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August 26, 2016

MEMORANDUM TO: Paul Piquado
Assistant Secretary
for Enforcement and Compliance

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

SUBJECT: Decision Memorandum for Preliminary Results of Antidumping
Duty Administrative Review: Large Power Transformers from the
Republic of Korea; 2014-2015

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 review covers five producers/exporters of the subject merchandise: Hyosung Corporation (Hyosung); Hyundai Heavy Industries Co., Ltd. (Hyundai); Iljin, Iljin Electric Co., Ltd. (Iljin Electric), and LSIS Co., Ltd (LSIS). The Department selected two respondents, Hyosung and Hyundai, for individual examination. The period of review is August 1, 2014, through July 31, 2015. We preliminarily find that Hyosung and Hyundai have sold subject merchandise at less than normal value during the period of review.

Background

On August 28, 2015, Hyundai filed a request for review of its imports of LPTs, as did Hyosung for its imports on August 31, 2015.¹ Petitioner, ABB, Inc., filed a request for reviews of Hyundai, Hyosung, Iljin and LSIS on August 31, 2015. Iljin Electric also filed a request for review of its imports on August 31, 2015. On October 6, 2015, in accordance with 19 CFR 351.221(c)(1)(i), we published a notice of initiation of the administrative review of the antidumping duty order on LPTs from Korea.²

¹ The public record of the review, including all public or public versions of correspondence filed by parties or the Department, may be accessed electronically *via* Enforcement and Compliance's Antidumping and Countervailing Duty Centralized Electronic Service System (ACCESS). ACCESS is available to guest and registered users at <http://access.trade.gov> and is also available to the public in the Central Records Unit, room B8024 of the main Department of Commerce building.

² See *Initiation of Antidumping and Countervailing Duty Administrative Reviews*, 80 FR 60356 (October 6, 2015) (*Initiation Notice*).



In the *Initiation Notice*, we stated our intention, in the event we limit the number of respondents for individual examination, to select respondents based on U.S. Customs and Border Protection (CBP) data.³ We released the CBP data to interested parties under an administrative protective order on October 16, 2015, and invited interested parties to submit comments on the data as well as potential respondent selection. On October 23, 2015, we received comments from Hyosung and Hyundai, and on October 26, 2015, we received comments from the Petitioner. Based on a consideration of the comments, the number of potential producers/exporters involved in this review, and the resources available to the Department, we determined that we could reasonably individually examine two producers/exporters in the current review (*i.e.*, Hyosung and Hyundai) as producers and exporters accounting for the largest volume of the subject merchandise from Korea that can reasonably be examined, pursuant to section 777A(c)(2)(B) of the Tariff Act of 1930, as amended (the Act).⁴

On May 2, 2016, we extended the time limit for completion of the preliminary results of the review to no later than August 19, 2016.⁵ On August 4, 2016, we extended the time limit for completion of the preliminary results of the review to no later than August 26, 2016.⁶

Companies Not Selected for Individual Examination

The Department did not select Iljin, Iljin Electric, or LSIS for individual examination. As we did not have publicly-ranged U.S. sales volumes for Hyosung for the period August 1, 2014, through July 31, 2015, to calculate a weighted-average percentage margin for the non-selected companies in this review, the rate applied to Iljin, Iljin Electric, and LSIS will be a simple-average percentage margin of the margins calculated for Hyosung and Hyundai.

³ See *Initiation Notice* at 60357.

⁴ See Memorandum to Scot Fullerton, Director, Antidumping and Countervailing Duty Operations, Office VI, from Dena M. Crossland, International Trade Compliance Analyst, on the subject of “Antidumping Duty Administrative Review of Large Power Transformers from the Republic of Korea: Respondent Selection Memorandum,” dated December 2, 2015.

⁵ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Moses Song, International Trade Compliance Analyst, on the subject of “Large Power Transformers from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2015,” dated May 2, 2016. The revised time limit reflects a four-day tolling of all deadlines due to closure of the federal government by Snowstorm Jonas, as addressed in Memorandum to the file 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.

⁶ See Memorandum to Christian Marsh, Deputy Assistant Secretary for Antidumping and Countervailing Duty Operations, from Moses Song, International Trade Compliance Analyst, on the subject of “Large Power Transformers from the Republic of Korea: Extension of Deadline for Preliminary Results of Antidumping Duty Administrative Review; 2014/2015,” dated August 4, 2016.

