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CCR (Hyundai)  
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**DATE:** May 24, 2018

**MEMORANDUM TO:** Gary Taverman  
Deputy Assistant Secretary  
for Antidumping and Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance

**FROM:** Scot Fullerton  
Director, Office VI  
Antidumping and Countervailing Duty Operations

**SUBJECT:** Preliminary Results of Changed Circumstances Review Regarding  
Successor-In-Interest Analysis: Large Power Transformers from  
the Republic of Korea

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## **I. Summary**

The Department of Commerce (Commerce) is conducting a changed circumstances review (CCR) of the antidumping duty order on large power transformers (LPTs) from the Republic of Korea (Korea). As a result of our analysis, we recommend that Commerce preliminarily determine that Hyundai Electric & Energy Systems Co., Ltd. (HEES) is the successor-in-interest to Hyundai Heavy Industries Co., Ltd. (HHI)<sup>1</sup> and that HHI's current cash deposit rate is the rate for HEES. Additionally, we recommend applying the cash deposit rate applicable to HEES retroactively to the effective date of the first entry by HEES at the final results of this CCR.

## **II. Background**

On August 31, 2012, Commerce published in the *Federal Register* the antidumping duty order on LPTs from Korea, which included HHI.<sup>2</sup> During the 2014-2015 administrative review, covering the period August 1, 2014, through July 31, 2015, Commerce assigned HHI an antidumping duty rate, based on adverse facts available (AFA), of 60.81 percent.<sup>3</sup> During the 2015-2016 administrative review, covering the period August 1, 2015, through July 31, 2016,

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<sup>1</sup> On April 3, 2017, HEES which was spun off from HHI effective April 1, 2017, began operations as a separate corporation. See Hyundai's January 3, 2018 Questionnaire Response (Hyundai January 3, 2018 QR).

<sup>2</sup> See *Large Power Transformers from Japan: Antidumping Duty Order*, 77 FR 53177 (August 31, 2012) (*Order*).

<sup>3</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review; 2014-2015*, 82 FR 13432 (March 13, 2017) (*2014-2015 Final Results*).

Commerce also assigned HHI an antidumping duty rate, based on AFA, of 60.81 percent.<sup>4</sup> Pursuant to section 751(b)(1) of the Tariff Act of 1930, as amended (the Act) and 19 CFR 351.216(d), on December 4, 2017, Commerce self-initiated a CCR regarding HHI's new spin-off company, HEES, based on information obtained (1) during the course of the 2014-2015 and 2015-2016 administrative reviews, (2) *via* public search and the phone conversation with a representative retained by ABB Inc.'s (ABB's or the petitioner's) counsel, and (3) from U.S. Customs and Border Protection (CBP) data.<sup>5</sup>

On December 5, 2017, we issued a questionnaire to Hyundai and on January 3, 2018, Hyundai<sup>6</sup> responded.<sup>7</sup> On January 29, 2018, ABB submitted comments in response to Hyundai's January 3, 2018 QR.<sup>8</sup> On February 7, 2018, Hyundai submitted comments in response to ABB's Comments.<sup>9</sup>

### **III. Scope of the Order**

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

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

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

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

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<sup>4</sup> See *Large Power Transformers from the Republic of Korea: Final Results of Antidumping Duty Administrative Review*; 2015-2016, 83 FR 11679 (March 16, 2018) (*2015-2016 Final Results*).

<sup>5</sup> See *Large Power Transformers from the Republic of Korea: Initiation of Antidumping Duty Changed Circumstances Review*, 82 FR 57210 (December 4, 2017) (*Initiation Notice*).

<sup>6</sup> HHI and HEES are collectively referred to as Hyundai.

<sup>7</sup> See Letter from Commerce to Hyundai, re: Large Power Transformers from the Republic of Korea: Antidumping Duty Changed Circumstances Review Questionnaire, dated December 5, 2017; *see also* Hyundai January 3, 2018 QR.

