCQR at Exh. C-1. [] Id. Hyundai AQR at Ex. A-13.

[15] Hyundai BCQR at Exh. C-1 .

[16] Petitioner's Jan. 7, 2016 Letter at Attachments 1 and 2 (Verification Report at Sales Verification Exhibit ("SVE") 12 ([])).

SEQU	Line Item Description	Revenue ($/unit)	Expenses ($/unit)	Overstatement ($/unit)	% Overstmt of GRSUPRU
[REDACTED]					[17]

SEQU	Line Item Description	Revenue ($/unit)	Expenses ($/unit)	Overstatement ($/unit)	% Overstmt of GRSUPRU
[REDACTED]					[18]

SEQU	Line Item Description	Revenue ($/unit)	Expenses ($/unit)	Overstatement ($/unit)	% Overstmt of GRSUPRU
[REDACTED]					[19]

Similar problems exist with regard to home market sales expense and revenue reporting in this review. The sample home market sales documentation shows that Hyundai [ ][20] Hyundai, however, did not [ ] in its home market sales database, even though this information is reported in the purchase order.[21]

---

[17] Petitioner's Jan. 7, 2016 Letter at Attachments 1 and 2 (Verification Report at Sales Verification Exhibit ("SVE") 13 ([])).

[18] Petitioner's Jan. 7, 2016 Letter at Attachments 1 and 2 (Verification Report at Sales Verification Exhibit ("SVE") 14 ([])).

[19] Petitioner's Jan. 7, 2016 Letter at Attachments 1 and 2 (Verification Report at Sales Verification Exhibit ("SVE") 15 ([])).

[20] Hyundai AQR at Exhibit A-15.

[21] Hyundai BCQR at Attachment B-1.

The Department should re-issue its instruction to Hyundai directing it to report revenues and expense in separate fields with a statement that failure to do so will result in facts available, as follows:

1. **For the home and U.S. sales file, please report revenue in separate fields (e.g., ocean freight revenue, inland freight revenue, oil revenue, installation, etc.) and identify the related expense(s) for each revenue. Failure to follow these instructions may result in application of facts available.**

Large Power Transformers from South Korea: Response to Sections B and C Questionnaires (Jan. 27, 2016) (relevant excerpt)

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

ANSWER: Hyundai understands the instruction to report revenue in separate fields and identify the related expense as restating the conclusion reached by the Department in the Original Investigation Final Determination. *See* Issues and Decision Memorandum ("I&D Memo") at Comment 4, *accompanying* Large Power Transformers from the Republic of Korea, 77 Fed. Reg. 40,857 (July 11, 2012). In the I&D Memo, the Department found that Hyundai correctly had reported its gross unit price and properly did not separate, for example, freight where there were no "separate arrangements on behalf of the customer" and where Hyundai had not "sought reimbursement for that cost." *Id.* The Department recognized that its practice is to separate revenue and expenses "that are not included in the term of sale." *Id.* That is, the Department separates freight expenses and revenue where transportation is arranged by the seller on behalf of the customer because delivery is not the seller's responsibility under the terms of sale, and the seller is separately reimbursed for making those arrangements. In contrast, the terms of sale applicable to Hyundai's sales of LPTs (with the

exception of *ex works* sales in the home market) include delivery to the customer's site. Therefore, Hyundai is not making freight arrangements *on behalf of the customer*; rather Hyundai is required to deliver the LPT to the customer's site *on Hyundai's own behalf* as required by the term of sale.

The Department's conclusion in the original investigation followed precedent in prior proceedings. The Department's explanation in *Ball Bearings*, for example, distinguishing separately provided and charged services from those within the terms of sale, is particularly clear:

> According to Schaeffler's and GRW's questionnaire responses, freight and insurance revenues are *revenues received from customers for invoice items covering transportation and insurance expenses and arise when freight and insurance are not included in the selling price under the applicable terms of delivery but when the respondent arranges and prepays freight and insurance for the customer*. Accordingly, the respondents incurred expenses and realized revenue for these activities. Therefore, we have limited the amount of the freight and insurance revenue used to offset the respondent's movement expenses to the amount of movement expenses incurred on the sale of subject merchandise or the foreign like product.

Issues and Decision Memorandum for the Antidumping Duty Administrative Reviews of Ball Bearings and Parts Thereof from France, Germany, Italy, Japan, and the United Kingdom for the Period of Review May 1, 2007, through April 30, 2008 at Comment 12, accompanying 74 Fed. Reg. 44,819 (Aug. 31, 2009) (emphasis added).

Other than for certain *ex works* sales in the home market, the applicable terms of sale for all of Hyundai's sales require Hyundai to deliver the LPT to the customer site. Thus, Hyundai's freight arrangements are on its own behalf, and not separately arranged on behalf of the customer. Under a "delivered" term of sale, such as DDP, Hyundai is responsible for the LPT until its delivery to the customer at its site.

Following the Department's analysis in the I&D Memo, Hyundai has reported, since the first administrative review, separate revenue and expenses where the customer issues a separate purchase order for services that are not part of the original term of sale. Specifically, in the U.S. sales list, Hyundai has reported the sales amount from additional purchase orders in the ADDPOPRU field and the associated additional expenses under the separate purchase order in the ADDPOEXPU field. Hyundai did not receive additional purchase orders for home market sales during the POR.

LPTs that require installation or supervision also require the seller to remain responsible for the LPT until installation is completed. Thus, the

seller cannot complete its obligations with regard to producing and delivering the LPT as ordered until installation is completed. Consequently, where it is required, installation and supervision are not separable from the LPT itself. On this point, ABB's Transformer Handbook explains:

> If it is specified that all handling, lifting, installation, oil filing and oil processing shall be carried out by the supplier or under the supervision of the representative from the supplier, the warranty {on the LPT} is only valid when this requirement is fulfilled.

ABB Transformer Handbook at 111, provided in **Attachment B-2**. Thus, the LPT is not complete and delivered until installation is performed. Thus, installation is not severable from the LPT itself

Request for Information – Antidumping Duty Administrative Review – Hyundai Heavy Industries Co., Ltd. ("HHI"); Korea – Large Power Transformers (Dec. 3, 2015) ("*Initial Questionnaire*") (relevant excerpt)

General Instructions:

[. . .]

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