Deadline for Submission of Updated Sales and Cost Information

Given that most LPTs sold in the United States were made pursuant to long-term contracts and the production of LPTs in general involves long lead times, certain expenses reported by respondents in their sales and cost databases were based upon estimates. Consistent with prior segments of this proceeding, we instructed respondents to provide actual cost and expense data for amounts for which actual data existed as of a certain date, which in this review was December 31, 2015. Therefore, when available, the Department relied upon reported actual costs and expenses (related to sales) through and including December 31, 2015, in determining the preliminary weighted-average dumping margins for Hyosung and Hyundai.

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.

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.

DISCUSSION OF THE METHODOLOGY

Comparisons to Normal Value

Pursuant to section 773(a) of the Act and 19 CFR 351.414(c)(1) and (d), to determine whether Hyosung and Hyundai’s sales of the subject merchandise from Korea to the United States were made at less than normal value, the Department compared the constructed export price (CEP) to the normal value as described in the “Constructed Export Price” and “Normal Value” sections of this memorandum.

A. Determination of Comparison Method

Pursuant to 19 CFR 351.414(b) and (c)(1), the Department calculates dumping margins by comparing weighted-average normal values to weighted-average export prices (EPs) (or CEPs) (the average-to-average method) unless the Secretary determines that another method is appropriate in a particular situation. In antidumping investigations, the Department examines whether to compare weighted-average normal values with the EPs (or CEPs) of individual sales (*i.e.*, the average-to-transaction method) as an alternative comparison method using an analysis consistent with section 777A(d)(1)(B) of the Act. Although section 777A(d)(1)(B) of the Act does not strictly govern the Department's examination of this question in the context of administrative reviews, the issue arising under 19 CFR 351.414(c)(1) in administrative reviews is analogous to the issue in antidumping investigations.⁷

In recent investigations, the Department applied a “differential pricing” analysis for determining whether application of average-to-transaction comparisons is appropriate in a particular situation pursuant to 19 CFR 351.414(c)(1) and consistent with section 777A(d)(1)(B) of the Act.⁸ The Department finds the differential pricing analysis used in those recent investigations may be instructive for purposes of examining whether to apply an alternative comparison method in this administrative review. The Department will continue to develop its approach in this area based on comments received in this and other proceedings, and on the Department's additional experience with addressing the potential masking of dumping that can occur when the Department uses the average-to-average method in calculating weighted-average dumping margins.

The differential pricing analysis used in these preliminary results requires a finding of a pattern of EPs, (or CEPs) for comparable merchandise that differ significantly among purchasers, regions, or time periods. If such a pattern is found, then the differential pricing analysis evaluates whether such differences can be taken into account when using the average-to-average method to calculate the weighted-average dumping margin. The differential pricing analysis used here evaluates all purchasers, regions, and time periods to determine whether a pattern of prices that differ significantly exists. The analysis incorporates default group definitions for purchasers, regions, time periods, and comparable merchandise. Purchasers are based on the reported consolidated customer codes. Regions are defined using the reported destination code (*i.e.*, zip codes or city and state names) and are grouped into regions based upon standard definitions published by the U.S. Census Bureau. Time periods are defined by the quarter within the period of review being examined based upon the reported date of sale. For purposes of analyzing sales transactions by purchaser, region and time period, comparable merchandise is

⁷ See *Ball Bearings and Parts Thereof From France, Germany, and Italy: Final Results of Antidumping Duty Administrative Reviews; 2010–2011*, 77 FR 73415 (December 10, 2012), and accompanying Issues and Decision Memorandum at Comment 1; see also *Apex Frozen Foods Private Ltd. v. United States*, 37 F. Supp. 3d 1286 (Ct. Int'l Trade 2014).

⁸ See, *e.g.*, *Xanthan Gum From the People's Republic of China: Final Determination of Sales at Less Than Fair Value*, 78 FR 33351 (June 4, 2013); *Steel Concrete Reinforcing Bar From Mexico: Final Determination of Sales at Less Than Fair Value and Final Affirmative Determination of Critical Circumstances*, 79 FR 54967 (September 15, 2014); or *Welded Line Pipe From the Republic of Turkey: Final Determination of Sales at Less Than Fair Value*, 80 FR 61362 (October 13, 2015).

considered using the product control number and any characteristics of the sales, other than purchaser, region and time period, that the Department uses in making comparisons between EP (or CEP) and normal value for the individual dumping margins.