<sup>8</sup> See Letter from ABB, re: Large Power Transformers from the Republic of Korea – Petitioner's Comment on Hyundai's Questionnaire Response, dated January 29, 2018 (ABB's Comments).

<sup>9</sup> See Letter from Hyundai, re: Large Power Transformers from Korea: Response to ABB's Comments on Hyundai's Questionnaire Response, dated February 7, 2018 (Hyundai's Comments).

#### IV. Successor-In-Interest Determination

In determining whether a change in a company and its relationship with outside entities results in a new company that is not a successor to the pre-change company for cash deposit purposes, Commerce examines a number of factors including, but not limited to: changes in structure, management, production facilities, supplier relationships, and customer base.<sup>10</sup> Although no single, or even several, of these factors will necessarily provide a dispositive indication of succession, generally, Commerce will consider a company to be a successor if its resulting operation is not materially dissimilar to that of its predecessor.<sup>11</sup> Thus, if the “totality of circumstances” demonstrates that, with respect to the production and sale of the subject merchandise, the new company operates as the same business entity as the prior company, Commerce will assign the new company the cash deposit rate of its predecessor.<sup>12</sup>

In its questionnaire response, Hyundai detailed the following regarding the company’s operations:

##### 1. *Ownership / Management / Corporate Structure*

The record shows that HHI’s Electro Electric Systems Division, which had been involved in the production and sales of LPTs, was spun off into HEES, effective April 1, 2017, and was registered as a new corporation, effective April 3, 2017.<sup>13</sup>

With regard to ownership, information on the record shows that HEES’s major shareholders are essentially identical to those from HHI before the spin-off.<sup>14</sup> In fact, except for Hyundai Robotics, each of HEES’s shareholders listed in Attachment 22 was a shareholder of HHI.<sup>15</sup>

Concerning management, the record indicates that virtually all of the directors for HEES were also directors for HHI.<sup>16</sup> In addition, HEES’s sales personnel [ ] prior to the spin-off.<sup>17</sup>

Regarding corporate structure, information on the record demonstrates that after the spin-off, HHI and HEES have not had a relationship concerning the merchandise under review, there has not been an overlap of the production and sale of such merchandise

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<sup>10</sup> See, e.g., *Ball Bearings and Parts Thereof from France: Final Results of Changed–Circumstances Review*, 75 FR 34688 (June 18, 2010), and accompanying Issues and Decision Memorandum (IDM) at Comment 1.

<sup>11</sup> See, e.g., *Fresh and Chilled Atlantic Salmon from Norway: Final Results of Changed Circumstances Antidumping Duty Administrative Review*, 64 FR 9979, 9980 (March 1, 1999).

<sup>12</sup> See, e.g., *id.* at 9980; *Brass Sheet and Strip from Canada: Final Result of Administrative Review*, 57 FR 20461 (May 13, 1992), and accompanying IDM at Comment 1.

<sup>13</sup> See Hyundai January 3, 2018 QR at 1, 3-5, 7 and Attachment 1.

<sup>14</sup> *Id.* at 10, 18 and Attachments 8 and 22.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at Attachments 10, 23 and 64.

<sup>17</sup> *Id.* at Attachment 61.

between the two companies, and HHI has had no involvement in the sale, distribution, or production of the merchandise under review.<sup>18</sup> Additionally, Hyundai explains that since the spin-off became effective, HHI and HEES do not share sales operations.<sup>19</sup> In fact, the two companies sell completely different products and each respective sales team has no interaction.<sup>20</sup> Further, Hyundai explains that all Korean assets related to sales and production of LPTs were spun off into HEES.<sup>21</sup>

Based on the information above, we preliminarily determine that HHI has undergone significant changes in its board of directors, management, and corporate structure as a result of the spin-off of HEES.