In the first stage of the differential pricing analysis used here, the “Cohen’s *d* test” is applied. The Cohen’s *d* coefficient is a generally recognized statistical measure of the extent of the difference between the mean (*i.e.*, weighted-average price) of a test group and the mean (*i.e.*, weighted-average price) of a comparison group. First, for comparable merchandise, the Cohen’s *d* coefficient is calculated when the test and comparison groups of data for a particular purchaser, region or time period each have at least two observations, and when the sales quantity for the comparison group accounts for at least five percent of the total sales quantity of the comparable merchandise. Then, the Cohen’s *d* coefficient is used to evaluate the extent to which the prices to the particular purchaser, region or time period differ significantly from the prices of all other sales of comparable merchandise. The extent of these differences can be quantified by one of three fixed thresholds defined by the Cohen’s *d* test: small, medium or large (0.2, 0.5 and 0.8, respectively). Of these thresholds, the large threshold provides the strongest indication that there is a significant difference between the mean of the test and comparison groups, while the small threshold provides the weakest indication that such a difference exists. For this analysis, the difference is considered significant, and the sales in the test group are found to pass the Cohen’s *d* test, if the calculated Cohen’s *d* coefficient is equal to or exceeds the large (*i.e.*, 0.8) threshold.

Next, the “ratio test” assesses the extent of the significant price differences for all sales as measured by the Cohen’s *d* test. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test account for 66 percent or more of the value of total sales, then the identified pattern of prices that differ significantly supports the consideration of the application of the average-to-transaction method to all sales as an alternative to the average-to-average method. If the value of sales to purchasers, regions, and time periods that pass the Cohen’s *d* test accounts for more than 33 percent and less than 66 percent of the value of total sales, then the results support consideration of the application of an average-to-transaction method to those sales identified as passing the Cohen’s *d* test as an alternative to the average-to-average method, and application of the average-to-average method to those sales identified as not passing the Cohen’s *d* test. If 33 percent or less of the value of total sales passes the Cohen’s *d* test, then the results of the Cohen’s *d* test do not support consideration of an alternative to the average-to-average method.

If both tests in the first stage (*i.e.*, the Cohen’s *d* test and the ratio test) demonstrate the existence of a pattern of prices that differ significantly such that an alternative comparison method should be considered, then in the second stage of the differential pricing analysis, the Department examines whether using only the average-to-average method can appropriately account for such differences. In considering this question, the Department tests whether using an alternative comparison method, based on the results of the Cohen’s *d* and ratio tests described above, yields a meaningful difference in the weighted-average dumping margin as compared to that resulting from the use of the average-to-average method only. If the difference between the two calculations is meaningful, then this demonstrates that the average-to-average method cannot account for differences such as those observed in this analysis, and, therefore, an alternative comparison method would be appropriate. A difference in the weighted-average dumping

margins is considered meaningful if 1) there is a 25 percent relative change in the weighted-average dumping margins between the average-to-average method and the appropriate alternative method where both rates are above the *de minimis* threshold, or 2) the resulting weighted-average dumping margins between the average-to-average method and the appropriate alternative method move across the *de minimis* threshold.

Interested parties may present arguments and justifications in relation to the above-described differential pricing approach used in these preliminary results, including arguments for modifying the group definitions used in this proceeding.

B. Results of the Differential Pricing Analysis

For Hyundai, based on the results of the differential pricing analysis, the Department finds that the value of total sales that passed the Cohen's *d* test was less than 33 percent, and, as such, these results do not confirm the existence of a pattern of prices for comparable merchandise that differ significantly among purchasers, regions, or time periods and these results do not support consideration of an alternative to the average-to-average method.⁹ Thus, the results of the Cohen's *d* and ratio tests do not support consideration of an alternative to the average-to-average method for either respondent. Accordingly, the Department preliminarily determines to apply the average-to-average method for all U.S. sales to calculate the weighted-average dumping margin for Hyundai.

For Hyosung, based on the results of the differential pricing analysis, the Department finds that no sales passed the Cohen's *d* test. Therefore, there is no pattern or prices that differ significantly.¹⁰ Accordingly, the Department has used the average-to-average method to calculate the weighted-average dumping margin for Hyosung.¹¹

Product Comparisons

In accordance with section 771(16) of the Act, we compared prices for products produced by Hyosung and Hyundai and sold in the home market on the basis of the comparison product which was either identical or most similar in terms of the physical characteristics to the product sold in the United States. In the order of importance, these physical characteristics are (1) number of phases; (2) maximum MVA rating; (3) transformer technology; (4) high line voltage; (5) high voltage winding basic insulation level; (6) number of windings in transformer; (7) type

⁹ See Memorandum from Edythe Artman to the File, regarding "Analysis of Data Submitted by Hyundai Heavy Industries Co., Ltd. in the Preliminary Results of the 2013-2014 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea" (Hyundai Preliminary Analysis Memorandum) dated concurrently with this memorandum.

¹⁰ See Memorandum from John K. Drury to the File, regarding "Analysis of Data Submitted by Hyosung Corporation in the Preliminary Results of the 2014-2015 Administrative Review of the Antidumping Duty Order on Large Power Transformers from the Republic of Korea" (Hyosung Preliminary Analysis Memorandum) dated concurrently with this memorandum.

¹¹ In these preliminary results, the Department applied the weighted-average dumping margin calculation method adopted in *Antidumping Proceedings: Calculation of the Weighted-Average Dumping Margin and Assessment Rate in Certain Antidumping Duty Proceedings; Final Modification*, 77 FR 8101 (February 14, 2012).

of tap changer and percentage regulation; (8) low line voltage; (9) impedance at maximum MVA rating; (10) type of core steel; (11) type of transformer; (12) low voltage winding basic insulation level; (13) load loss at maximum MVA rating; (14) no-load loss; (15) cooling class designation; (16) overload requirement; (17) decibel rating; and (18) frequency.

Date of Sale

Section 19 CFR 351.401(i) states that, “[i]n identifying the date of sale of the subject merchandise or foreign like product, the Secretary normally will use the date of invoice, as recorded in the exporter or producer’s records kept in the ordinary course of business.” The regulation provides further that the Department may use a date other than the date of invoice if the Secretary is satisfied that a different date better reflects the date on which the exporter or producer establishes the material terms of sale.¹² The Department has a long-standing practice of finding that, where shipment date precedes invoice date, shipment date better reflects the date on which the material terms of sale are established.¹³

In prior segments of this proceeding, we concluded that the date of the initial purchase order was the date upon which material terms of sale had been established between the respondents and their customers.¹⁴ In keeping with our earlier determinations, both Hyosung and Hyundai used the initial purchase order date as the basis for their reporting of the dates of sale for both markets in this review.¹⁵ However, both companies acknowledged that the purchase orders they received or issued for home- or U.S.-market sales were subject to revisions.¹⁶ An analysis of the degree and types of changes resulting from these revisions led us to conclude that, for purposes of this review, changes in the material terms of sale take place after the date of the initial purchase order and thus, we cannot rely on the purchase order date as the date of sale in the current review.¹⁷

¹² See 19 CFR 351.401(i); see also *Allied Tube & Conduit Corp. v. United States*, 132 F. Supp. 2d 1087, 1090 (CIT 2001) (quoting 19 CFR 351.401(i)) (*Allied Tube*).

¹³ See, e.g., *Notice of Final Determination of Sales at Less Than Fair Value and Negative Final Determination of Critical Circumstances: Certain Frozen and Canned Warmwater Shrimp From Thailand*, 69 FR 76918 (December 23, 2004), and accompanying Issues and Decision Memorandum at Comment 10; see also *Notice of Final Determination of Sales at Less Than Fair Value: Structural Steel Beams From Germany*, 67 FR 35497 (May 20, 2002), and accompanying Issues and Decision Memorandum at Comment 2.

¹⁴ For a full discussion of this determination, see *Large Power Transformers from the Republic of Korea: Final Determination of Sales at Less Than Fair Value*, 77 FR 40857 (July 11, 2012) and accompanying Issue and Decision Memorandum at Comment 1.

¹⁵ See Hyosung’s response to Section A of the antidumping duty questionnaire, dated December 30, 2015 (Hyosung’s Section A Response), pp. A-32 through A-33 and Hyosung’s response to Sections B-D of the antidumping duty questionnaire, dated February 5, 2016 (Hyosung’s Section B-D Response), p. B-21 and B-16 and B-17; Hyundai’s response to Section A of the antidumping duty questionnaire, dated December 31, 2015 (Hyundai’s Section A Response), pp. A-21 and A-22 and Hyundai’s response to Sections B-C of the antidumping duty questionnaire, dated January 27, 2016 (Hyundai’s Section B-C Response), p. B-26 and pp. C-21 and C-22.