## 2. *Production Facilities*

Hyundai explains that since the spin-off, HHI has not had the capacity (*e.g.*, facilities) to produce LPTs and that HEES produces merchandise under review because the production facilities of HEES were spun off from HHI.<sup>22</sup>

Therefore, based on record evidence, we preliminarily determine that these changes in the production facilities before and after the spin-off are significant, HHI's current production facilities are materially dissimilar from those of HEES, and HEES assumed HHI's production for the merchandise under review.

## 3. *Supplier Relationships*

Hyundai states that “[p]rior to the spinoff, HHI purchased raw materials for subject merchandise directly from vendors” and that “[s]ince the spinoff, HEES has procured raw materials for subject merchandise directly from vendors.”<sup>23</sup> Hyundai provided a list of suppliers before and after the spin-off, which indicates that HEES [ ].<sup>24</sup> Thus, we preliminarily find that HEES's supplier relationships did not change materially or significantly from HHI as a result of the spin-off.

## 4. *Customer Base*

Hyundai provided lists of customers before and after the spin-off and the review of the customer lists indicates that out of [ ] customers listed for HEES, [ ] were also customers of HHI before the spin-off.<sup>25</sup> Moreover, Hyundai explains that all sales by HEES to the United States were made through Hyundai Corporation USA (Hyundai

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<sup>18</sup> *Id.* at 3, 38, and Attachments 4, 5 and 64.

<sup>19</sup> *Id.* at 33.

<sup>20</sup> *Id.*

<sup>21</sup> *Id.* at 1.

<sup>22</sup> *Id.* at 7 and 28-29.

<sup>23</sup> *Id.* at 34.

<sup>24</sup> *Id.* at Attachments 68 and 69.

<sup>25</sup> *Id.* at Attachments 70 and 71.

USA), as HHI's sales to the United States were before the spin-off.<sup>26</sup> As such, we preliminarily determine that HHI and HEES have a significant overlap regarding their customer base.

For the reasons discussed above, we preliminarily find that Hyundai has provided sufficient evidence, based on the totality of the circumstances under Commerce's successor-in-interest criteria, to demonstrate that HEES's day-to-day operations, corporate and management structure, and ownership are materially similar to those of HHI before the spin-off with respect to the merchandise under review. Moreover, we preliminarily find that HEES assumed HHI's production facilities, supplier relationships, and customer base with regard to the merchandise under review. Thus, we recommend that Commerce preliminarily find that HEES is the successor-in-interest to HHI and the rate assigned to HHI should be the rate for HEES as a result of our successor-in-interest finding.

## **V. Retroactive Application of HHI's Cash Deposit Rate to HEES**

In CCRs, we generally consider a company to be the successor to another company for purposes of antidumping duty cash deposits if the operations of the successor are not materially dissimilar to those of its predecessor. If Commerce makes such a determination, as it has preliminarily done here, the successor company will receive the predecessor company's cash deposit rate. Typically, in successor-in-interest CCRs the cash deposit rate determined for the successor company is applied prospectively.<sup>27</sup> Commerce has, however, articulated instances wherein determinations may be applied retroactively, *e.g.*, where a predecessor company had been excluded from the antidumping duty order.<sup>28</sup> Although in prior CCRs Commerce has stated that because cash deposits are only estimates of the amount of antidumping duties to be assessed, changes in cash deposit rates are not made retroactively,<sup>29</sup> these prior CCRs were not confronted with the issue of cash deposit avoidance, which is chief among Commerce's concerns in enforcing and maintaining the efficacy of its antidumping and countervailing duty orders. These concerns are particularly relevant when considering that one of the purposes of CCRs is to ensure that the relief afforded to the domestic industry through the payment of the appropriate cash deposits is not undermined by companies taking steps to avoid all or a portion of such payment.<sup>30</sup> The record of this case, in particular, gives rise to Commerce's concern as to whether HHI has acted in a manner to avoid the payment of the appropriate cash deposits, and, effectively, deprived the domestic industry of its entitled relief.

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<sup>26</sup> *Id.* at 9, 16, and 25.