¹⁶ See Hyosung’s supplemental Section A questionnaire response, dated May 9, 2016, p. 8.; see Hyundai’s supplemental questionnaire response, dated April 19, 2016, p. 11.

¹⁷ See Hyosung’s Analysis Memorandum at 4-5; Hyundai’s Analysis Memorandum at 2-3.

As a result, we have considered using invoice date or shipment date as the appropriate date of sale.¹⁸ Although invoicing generally occurs at a later point in time than the receipt of a purchase order, the record shows that, for some home-market and U.S. sales, Hyundai based its invoicing on milestones reached in the production process, including the issuance of the purchase order and other pre-production steps.¹⁹ Thus, in these instances, the evidence shows that the material terms of sale were not set by the date of the initial invoice. For this reason, we preliminarily determine that shipment date best reflects the date by which the material terms were established in both markets for Hyundai's sales.

For Hyosung, the company stated that it normally issues a tax invoice to home-market customers at the time that it is preparing to ship a completed LPT unit to the customer.²⁰ However, for certain home-market sales, Hyosung indicated that it had not yet issued invoices for sales of LPT units that had been shipped to the customer.²¹ For sales in the United States, Hyosung stated that its U.S. affiliate, HICO America Sales and Technology, Inc. (HICO America), issues an invoice to its U.S. customer once the LPT unit has been shipped to the United States and certain tests have been performed.²² Thus, we conclude that, for Hyosung, the date of sale is the earlier of invoice date or shipment date, in accordance with the Department's regulation and practice.

Constructed Export Price

For the price to the United States, we used CEP, in accordance with section 772(b) of the Act. We calculated CEP for those sales where a person in the United States, affiliated with the foreign exporter or acting for the account of the exporter, made the sale to the first unaffiliated purchaser in the United States of the subject merchandise.²³ We based CEP on the packed prices charged to the first unaffiliated customer in the United States and the applicable terms of sale.

With respect to Hyosung, in accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses, including foreign inland freight, foreign inland insurance, foreign brokerage and handling, U.S. inland freight, international freight, marine insurance, and U.S. brokerage and handling expenses and U.S. duty expenses. Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for commissions, direct selling expenses (*e.g.*, oil, installation, duty drawback, inventory carrying costs incurred in Korea and certain other costs) credit expenses, warranties and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

With respect to Hyundai, in accordance with section 772(c)(2) of the Act, and where appropriate, we made deductions from the starting price for certain movement expenses for foreign inland

¹⁸ Hyundai also reported the date of completion of production for each sale, which coincides with the shipment date for each sale. See Hyundai's supplemental questionnaire response, dated July 15, 2016, pp. 2 and 4.

¹⁹ See Hyundai's Section A Response at A-25.

²⁰ See Hyosung's Section A Response at A-25.

²¹ See Hyosung's Section B-D Response at B-20; see also Hyosung's supplemental Section B-D questionnaire response, dated June 8, 2016, at 5 and Exhibit S-7.

²² See Hyosung's Section A Response at A-30.

²³ See section 772(b) of the Act.

freight, foreign brokerage and handling, international freight, marine insurance, U.S. brokerage and handling, U.S. inland freight and U.S. customs duties. Pursuant to section 772(d)(1) of the Act, we made additional adjustments to CEP for commissions, direct selling expenses (*i.e.*, expenses for oil and oil transportation, installation and supervision expenses, and expenses related to performance bonds), bank charges, credit and warranty expenses and indirect selling expenses. Pursuant to section 772(d)(3) of the Act, we made an adjustment for CEP profit.

Normal Value

A. Home Market Viability as Comparison Market

To determine whether there was a sufficient volume of sales of LPTs in the home market to serve as a viable basis for calculating normal value (*i.e.*, the aggregate volume of home-market sales of the foreign like product is five percent or more of the aggregate volume of U.S. sales), the Department compared the volume of Hyosung and Hyundai's respective home-market sales of the foreign like product to the volume of its U.S. sales of the subject merchandise, in accordance with section 773(a)(1)(C) of the Act.²⁴ Based on this comparison, we determined that both companies had a viable home market during the period of review. Consequently, we based normal value on home-market sales to unaffiliated purchasers made in the usual quantities in the ordinary course of trade, described in detail below.

B. Level of Trade

In accordance with section 773(a)(1)(B) of the Act and to the extent practicable, we determine normal value based on sales in the comparison market at the same level of trade as the EP or CEP.²⁵ Pursuant to 19 CFR 351.412(c)(1)(iii), the level of trade for normal value is based on the starting price of the sales in the comparison market or, when normal value is based on constructed value, the starting price of the sales from which we derive selling, general and administrative expenses (SG&A), and profit. For CEP sales, the U.S. level of trade is based on the starting price of the U.S. sales, as adjusted under section 772(d) of the Act, which is from the exporter to the importer.²⁶

To determine if normal value sales are at a different level of trade than CEP sales, we examine stages in the marketing process and selling functions along the chain of distribution between the producer and the unaffiliated customer.²⁷ If the comparison-market sales are at a different level of trade and the difference affects price comparability, as manifested in a pattern of consistent price differences between the sales on which normal value is based and comparison-market sales at the level of trade of the export transaction, we make a level-of-trade adjustment under section 773(a)(7)(A) of the Act. For CEP sales, if the normal value level of trade is more remote from the factory than the CEP level and there is no basis for determining whether the difference in

²⁴ See Hyosung's Section A Response at Exhibit A-1; Hyundai's Section A Response at Exhibit A-1.

²⁵ See also section 773(a)(7) of the Act.

²⁶ See 19 CFR 351.412(c)(1)(ii).

²⁷ See 19 CFR 351.412(c)(2).

levels between normal value and CEP affects price comparability, we adjust normal value under section 773(a)(7)(B) of the Act (the CEP-offset provision).²⁸

For Hyosung, the company reported a single channel of distribution to one category of customers.²⁹ We reviewed the intensity of all selling functions Hyosung claimed to perform for this single channel of distribution and, based on our analysis of all Hyosung's comparison-market selling functions, we preliminarily found all home-market sales were made at the same level of trade, or the normal-value level of trade.³⁰ With regard to U.S. sales, Hyosung also reported one channel of distribution for all sales (*i.e.*, sales through HICO America).³¹ Finally, we reviewed the selling-functions chart provided by Hyosung. Our review indicated that many of the selling activities were performed by the affiliate HICO America in the United States.³² Based on this information, we preliminarily find that all CEP sales constitute one level of trade, or the CEP level of trade. We then compared the normal-value level of trade, based on the selling functions associated with the transactions between Hyosung and its customers in the home market, to the CEP level of trade, based on the selling functions associated with the transactions between Hyosung and HICO AMERICA. Our analysis indicated that the selling functions performed for home-market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for HICO America. Thus, we preliminarily concluded that the normal-value level of trade is at a more advanced stage than the CEP level of trade. Furthermore, although Hyosung cooperated by providing information to the best of its ability, the available data does not permit us to determine whether a level-of-trade difference affects price comparability in order to permit for a level-of-trade adjustment. Accordingly, to adjust for differences in any levels of trade between the home and U.S. markets, we preliminarily applied a CEP offset to normal value, in accordance with section 773(a)(7)(B) of the Act.³³

For Hyundai, we found that it reported a single channel of distribution to two categories of customers (*i.e.*, to end users or to purchasing agents of the ultimate end user).³⁴ We reviewed the intensity of all selling functions Hyundai claimed to perform for this single channel of distribution and, based on our analysis of all Hyundai's comparison-market selling functions, we preliminarily found all home-market sales were made at the same level of trade, or the normal-value level of trade.³⁵ With respect to U.S. sales, Hyundai also reported one channel of distribution for all sales (*i.e.*, sales through Hyundai USA to end users or purchasing agents of end users).³⁶ Finally, a review of the selling-functions chart showed us that many of the selling

²⁸ See *Notice of Final Determination of Sales at Less Than Fair Value: Certain Cut-to-Length Carbon Steel Plate from South Africa*, 62 FR 61731, 61732-33 (November 19, 1997) (applying the CEP offset analysis under section 773(a)(7)(B)).

²⁹ See Hyosung's Section A response at pp. A-17 – A-19 and A-22, and Exhibit A-14.

³⁰ *Id.* at Exhibit A-14.

³¹ *Id.* at p. A-23 and Exhibit A-14.

³² *Id.*

³³ The CEP offset from home-market net price is subject to an offset cap, which is calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

³⁴ See Hyundai's Section A Response at A-16 and Exhibit A-11.

³⁵ *Id.* at Exhibit A-12.