<sup>27</sup> See 19 C.F.R. § 351.221(b)(7).

<sup>28</sup> *Certain Carbon Steel Butt-Weld Pipe Fittings from Thailand: Final Results of Changed Circumstances Antidumping Duty Review*, 74 FR 8904 (Dep't of Commerce Feb. 27, 2009) at Comment 1.

<sup>29</sup> *Certain Lined Paper Products from India: Preliminary Results of Changed Circumstances Review*, 79 FR 21897, 21898 (Dep't of Commerce Apr. 18, 2014) *unchanged in*; see also *Notice of Initiation and Preliminary Results of Antidumping Duty Changed Circumstances Review: Certain Frozen Warmwater Shrimp from India*, 77 FR 64953 (Dep't of Commerce Oct. 24, 2012).

<sup>30</sup> Congress stated that one of the reasons for section 751(b) of the Act was to "introduce {} more procedural safeguards" for domestic interested parties. See S. Rep. 249, 96<sup>th</sup> Cong., 1<sup>st</sup> Sess. 80-81.

On November 15, 2016, HHI's board of directors approved a spin-off of HHI's Electro Electric Systems Division that produced and exported LPTs, as stated above.<sup>31</sup> In late November 2016, HHI began notifying customers of the spin-off.<sup>32</sup> On January 18, 2017, HHI notified the Korea Financial Service Commission of the planned spin-offs.<sup>33</sup> Hyundai explained that on January 27, 2017, counsel to HHI informed Commerce of the likely spin-offs when they met with Commerce officials concerning the *2014-2015 Final Results*.<sup>34</sup> On February 27, 2017, HHI's shareholders approved the spin-off.<sup>35</sup> On March 13, 2017, Commerce published the final results of the 2014-2015 administrative review and assigned HHI an antidumping duty rate of 60.81 percent, finding that the application of total AFA was warranted.<sup>36</sup> On April 1, 2017, HHI's Electro Electric System Division was spun off and HEES (*i.e.*, the former HHI's Electro Electric Division) was formed.<sup>37</sup> On April 3, 2017, HEES was registered as a separate corporation and began LPT operations.<sup>38</sup> Since [ ], [ ], the record shows that subject merchandise has been entering at the all-others rate of 22 percent because, as Hyundai explains, HEES is the manufacturer of subject merchandise.<sup>39</sup> Regarding [ ], Hyundai explains that it [ ].<sup>40</sup> However, [ ]

[ ].<sup>41</sup> On [ ], HEES also [ ].<sup>42</sup> On December 4, 2017, we self-initiated this CCR because we were concerned that certain merchandise may not be entering the United States at the appropriate cash deposit rate.<sup>43</sup> On March 16, 2018, Commerce published the final results of the 2015-2016 administrative review, covering the period August 1, 2015, through July 31, 2016, and assigned HHI an antidumping duty rate of 60.81 percent also on the basis of total AFA.<sup>44</sup>

Sections 751(a)(1)(B) and 751(a)(2)(C) of the Act stipulate that the cash deposit rate following an administrative review for a company will be based on the rates determined by Commerce in that administrative review. Necessarily, this statutory scheme requires that parties pay the correct amount of applicable cash deposits determined at the final results of an administrative review. Congress mandated that a rate determined from an administrative review would remain in effect until a subsequent administrative review was completed. In considering this statutory scheme, however, Congress also anticipated that companies may make certain business decisions that would allow them to avoid the payment of the appropriate cash deposits. For example, a company could create a new entity in which that new entity would produce and export the prior company's merchandise and enter that merchandise at a different or lower cash deposit rate. In

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<sup>31</sup> See Hyundai January 3, 2018 QR at 1 and Attachment 1.

<sup>32</sup> *Id.* at 1.

<sup>33</sup> *Id.*

<sup>34</sup> *Id.*

<sup>35</sup> *Id.*

<sup>36</sup> See *2014-2015 Final Results*.