³⁶ *Id.* at A-16 and Exhibit A-10.

activities were performed by an affiliate in the United States. Based on this information, we preliminarily found that all CEP sales constitute one level of trade, or the CEP level of trade. We then compared the normal-value level of trade, based on the selling functions associated with the transactions between Hyundai and its customers in the home market, to the CEP level of trade, based on the selling functions associated with the transaction between HHI and Hyundai USA. Our analysis indicated that the selling functions performed for home-market customers are either performed at a higher degree of intensity or are greater in number than the selling functions performed for Hyundai USA. Thus, we preliminarily concluded that the normal-value level of trade is at a more advanced stage than the CEP level of trade. Furthermore, although Hyundai cooperated by providing information to the best of its ability, the available data does not permit us to determine whether a level-of-trade difference affects price comparability in order to permit for a level-of-trade adjustment. Accordingly, to adjust for differences in any levels of trade between the home and U.S. markets, we preliminarily applied a CEP offset to normal value, in accordance with section 773(a)(7)(B) of the Act.³⁷

C. Sales to Affiliates

We exclude comparison market sales to affiliated customers that are not made at arm's-length prices from our margin analysis because we consider them to be outside the ordinary course of trade.³⁸ To test whether the respondents' comparison market sales are made at arm's-length prices, we compare the prices of sales of comparable merchandise to affiliated and unaffiliated customers, net of all rebates, movement charges, and direct selling expenses. Pursuant to 19 CFR 351.403(c) and in accordance with our practice, when the prices charged to an affiliated party are, on average, between 98 and 102 percent of the prices charged to unaffiliated parties for merchandise comparable to that sold to the affiliated party, we determine that the sales to the affiliated party are at arm's-length prices.³⁹ Because Hyundai reported sales to affiliates in the comparison market, we tested to see if those sales were made at arm's-length prices for our preliminary results. In the event they were not, we disregarded these sales for purposes of calculating weighted-average monthly normal values.

D. Cost of Production

On June 29, 2015, the President signed into law The Trade Preferences Extension Act of 2015, Public Law 114-27, which provides a number of amendments to the antidumping and countervailing duty laws. Pursuant to the amendment of section 773(b)(2) of the Act,⁴⁰ the Department required that both respondents provide constructed-value and cost of production (COP) information to determine if there were reasonable grounds to believe or suspect that sales of foreign like product had been made at prices that represented less than the COP of the product.

³⁷ The CEP offset from home-market net price is subject to an offset cap, which is calculated as the sum of home-market indirect selling expenses up to the amount of U.S. indirect selling expenses deducted from CEP.

³⁸ See 19 CFR 351.403(c).

³⁹ See Antidumping Proceedings: Affiliated Party Sales in the Ordinary Course of Trade, 67 FR 69186 (November 15, 2002).

⁴⁰ See 19 USC 1677b(b)(2)(A)(ii).

1. Calculation of Cost of Production

We calculated the COP for the respondents based on the sum of the cost of materials and fabrication for the foreign like product, plus amounts for SG&A expenses and packing, in accordance with section 773(b)(3) of the Act. We relied on the COP data submitted by Hyosung and Hyundai.

2. Test of Comparison Market Sales Prices

On a product-specific basis, we compared the adjusted weighted-average COP to the per-unit price of the comparison-market sales of the foreign like product to determine whether these sales had been made at prices below the COP. In particular, in determining whether to disregard home-market sales made at prices below the COP, we examined whether such sales were made within an extended period of time in substantial quantities and at prices which permitted the recovery of all costs within a reasonable period of time, in accordance with sections 773(b)(2)(B), (C), and (D) of the Act. For purposes of this comparison, we used COP exclusive of selling and packing expenses. The prices were net of billing adjustments, discounts, movement expenses, direct and indirect selling expenses, and packing expenses, where appropriate.

3. Results of the Cost of Production Test

Section 773(b)(1) of the Act provides that, where sales made at less than the COP “have been made within an extended period of time in substantial quantities” and “were not at prices which permit recovery of all costs within a reasonable period of time,” the Department may disregard such sales when calculating normal value. Pursuant to section 773(b)(2)(C)(i) of the Act, we did not disregard below-cost sales that were not made in “substantial quantities,” *i.e.*, where less than 20 percent of sales of a given product were made at prices less than the COP. We disregarded below-cost sales when they were made in substantial quantities, *i.e.*, where 20 percent or more of a respondent’s sales of a given product were at prices less than the COP and where “the weighted average per unit price of the sales . . . is less than the weighted average per unit cost of production for such sales.”⁴¹ Finally, based on our comparison of prices to the weighted-average COPs, we considered whether the prices would permit the recovery of all costs within a reasonable period of time.⁴²

For Hyosung and Hyundai, the cost test indicated that, for home market sales of certain products, more than 20 percent were sold at prices below the COP within an extended period of time and were at prices which would not permit the recovery of all costs within a reasonable period of time. Thus, in accordance with section 773(b)(1) of the Act, we disregarded these below-cost sales as outside of the ordinary course of trade in our analysis of the companies’ home-market sales data and used the remaining sales to determine normal value.

E. Calculation of Normal Value Based on Comparison Market Prices

⁴¹ See section 773(b)(2)(C)(ii) of the Act.

⁴² See section 773(b)(2)(D) of the Act.

We calculated normal value for Hyosung and Hyundai based on the reported packed, ex-factory, or delivered prices to comparison-market customers.

With respect to Hyosung, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*e.g.*, warranty, bank charges, installation costs, and other charges), pursuant to section 773(a)(6)(B)(ii) of the Act. For Hyundai, we made deductions from the starting price, where appropriate, for certain movement expenses (*i.e.*, inland freight and inland insurance) and for certain direct selling expenses (*i.e.*, charges related to the installation of LPTs, warranty, and certain other fees), pursuant to section 773(a)(6)(B)(ii) of the Act. For both companies, we added U.S. packing costs and deducted home-market packing costs, in accordance with sections 773(a)(6)(A) and (B)(i) of the Act. Because Hyundai incurred commissions on U.S. sales but not comparison-market sales, we made an adjustment to normal value for a commission offset to account for the commissions incurred in the home-market on U.S. sales. Specifically, we deducted home-market indirect selling expenses from normal value up to the amount deducted from U.S. price for commissions.

As discussed in the “Level of Trade” section above, we made an offset to CEP, pursuant to section 773(a)(7)(B) of the Act and 19 CFR 351.412(f), for both respondents. We calculated the CEP offset as the lesser amount of the indirect selling expenses incurred on the home-market sales or the indirect selling expenses deducted from the starting price in calculating CEP.

When comparing U.S. sales with comparison-market sales of similar, but not identical, merchandise, we also made adjustments for physical differences in the merchandise in accordance with section 773(a)(6)(C)(ii) of the Act and 19 CFR 351.411. We based this adjustment on the difference in the variable cost of manufacturing of the foreign-like product and that of the subject merchandise.⁴³

F. Price-to-Constructed Value Comparison

Where we were unable to find a home-market match of identical or similar merchandise, we based normal value on constructed value in accordance with section 773(a)(4) of the Act. Where appropriate, we made adjustments to constructed value in accordance with section 773(a)(8) of the Act.

In accordance with section 773(e) of the Act, we calculated constructed value based on the sum of the respondents’ material and fabrication costs, SG&A expenses, profit, and U.S. packing costs. We calculated the COP component of constructed value as described above in the “Calculation of Cost of Production” section of this memorandum. In accordance with section 773(e)(2)(A) of the Act, we based SG&A expenses and profit on the amounts incurred and realized by the respondents in connection with the production and sale of the foreign like product in the ordinary course of trade, for consumption in the foreign country. The Department’s normal practice is to rely on the financial information most contemporaneous with the period of

⁴³ See 19 CFR 351.411(b).

review.⁴⁴ Because the majority of this period fell within fiscal year 2015 rather than fiscal year 2014, we relied on Hyosung and Hyundai's G&A and financial expense rates for fiscal year 2015.

Currency Conversion

We made currency conversions into U.S. dollars in accordance with section 773A(a) of the Act and 19 CFR 351.415, based on the exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank. The exchange rates are available on the Enforcement and Compliance website at <http://enforcement.trade.gov/exchange>.

⁴⁴ See, e.g., *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompany Issues and Decision Memorandum at Comment 3.

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Recommendation

We recommend applying the above methodology for these preliminary results.

☒ Agree ☐ Disagree



Paul Piquado
Assistant Secretary
for Enforcement and Compliance

26 August 2016
Date

⁴⁴ See, e.g., *Polyethylene Retail Carrier Bags from Thailand: Final Results of Antidumping Duty Administrative Review and Partial Rescission of Antidumping Duty Administrative Review*, 72 FR 64580 (November 16, 2007), and accompany Issues and Decision Memorandum at Comment 3.