<sup>37</sup> See Hyundai January 3, 2018 QR at 1 and 3-4.

<sup>38</sup> *Id.*

<sup>39</sup> *Id.* at 22-24 and Attachment 63.

<sup>40</sup> *Id.*

<sup>41</sup> *Id.* at 23.

<sup>42</sup> *Id.*

<sup>43</sup> See *Initiation Notice*, 82 FR 57210 (December 4, 2017).

<sup>44</sup> See *2015-2016 Final Results*, 83 FR 11679 (March 16, 2018).

this CCR, we are concerned that such a situation exists. While HHI may make certain business decisions, including reorganizing its corporate structure, that HEES became operational shortly after we applied the total AFA rate of 60.81 percent to HHI in the *2014-2015 Final Results* and HEES entered subject merchandise at the lower all-others cash deposit rate of 22 percent, we have concerns that Hyundai is not paying the appropriate cash deposit rate as a result. This deprives the domestic industry of the remedial effect of Hyundai paying the appropriate cash deposits, thereby undermining the effectiveness of the LPT order.

As detailed above, Hyundai completed its reorganization of its LPTs business in April 2017 and began entering subject merchandise in May 2017, less than two months after Commerce assigned HHI a rate of 60.81 percent in the 2014-2015 administrative review. Nevertheless, Hyundai, by way of its newly created spin-off, HEES, entered subject merchandise at the lower all-others rate of 22 percent. If we continue to find that HEES is the successor-in-interest to HHI for the final results of this CCR and apply these results on a prospective basis, which would require that HEES pay cash deposits at HHI's 60.81 percent rate only on future entries, the determinations made in the 2014-2015 and 2015-2016 administrative reviews may be subverted and the integrity of the LPTs order may be substantially weakened. This would deprive the domestic industry of adequate relief afforded by the law requiring HEES to pay the appropriate cash deposits at the rate assigned to HHI in the underlying (*i.e.*, 2014-2015 and 2015-2016) administrative reviews. Such deprivation would persist until the completion of the ongoing 2016-2017 administrative review, where we will determine the assessment rate and new cash deposit rate for future entries.

We believe that a scenario like this, which arises out of a "changed circumstance," is among the reasons Congress added section 751(b) of the Act. In order to maintain the efficacy of an order, Commerce has the discretion to apply the cash deposit rate retroactively to address changed circumstances when such circumstances result in the avoidance of payment of the proper cash deposit. For the reasons noted above, we preliminarily find that as a result of Hyundai's business decision to spin-off HEES and for HEES to then enter subject merchandise under the lower all-others rate, the efficacy of the order will be undermined if the rate is applied prospectively, thereby depriving the domestic industry of the full magnitude of the remedy. If, for the final results of this CCR, we continue to find it appropriate to retroactively apply HHI's cash deposit rate to HEES, we will correct any such cash deposit avoidance and afford the relief that payment of appropriate cash deposits was intended to provide. As such, to maintain the effectiveness of the order and to provide the adequate relief to the domestic industry, we preliminarily determine that the unique facts of this CCR warrant the retroactive application of the cash deposit rate to the effective date of the first entry by HEES. Based on our analysis above, we preliminarily recommend applying the cash deposit rate applicable to HEES retroactively to the effective date of the first entry by HEES.

## **VI. RECOMMENDATION**

For the reasons explained above, we preliminarily determine that HEES is the successor-in-interest to HHI, that HHI's current cash deposit rate should be applied to HEES, and that we will

apply the cash deposit rate applicable to HEES retroactively to the effective date of the first entry by HEES at the final results of this CCR.



\_\_\_\_\_  
Agree

\_\_\_\_\_  
Disagree

5/24/2018

X

*Gary Taverman*

Signed by: GARY TAVERMAN

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Gary Taverman  
Deputy Assistant Secretary  
for Antidumping Countervailing Duty Operations,  
performing the non-exclusive functions and duties of the  
Assistant Secretary for Enforcement and Compliance